

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-71 of 2010

(CMA No. 2357/2011 u/s 3 & 4
of Contempt of Court Act, 1976)

Manzoor Muhammad & others

Petitioners

Versus

Federation of Pakistan & others

Respondents

Date of hearing: 19.11.2018

Mr. Malik Naeem Iqbal Advocate for the Petitioners.

Mr. Khalid Javed, Advocate for the Respondents No.2 and 3.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

O R D E R

The instant petition was disposed of by this Court vide order dated 03.05.2010 with the following observations:-

“ Be that as it may, in view of the clear cut admission of the counsel for KPT, we direct the respondent KPT to implement the above noted office memorandum dated 29.08.2008 in its letter and spirit and regularize the service of petitioners who are appointed upto 03.06.2008 from 01.07.2008 and to pay consequential monetary benefit to them. Such may be done by the respondent KPT within a period of one month.

Petition along with listed application stands disposed of in above terms.

2. On 25.02.2011, the Petitioners being aggrieved by and dissatisfied with the non-action by the alleged Contemnors, filed the Application (CMA 2357/2011) under Article 204 of the

Constitution r/w Section 3 & 4 of the Contempt of Court Act, 1976, praying therein to initiate the Contempt Proceedings against the alleged Contemnors, who willfully disobeyed and disregarded the order dated 03.05.2010, passed by this Court.

3. The alleged Contemnors filed objections by way of counter affidavit and statement.

4. Mr. Malik Naeem Iqbal, learned counsel for the Petitioners has argued that the alleged Contemnors, despite clear directions have not complied with the above order in its letter and spirit. He further contended that directions were issued to the Respondents to implement the office memorandum dated 29.08.2008 in its letter and spirit and to regularize the service of the Petitioners and to pay consequential monetary benefits to them within a period of one month. He further submitted that the service of the Petitioners have been regularized but consequential monetary benefits to the Petitioners as directed by this Court vide order dated 03.05.2010 have been declined. Learned counsel has further argued that the Petitioners are entitled for the following monetary benefits:-

- (i) **Back benefits w.e.f. 1st July, 2008.**
- (ii) **Gazzated holidays provided to regular KPT employees.**
- (iii) **Medical facility including OPD facility.**
- (iv) **Salary packages including other fringe benefits as per similarly placed KPT employees.**
- (v) **70% increase in the salaries of KPT employees as per charter of demand 2010.**
- (vi) **Promotion policy.**
- (vii) **Plots for KPT employees.**
- (viii) **All other benefits, which are enjoyed by other permanent employees.**

5. Learned counsel further submitted that the Petitioners are in the service of Karachi Port Trust, thus are entitled for all the

benefits as given to the other employees as per KPT Rules. He next submitted that the service of the Petitioners is being governed by the KPT Service Rules and the Rules framed by the Government from time to time. He further added that Industrial Relations Act is not applicable to the staff of Watch and Ward Department and Port Fire Services; however the Petitioners are entitled to all service benefits including charter of demand. He further submitted that the Respondents have adopted a discriminatory attitude towards Petitioners by regularizing the service of 13 employees of Medical Department, however, the terms and conditions mentioned in their absorption letters are the same. He further submitted that the Petitioners have established a prima facie case for initiating contempt proceedings against the contemnors. It is further added by the learned counsel that the Petitioners are agitating for their basic rights and seeking indulgence of this Court for directions to the Respondents for compliance of the order dated 03.05.2010 passed by this Court. Learned counsel for the Petitioners while referring the report of the Committee dated 14.07.2015, which prima facie suggest.

- i. ***“Historically the security of the Port was being managed using services of Watch & Ward Staff (Present strength of Watch & Ward Staff is 306 and prior to establishment of Port Security Force it was 580).***
- ii. ***The Karachi Port Security Force was raised after the poignant incident of 9/11, on lines of Airport Security Force in the year 2003, upon promulgation of Karachi Port Security Force Ordinance 2002 (No. LXXXIV of 2002) (hereinafter referred to as PSF Ordinance, 2002). Karachi Port Trust consists of three Port Facilities, which are Oil Piers, East and West Wharves. These facilities comply with the International Ship and Port Facility Security (ISPS) code since July 2004. ISPS code warrants proper implementation of security arrangements and deployment of trained work force.***
- iii. ***Accordingly, the induction of PSF Personnel was carried out after following the prescribed procedure in Aug-Sep 2004. Around 92 Security***

Guards and 23 Assitt. Sun Inspectors were appointed on 05 years contract basis in BPS-8 and BPS-9 respectively. They were later on permanently absorbed in the same pay & scale in Aug-Oct 2012 in which 183 Security Guards and 70 Asstt. Sub Inspectors were appointed. The present total strength of PSP Personnel is 325 which comprises both Security Guards (BPS-8) and ASI (BPS-9).

- iv. Presently, there are two different types of Salary Packages for employees in PSP Department. these types of Packages/ Scale are identified as under:-
(1) National/ Basic Pay Scales for PSF Personnel.
(2) KPT Pay Scales for Watch & Watch Staff.*
- v. It is pertinent to highlight that Section 17 of PSF Ordinance stipulates that the KPT Board may, make rules regulating the classes and grades of and the remuneration to be paid to the members of Port Security Force and their conditions of service.*
- vi. The security of the port is the core issue, which is fundamentally based on the motivation level of staff deployed in concerned areas. The Well-being of the concerned security staff is also paramount and can be achieved through ensuring that they feel as a part of team, remain motivated, and are not alienated which will allow them to carry out their duties efficiently and with a sense of responsibility that they are at par with other KPT employees.*
- vii. Presently, the Pay Scales for PSF Personnel are linked with BPS structure of the Federal Government and increase in pay and allowances in respect of PSF Personnel are only allowed as and when announced by the Federal Government. On the other hand, in case of Watch & Ward Staff, the increase in pay and allowances is considered after every 02 years through Charter of Demand / Memorandum of Settlement. In fact, the increase in pay and allowances allowed by Federal government during the last few years' does not commensurate with the increases in pay and allowances allowed to other workers of KPT. Due to substantial increase in the pay structures and emoluments of KPT workers, the differential has become too much. Obviously, this has created resentment and heart burning amongst the PS staff and it has widened the gap between the take home salary of PSF Personnel and other KPT workers. Moreover, the KPT workers are entitled of various advances and monetary benefits, and the PSF Personnel are being deprived of all these benefits.*

6. The Section 7 of PSF Ordinance, 2002 categorically defines as under:

“7. Industrial Relations Ordinance 1969 or any other labor law not to apply to the Port Security Force—Nothing contained in the industrial Relations Ordinance, 1969 or any other labor law, which is for the time being in force, shall apply to, or in relation to, to Port Security Force, or any person appointed under this Ordinance”

- 1. Be that as it may, the said provision does not place embargo from legal point of view in respect of monetary benefits or salary packages.*
- 2. The PSF Personnel have also filed a Constitution Petition in the High Court of Sindh with the plea that they may be allowed KPT Pay Scale and other*

fringe benefits that are admissible to Watch & Ward staff and rest of KPT workers.

3. *Therefore, in order to resolve the resentment and unrest among PSF personnel once for all, the Committee recommends the following, keeping in view the all aspects and legality of the case.*
4. *The PSF Personnel may be allowed KPT Pay Scales equivalent to their class/cadre at par with Watch & Ward Staff as below:*
 - i. *Security Guard (BPS-8) to be replaced by Security Guard (KPT PS-2).*
 - ii. *ASI (BPS-9) to be replaced by ASI (KPT PS-4)*
 - iii. *As and when further new categories are formulated in PSF Department the same may also be allowed KPT Pay scales.*

KPT Pay Scales will be allowed i.e. pay fixation will be considered from the date they were permanently absorbed/ regularized in KPK service, however, the benefits of the scale will be effective from 1st July 2015 subject to the undertaking that they will not claim back benefits during the intervening period, as well as withdraw the litigation pending adjudication before Hon'ble High Court of Sindh on same cause of action.

All existing allowances being drawn in BPS will be replaced by KPT Pay Scales allowances effective from 1st July 2015. However, they shall continue to be governed by PSF Ordinance, 2002 and will not be allowed to change their cadre.

They will also be entitled to all other financial benefits like advances, special grants etc as like other KPT employees.

But, however, their status of being force would be as it is as has been defined in PSF Ordinance, 2002.

The Committee was further of the view that if the above recommendations approved the same may be made part of PSF Rules being prepared by the consultant."

7. Mr. Khalid Jawed, learned counsel for the alleged Contemnors has denied the allegations and did not endorse the report of the committee as submitted supra. However, he referred to his statement filed on behalf of the Respondents and contended that the order of this Court dated 03.05.2010 has been complied with in letter and spirit and the Respondents never imagine to disobey the same in any manner whatsoever. He next submitted that the comparison submitted by the Petitioners regarding salary / allowances of Assistant Sub Inspector Port Security Force, Assistant Sub- Inspector (Watch & Ward) KPT and Security Guard of Port Security Force with Security Guard (Watch & Ward) KPT is

absolutely incorrect and baseless. He further submitted that the Petitioners are not employees of KPT but the employees of Port Security Force, which comes within the ambit of KPT but the same force is established through an Ordinance 2002, which has separate functions. Learned counsel attempted to justify the claim of the alleged contemnors, referred comparison of pay and allowances between PSF and Watch and Ward personnel with effect from 01.07.2008 to 31.08.2017 and argued that after framing the Rules of PSF, remarkable increase in the salary and allowances of PSF ASIs and Security Guards has been made. He further submitted that KPT Rules are not applicable to the employees of PSF in its true perspective, therefore, the office memorandum dated 29.08.2008 applied and the Petitioners were regularized as per directives of this Court, therefore the Petitioners were paid all monetary benefits as admissible under the law. In support of his contention he relied upon statement dated 29.09.2018 and argued that the order dated 03.05.2010 passed by this Court has been fully complied with and the consequential monetary benefits have also been paid. He further pointed out that KPT employees (worker) are covered under the relevant labour laws and their service matters / service benefits are settled through charter of demands / settlement under the Sindh Industrial Relations Act, 2013 and the relevant labour laws, whereas the pay scales of personnel of PSF (Petitioners are regulated under the terms of their service context and under Port Security Force Ordinance 2002, hence the same are different from KPT employees. He lastly prayed for dismissal of CMA No. 2357/2011.

8. Mr. Shaikh Liaquat Hussain, Assistant Attorney General representing Respondent No.1 has adopted the arguments advanced by Mr. Khalid Jawed Khan learned counsel for the alleged contemnors.

9. Today when the matter is taken up, learned counsel for Petitioner at the very outset does not press the contempt application to the extent of alleged contemnor No. 1,4 and 5, hence the contempt application so far as these alleged contemnors are concerned stands dismissed as not pressed.

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

11. This Court while disposing of the instant Petition vide order dated 03.05.2011, directed the Respondents to implement the office memorandum dated 29.08.2008 and pay consequential monetary benefits to the Petitioners.

12. Perusal of record shows that the Respondents implemented first part of the order dated 03.05.2011 passed by this Court by regularizing the service of the Petitioners, as per office memorandum dated 29.08.2008. So far as the consequential monetary benefits are concerned, learned counsel for the alleged contemnors has made an abortive attempt by referring his statements filed in this regard and argued that as per law the Petitioners have been paid their due monetary benefits and there is nothing left on the part of Respondents to pay any further to the

Petitioners. We are not impressed with the assertion of learned counsel for the alleged contemnors that they have complied with the second part of the order dated 03.05.2010.

13. Perusal of office memorandum dated 29.08.2008 clearly depicts that regularization for all contract employees will be with effect from 01 July, 2008 and their Seniority will be reckoned from the date of their regularization i.e. 01 July, 2008. The order dated 03.05.2010 passed by this Court is also in the same footing, however, a rider was placed that the Petitioners are also entitled for consequential monetary benefits. The word monetary benefits imply, a monetary incentive which is a money-based reward given when an employee meets or exceeds expectations. Monetary incentives can include cash bonuses, stock options, profit-sharing and any other type of reward that increases an employee's compensation. Prima-facie, the issue involved in the present proceedings is related to the regularization of the service of the Petitioners, thus we infer that the benefits include all the service benefits given to the regular employee of the Karachi Port Trust. As per the contention of the learned counsel for the KPT that the service of the Petitioner is governed by Karachi Port Security Force Ordinance 2002 as per advertisement dated 17.06.2004, thus the KPT Board delinked PSF Personnel from other regular KPT Employees, who are working in basic pay scale of the Government and they got the increase in pay as and when announced by the Federal Government. During the course of the arguments, we have been informed that the service terms and

conditions of the KPT regular employees are settled through memorandum of settlement with CBA, whereas no Labor Laws are applicable to PSF Personnel, thus the Petitioners are not entitled to memorandum of settlement negotiated by CBA. Learned counsel for KPT made on emphasis that the contempt application is not maintainable.

We have gone through the record and other details and are not impressed by the assertion of the learned counsel for the alleged contemnors for the reason that the respondents are liable to pay consequential / monetary benefits to the Petitioners as it is admitted by the KPT in its letter dated 27.09.2018 that Petitioners are KPT employees and salary / allowances are paid from KPT. The compliance report as well as statement filed in this regard do not depict that the consequential monetary benefits have been paid to the Petitioners, which prima-facie entails proceedings to be initiated against the alleged contemnors under Article 204 r/w Section 3 & 4 of Contempt of Court Ordinance 2003.

14. In view of the above averments, the question before us is as to whether we can enlarge the scope and allow the parties to argue the matter on merits of the case in Contempt Proceedings? The answer to this question is in negative.

15. Prime facie the explanation offered by the Respondents vide counter affidavit, statement dated 28.11.2016, 21.09.2017, 29.09.2018 is not tenable under the law. The Petitioners pointed out malice on the part of alleged contemnors warranting interference of this Court to take action against the alleged

contemnors under Article 204 of the Constitution who have apparently failed and neglected to pay consequential monetary benefits to the Petitioners as per order dated 03.05.2010 passed by this Court.

16. In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 03.05.2010 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, prima facie, Petitioners have made out a case for initiating contempt proceedings against the alleged contemnors. Therefore, the office is directed to issue show cause notice under section 17 (1) of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution, to the alleged contemnors namely Mrs. Shama & Captain (R) Tariq Mahmood as to why contempt proceedings should not be initiated against them for willful defiance of the order dated 03.05.2010 passed by this Court. The alleged contemnors are directed to be in attendance along with their explanation, if any, on the date fixed for hearing. The listed application bearing (CMA No.2357/2011) is adjourned to be taken up after two weeks.

JUDGE

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