

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5649 of 2018

Rao Muhammad Gulzar & others,

Applicants through: Malik Naeem Iqbal, advocate

Respondent No.1

through: Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2&3

Through: Mr. Asim Iqbal, advocate.

For hearing of CMA No.17857 of 2020 :

Date of hearing and order: 22.10.2020

ORDER

ADNAN-UL-KARIM MEMON, J: The present application for initiating contempt proceedings, against the alleged contemnors, arises out of the judgment passed by this Court on 30.9.2019 in the aforesaid matter, whereby clear-cut direction was issued to the Managing Director / Competent Authority of respondent-company to consider the case of the petitioners for regularization of their service, more particularly in the same analogy as decided by the Hon'ble Supreme Court of Pakistan in the case of Messrs. State Oil Company Limited vs. Bakht Siddique and others, **2018 SCMR 1181**. The aforesaid judgment was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petition No.3977 of 2019 and the same was disposed of vide order dated 04.03.2020 with the following observation: -

“Learned counsel for the petitioner at the outset states that the direction contained in para 22 of the impugned judgment is being complied with by the petitioner but the petitioner wants some more time to complete the exercise in that the two months’ time granted by the High Court is not enough for doing the same. His further grievance is that amongst the respondents, who have filed constitution petitions before the High Court in person, there are persons who are not even the employees of the contractor and thus, will not be entitled to get the benefit of the impugned judgment. Whatever the case may be, it may be looked into by the petitioner in making compliance of the impugned judgment for which we allow six months’ time. Learned counsel for the petitioner is satisfied by such extension of time granted to the petitioner and states that during the given time, the matter shall be disposed of.

The petition stands disposed of in the terms mentioned above.”

2. On 07.09.2020, petitioner No.01 filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No.17857 /2020) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned judgment passed by this Court.

3. Malik Naeem Iqbal, learned counsel for the applicants, has submitted that since the alleged contemnors had failed to comply with the judgment/orders passed by this Court in the aforesaid matter, contempt proceedings may be initiated against them. He next contended that this petition was disposed of vide judgment dated 30.09.2019, which was challenged by the respondent-company before the Hon'ble Supreme Court of Pakistan by filing Civil Petition No.3977 of 2019, and the Hon'ble Supreme Court maintained the judgment of this Court, vide order dated 04.03.2020 however, the time frame was given in the order of this Court, was extended for further six (06) months. Learned counsel for the applicants has further contended that to date no regularization order has been given by the alleged contemnors to all the petitioners, though the compliance report/statement has been filed by the respondent-company on 13.10.2020, nothing has been done about the compliance of the judgment as referred above. Learned counsel next contended that this Court vide orders dated 29.08.2018 and 11.10.2018 suspended the operation of the letter of termination of some of the petitioners and several other chances were given to the respondent-company to do the needful and till date compliance has not been made for one or the other reason and lame excuses have been put forwarded which have already been discarded by this Court as well as by the Honourable Supreme Court. Learned counsel states that all the petitioners, except nineteen (19) petitioners, have been accommodated, whereas they qualified for the regularization of their services, the respondents have adopted a discriminatory attitude by singling out some of the petitioners without any rhyme any reason.

4. We have seen the objections filed on behalf of the petitioners to the purported compliance report dated 13.10.2020 which reads as under:

Total number of petitioners	Petitioners not regularized	Petitioners who have been issued offer letters for regularization
127	30	97

That 30 petitioners who have not been regularized can be categorized as follows:

Description	Number of Petitioners	Remarks / Objection
Terminated	19	They were terminated during the pendency of petition and in violation of interim injunctive order dated 29.08.2018 and this Honorable Court vide its order dated 11.10.2018 again restrained the respondent from acting upon termination orders passed by them and finally vide judgment dated 30.09.2019 the respondents were directed to consider the case of all petitioners for regularization of their service. Consequently, the contemnors have acted in defiance of the order of this Hon'ble Court by rejecting their cases on account of being terminated employees.
Death	2	They have passed away after the announcement of the judgment dated 30.09.2019, as such cannot be

		excluded from the process.
Case Withdrawn	01	Nil
Overage	01	Nil
Document not submitted	01	Nil
Record not found	01	Nil
Rejected	05	Rejected for the reason that they do not meet the criteria as per clause 5.1 of the agreement with CBA. The reason is ex-facie malafide inasmuch as clause 5.1 relates to the appointment of children of retired workers of the company who have retired effect from 01.01.2012 to 31.12.2014 provided tat no son/daughter is/was in the employment of the company. Fathers of all the five petitioners never retired during the above mentioned period.
<i>That the objections about the 97 petitioners who have been issued offer letters are as follows:</i>		
i.	35 petitioners out of 97 were issued offer letters against lower grade/salary instead of in the grade in which they were serving before issuance of offer letters for regularization.	
ii.	The offer letters do no indicate the date of regularization, which according to the judgment dated 30.09.2019 is to be under the judgment of the Honorable Supreme Court in the case of M/s. State Oil Company Limited Vs Bakhat Siddique & Others (2018 SCMR 1181). As per the aforementioned judgment, the petitioners are entitled to regularization w.e.f the date of filing of the captioned petition viz: 02.08.2018, and the petitioners are entitled to counting their past service towards pensionary benefits.	

He lastly prays for the initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned judgment passed by this Court and maintained by the Hon'ble Supreme Court vide order dated 04.03.2020. In support of his case, he relied upon the documents attached to his objections to the compliance report.

5. Mr. Asim Iqbal, learned counsel for the alleged contemnors, has refuted the claim of the applicant/ petitioner No.1 and referred to the concise statement dated 13.10.2020 filed by the alleged contemnors and argued that the respondent-company has fully complied with the judgment dated 30.09.2019 passed by this court in its letter and spirit. He relied upon the copy of the compliance report submitted on behalf of the respondent-company and argued that nothing is left on their part. In support of his contention, he relied upon the documents attached with the compliance report and argued that the respondent-company has rightly opined that such petitioners are not entitled to be regularized who had been terminated earlier by their respective employers / third party contractor before passing of the judgment as discussed supra, or who had resigned from their services, or had reached the age of superannuation, or had expired/died or had no record of employment with contractors. He lastly prayed for dismissal of the contempt application.

6. We have heard learned counsel for the applicant and learned counsel appearing on behalf of the respondent-company on the listed application.

7. This is a simple case of enforcement of the order dated 4.3.2020 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.3977 of 2019 as discussed supra.

8. Record reflects that this Court vide judgment dated 30.9.2019 disposed of the C.P. No.D- 5649 of 2018 and the same was maintained by the Hon'ble Supreme Court. The record further reflects that respondent-company recommended the case of all the petitioners excluding thirty (30) petitioners for regularization vide their respective letters attached with the compliance report dated 13.10.2020.

9. We are not impressed by the submissions of learned counsel for the alleged contemnors that the services of thirty (30) petitioners could not be regularized on the premise that they did not meet the criteria as per clause 5.1 of the agreement with Collective Bargaining Agent (CBA) / third party contractor and other reasons assigned for such justification for the simple reason that the issue of third party contractor has already been resolved in the cases of Fauji Fertilizer Company Limited vs. National Industrial Relations Commission, 2013 SCMR 1253, Messrs. State Oil Company Limited vs. Bakht Siddique and others, 2018 SCMR 1181, and Messrs. Sui Southern Gas Company Limited vs. Registrar Trade Unions and others, 2020 SCMR 638, therefore, no premium can be given to the alleged contemnors to deviate from the aforesaid judgments passed by this Court as well as the Hon'ble Supreme Court of Pakistan in order to knock out some of the petitioners from regularizing their services on the point that they were employees of third party contractors. Even some of the petitioners have passed away after passing of the judgment of this Court, therefore, the benefit of the ratio of the judgment of the Hon'ble Supreme Court in the case of Messrs. State Oil Company Limited supra shall also be given to the beneficiaries of the deceased petitioners.

10. In our view, all the petitioners were /are entitled to the benefit of the aforesaid judgment passed by this Court and the Hon'ble Supreme Court of Pakistan, therefore, prima-facie the competent authority of respondent-company was/is under obligation to issue order of regularization of their service against their respective posts held by them before the filing of the captioned petition.

11. We have also scrutinized the compliance report submitted on behalf of the alleged contemnors; prima-facie the explanation offered by the Respondents vide compliance statement dated 13.10.2020 to the extent of

petitioners as discussed in paragraph No.4 is not tenable under the law, in our view, the purported compliance report is not in compliance with the order passed by the Hon'ble Supreme Court in letter and spirit. *Prim-facie*, they have not looked into the basic spirit of the order as discussed supra, therefore, the same is rejected to the extent of petitioners as discussed in paragraph No.9. The petitioners have 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 failed and neglected to issue regularization of their service order to the petitioners, thus, we are left with two options; either to initiate proceedings for contempt against the alleged contemnors under the provisions of Contempt of Courts Ordinance, 2003 or Article 204 of the Constitution, or to direct the Managing Director/Competent Authority of respondent-company to implement the judgment passed by this Court in letter and spirit, expeditiously, without any delay and with reasonable dispatch.

12. We are of the considered view that the interest of justice would be best met if the respondent-company is granted last opportunity to comply with the direction of this Court as well as the Honorable Supreme Court in the instant matter without fail within two (02) weeks and to submit compliance report to this Court on the next date of hearing, failing which show cause notice shall be issued to alleged contemnors on the next date of hearing.

To be listed on **09.11.2020** at **11:00 a.m.**, when alleged contemnors must be present in Court along with their compliance report.

JUDGE

JUDGE

Nadir