

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Agha Faisal

C.P No. D-245 of 2011

**Muhammad Younis & others versus The Province of Sindh & others.**

For Direction:-

For order on CMA No. 1869 of 2017 (Contempt):

**Date of hearing**

**& Decision: 13.01.2020**

Mr. Faizan H. Memon, Advocate for the Applicant

Mr. Ali Safdar Depar, AAG a/w Mr. Sadoro Jalbani, Section Officer, Special Education Department, Government of Sindh.

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**ORDER**

The captioned Petition was disposed of vide order dated 20.05.2011 with the following observation:-

*“We, therefore, direct that the process of appointment on permanent posts be finalized by the respondents within a period of one month and where the petitioners have remained in the employment on contract basis, they will be considered on preference basis being experienced and having know how of the job. Such petitioners in whose favour status quo order was operating and were in the employment will be paid their salaries upto date.*

*The petitions alongwith listed applications stand disposed of in the above terms.”*

2. On 23.01.2017 Petitioner filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No. 1869 of 2017) for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

3. Mr. Faizan H. Memon, learned counsel for the Applicant has argued that despite clear directions in the above said order and subsequent orders passed by this Court, the contemnor has not complied with the same. He next contended that other petitioners have been accommodated, whereas petitioner No.27 has been left out without any reasonable cause. He pointed out that the reason assigned by the respondent-department is that Scrutiny Committee has examined the complete record of petitioners and recommended for re-appointment of the petitioners on their services on humanitarian grounds subject to final approval of the Competent

Authority i.e. Chief Minister Sindh. Learned counsel states that all the petitioners except 05 out of 210 have been regularized but the matter of 05 petitioners has not been processed in accordance with law. He next pointed out that the Secretary (Services) wrongly opined that the Scrutiny Committee was not competent to consider the case of employees who were relieved from their services after completion of their contract in the year 2011 as their cases do not fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013; that Scrutiny Committee has not scrutinized the case of the petitioners as per judgment of this Court; that administrative department should have examined the cases of petitioners at its own level without placing the same before the Scrutiny Committee which was not proper forum for considering their cases for regularization. He next argued that the reasons assigned by the Secretary (services) are erroneous and based upon malafide intention; that the findings of the Competent Authority is also against the decision rendered by this Court as discussed supra. He lastly prays for direction to the respondent-department to comply the directives of this Court as discussed in the order dated 20.05.2011.

4. Mr. Ali Safdar Depar, AAG states that the directions passed by this Court have been substantially complied with, however, the cases of 05 petitioners have been regretted on the premise that the administrative department is competent to take decision for regularization of the services of the petitioners. In support of his contentions, he referred to the statement dated 11.12.2019 and copy of summary for Chief Minister, Sindh dated 2<sup>nd</sup> May, 2019 attached with the statement. He has prayed for dismissal of the listed application.

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

6. This is a simple case of enforcement of the order dated 20.05.2011 passed by this Court as discussed supra.

7. Record reflects that this Court vide order dated 20.05.2011 disposed of the instant petition, in which direction was issued to process the appointment of petitioners on permanent posts by the respondents within a period of one month.

8. The compliance reports dated 10.05.2019 & 24.09.2019 explicitly show that respondent-department recommended the petitioners on their services purely on humanitarian grounds subject to final approval of Competent Authority, whereas Summary for the Chief Minister, Sindh also show that the Competent Authority endorsed the views of Secretary, Services, General Administration and Coordination Department on the premise that Scrutiny Committee was not competent to consider

the cases of the petitioners for regularization and it was for the administrative department to deal with the matter.

9. *Prima facie*, the aforesaid findings of the respondent-department negates the basic spirit of order dated 20.05.2011 passed by this Court, which cannot be construed to be a substantial compliance of the aforesaid order. The explanation offered by the Respondents through statement dated 11.12.2019 is not tenable under the law. We do see malice on the part of alleged contemnor warranting interference of this Court to take action against the alleged contemnor under Article 204 of the Constitution.

10. 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 contemnor that substantial compliance of the order dated 20.05.2011 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, case for initiating contempt proceedings against the alleged contemnor is made out. Resultantly, let a Show Cause Notice be issued to the alleged Contemnor for further proceedings in the matter. CMA No. 1869 of 2017 is adjourned; to be taken after three [03] weeks.

**JUDGE**

**JUDGE**

Nadir/-