

ORDER SHEET
THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-269 of 2020

Order with signature of Judge(s)

For Direction:

1. For order on MIT-II report dated 7.7.2021
2. For hearing of CMA No.17843/2021

22.2.2022

Mr. Zahid Ali Maitlo, advocate for the petitioner
Mr. Dhani Bakhsh Lashari, advocate for respondent No.2.
Mr. Muhammad Irfan, advocate respondent No.4
Mr. Zaheeruddin Sehto, advocate for respondent No.5
Mr. Ali Safdar Debar, AAG along with Dr. Jamaluddin, Senior Director, Sindh Master Plan Authority and Hammadullah Seehar, Section Officer, General HTP, Local Government Department

The captioned petition was disposed of vide order dated 01.06.2021 passed by this Court with the following terms:

“8. In view of the foregoing discussion, the competent authority of respondents is directed to issue the retirement notification of the petitioner in the same pay and scale as per the working paper prepared by the respondent-Town Planning Department Hyderabad, under the law, from the date of his attaining the age of superannuation i.e. 03.3.2018; and, pay all his retirement and other benefits along with his salary of the intervening period, if not paid earlier; and perks and privileges to which he was entitled to on the issuance of notification of his retirement within one month's time without any delay and submit compliance report with the MIT-II of this Court.

9. With these observations, the instant petition stands disposed of along with all the pending applications, if any.

Let a copy of this order be sent to the Secretary Local Government, Sindh for information and compliance.”

The petitioner filed application bearing No.17843/2021 on the ground that alleged contemnors have not complied with the order passed by this court in its letter and spirit.

Mr. Zahid Ali Maitlo learned counsel for the applicant, 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. In support of his case, he relied upon the documents attached to his objections to the compliance/inquiry report.

Learned AAG has filed compliance report which speaks that retirement notification of the petitioner has been issued in Grade-17 by notification dated 14.7.2021. Perusal of the above reflects that he department was required to issue notification in view of working papers prepared by Director, Town Planning Department. Besides, it has been surfaced that petitioner was working as Deputy Director BS-18 and notification of retirement speaks in Grade-17,

whereas judgment of this court clearly depicts directions that notification shall be issued in view of working papers.

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

The mainly plea that the respondents have challenged the order of this court before the Hon'ble Supreme Court of Pakistan; is not justification to avoid implementation of the order of this court and this is the reason this court was compelled to issue show cause notice to the Chief Secretary, Sindh as well as Secretary Local Government that why contempt proceeding shall not be initiated against them vide order dated 05.8.2021.

Pursuant to the above order, Secretary Local Government and Housing and Town Planning Department appeared before this court on 13.10.2021 and took the plea that the petitioner stood retired in 2015 as well as there was no upgradation or promotion of the officials who were working with the present petitioner in same category. He was directed to bring on record all factual aspects through their application and this court will decide the same in accordance with law. He was also directed to constitute committee that shall probe into the matter with the assistance of the documents filed by the petitioner and respondent department which shows date of retirement of petitioner as 3.3.2018.

Learned AAG was given further one month time to bring any interim order passed by the Hon'ble Supreme Court of Pakistan and he was warned that if he fails to obtain interim order, otherwise the order of this court shall be implemented.

The matter was again taken up on 18.1.2022, the Chief Secretary and Secretary Local Government was directed to appear before the court on the next date alongwith compliance report; and, in case of failure contempt proceedings shall be initiated against him for noncompliance of the court's orders.

The matter was taken up on 26.1.2022 Secretary, Local Government Department appeared and submitted that the pay bill of undisputed amount of the petitioner is ready for signature and the matter was adjourned for 03.02.2022. On the very day, Dr. Jamaluddin, Senior Director Sindh Master Plan Authority submitted that in compliance with the courts order bill for outstanding amount of the petitioner were sent to Accountant General Sindh for payment, he sought two weeks' time to conclude the process and stated that the outstanding amount of the petitioner will directly be sent in his account.

Today, when the matter was taken up Dr. Jamaluddin, Senior Director Sindh Master Plan Authority submitted that the District Accounts officer has to make payments of arrears of pay and allowances of the petitioner and relied upon the office order dated 18.02.2022. He requested for summoning the District Accounts Officer Hyderabad for payment to the petitioner.

At this juncture, learned counsel for the petitioner has filed comments upon the inquiry report submitted by the Secretary, Local Government Department with the assertion that inquiry report is based on false assumptions and submitted as under:

- i. Regarding the date of birth of petitioner it is evident from his CNIC bearing number 41306-2555041-3 renewed for the life time on 10/12/2018, that his Date of Birth is 04/03/1985.
- ii. Further at the back side of this CNIC the family file reference No.505431603422 and his manual NIC bearing No.450-58-060741 is also indicated. The CNIC was renewed in the year 2018 since the CNIC bearing the same number that was issued to the petitioner on 18/11/2006 was expired on 31/10/2018.
- iii. His manual NIC bearing No.450-58-060741 as also indicated in the current CNIC, was issued to the petitioner on 07/03/78 and relevant family file reference is bearing No.HD-12/605/28-3-74. This manual NIC was issued to the petitioner when he was studying in HSC part-II and 20 years old.
- iv. All of above mentioned information is available / present in database as verified personally and informed by the Staff at NADRA Facilitation Centre Karachi. Further such verification has been illustrated in the Receipt No.5825522021116065601 issued on 11/02/2022 by NADRA Saholat that is self-explanatory.

We have also scrutinized the purported compliance report submitted on behalf of the alleged contemnors; prima-facie the explanation offered by the Respondents vide compliance statement is not tenable under the law, in our view, the purported compliance report is not in compliance with the order passed by this 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. The petitioner has 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 notification of retirement of the petitioner as directed by this Court and even till today failed to disburse the pensionary benefits to the petitioner, 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 alleged contemnors to implement the order/judgment passed by this Court in letter and spirit, expeditiously, without any delay and within two weeks.

We are of the considered view that the interest of justice would be best met if the alleged contemnors are granted last opportunity to comply with the

direction of this 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 resolve the controversy as agitated by the learned AAG and to reach the correct conclusion of the actual date of birth of the petitioner, we would like to have, first, a report of NADRA on the subject issue of date of birth of the petitioner.

In view of the above, let notice be issued to the chairman NADRA to submit a comprehensive report about the actual date of birth of the petitioner.

Office is directed to dispatch necessary documents available on the record to the Chairman NADRA for his report, which shall come on record within two weeks from today positively. The parties shall assist the office in sending the requisite documents to the Chairman NADRA accordingly.

The District Accounts Officer, Hyderabad is directed to appear in person on the next date of hearing.

Let a copy of this order be transmitted to the Chairman NADRA and District Accounts Officer, Hyderabad for compliance.

To come up after two weeks.

JUDGE

JUDGE