

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.3257 of 2010

Order with signature of Judge

Priority

1. For hearing of Misc. No.28931/2016
2. For hearing of main case.

Dated : 17.03.2021

Mr. Shoa-un-Nabi, advocate for the petitioner.
Mr. M. Nishat Warsi, DAG.
Mr. Faheem Akhtar, advocate for respondent No.3.

-.-.-

It is contended inter alia by the learned counsel for the petitioner that this Court vide order dated 21.1.2011 disposed of the instant petition being not maintainable under the law. He pointed out that the aforesaid order of this Court was assailed before the Hon'ble Supreme Court of Pakistan in Civil Appeal No.59-K/2011. The Hon'ble Supreme Court of Pakistan vide order dated 21.4.2016 set aside the order passed by this Court and remanded the matter to this Court for fresh decision under the law. Learned counsel further pointed out that Messrs Pakistan Space and Upper Atmosphere Commission and others sought review of the orders dated 21 & 27 April 2016 passed by the Hon'ble Supreme Court in CA No.59-K/2011. The Hon'ble Supreme Court of Pakistan vide order dated 16.7.2018 passed the following order:

“Learned ASC for the petitioner states that though the Civil Review Petition No.654/2010 is pending at principal seat of this Court but he states that this Civil Review Petition may be disposed of by observing that whatever is decided in the said review petition, the same will also be applicable in the case in hand. The Respondent present in Court also agrees to such proposition. In the circumstances, this Civil Review Petition is disposed of with the observation that whatever is decided in Civil Review Petition No.654/2010 (Shafiq Ahmed Khan etc. V/S NESCOM Etc) by this Court, same will also apply to the present case.”

Learned counsel also referred to the order dated 9.10.2018 by the Hon'ble Supreme Court of Pakistan in CP No.710/2012. An excerpt of the order dated 9.10.2018 is reproduced as under:

“Petitioner has impugned the judgment rendered in the Writ Petition No.739 of 2010 dated 20.3.2012 wherein it was claimed that the petitioner was denied promotion. The learned Bench of the High Court seized of the matter dismissed the petition on the ground inter-alia that a writ could be issued as rule governing the service of the petitioner are non-statutory. Such controversy has since been resolved in the case titled as Shafiq Ahmed Khan Versus NESCOM (2016 SC 377) and rules were held to be statutory. Review against which has also been dismissed. When the learned counsel

for the respondent was confronted he stated that he has no objection if the matter is remanded back to the High Court for decision afresh on merits.

2. Learned counsel for respondents states that the subsequent legislative development has also taken place. Whatever the case may be, same may be brought to the notice of the High Court which will examine all the contentions of both the parties and decide the matter in accordance with law. Accordingly, this petition is converted into appeal and allowed in the above terms.”

Learned counsel for the petitioner emphasized that since the matter has been remanded to this Court by the Hon’ble Supreme Court by holding that the rules framed under Sections 7,9 & 15 of the National Command Authority Act, 2010, being statutory, thus no further deliberation is required on the subject, however, he averred that the respondents are avoiding to proceed with the matter by taking resort of the factual position of the case that Civil Review Petition No.654/2010 is pending in the case of *Shafiq Ahmed Khan, etc. V/S NESCOM Etc (PLD 2016 SC 377)*. Per learned counsel, this is hardly a ground for respondents not to proceed with the matter. At this stage, learned DAG intervened and since the direction of the Hon’ble Supreme Court in CRP No.14-K/2016 in CA No.59-K/2011 vide order dated 16.7.2018 is still holding the field and the direction of the Hon’ble Supreme Court is in categorical terms that whatever is decided Civil Review Petition No.654/2010 as discussed supra the same ratio shall apply to the present case, therefore, it is in the best interest of the justice that the matter may be adjourned to a date in the office so that the authoritative judgment of the Hon’ble Supreme Court on the subject review application be passed which will decide the fate of present case on the issue of statutory and non-statutory service of the petitioner.

Learned counsel for the parties are directed to place on record the copy of the order passed by the Hon’ble Supreme Court of Pakistan in Civil Appeals No.654 to 657 of 2010 on the next date of hearing so that the matter may be heard and decided. Learned DAG is also directed to assist this Court on the subject issue involved in this matter.

Re-list after two weeks.

Judge

Judge