

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-1272 of 2017

Order with signature of Judge

For hearing of CMA No.3482 of 2019.

12.04.2021

Petitioner present in person.

Mr. Ali Safdar Depar, AAG along with Syed Mehboob Ali, Deputy Director (Cord.) and Dhani Bux Bhutto, Section Officer (Legal), Planning and Development Department, Government of Sindh

The present application for initiating contempt proceedings, against the alleged contemnors, arises out of the Judgment dated 05.09.2018 passed by this Court in the aforesaid matter, whereby direction was given to the respondents to rectify their mistake and to regularize the service of the petitioner under law. A compliance report dated 12.04.2021 has been submitted which shows the following factual position of the case :

"1. It is respectfully submitted that in compliance of the order dated 22.02.2021 and 29.03.2021 passed by the Honourable High Court of Sindh, Planning & Development Department has floated a Summary for Chief Minister Sindh in the light of recommendations of Scrutiny Committee No.1 constituted under Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, with the proposal that the services of Mr. Arsalan Ahmed (Petitioner) may be regularized against the vacant post of Computer Operator (BPS-15), Project Coordination & Management Unit, Sindh Barrages Improvement Project under Section -3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (Sindh Act No.XXV of 2013). The Order to this effect is placed at Annexure-I"

Learned AAG seeks disposal of the listed contempt application in the terms of compliance report dated 12.4.2021 submitted by the Secretary Planning and Development Department, Government of Sindh Karachi.

Petitioner who is present in person agrees to the proposal submitted by respondent-department and also seeks disposal of the listed contempt application accordingly. Be that as it may, we are cognizant of the fact that this Court vide judgment dated 08.04.2021 passed in C.P. No.D- 6241 of 2016 and other connected petitions, declared Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, to the extent of BPS-16 and

above as ultra vires to the Constitution and the dicta laid down by the Hon'ble Supreme Court, the relevant paragraph whereof is as under:

“23. Regarding all such contractual employees in BS 16, 17 and 18 who have been regularized under Section 3 of the Act of 2013 without going through the mandatory process of selection by the Commission in violation of the command of the Constitution and the direction of the Hon'ble Supreme Court, suffice it to say the Hon'ble Supreme Court in the case of Shahid Pervaiz supra was pleased to hold, *inter alia*, that if an illegal benefit was accrued or conferred under a statute, whether repealed / omitted or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act which is declared *ultra vires*, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not ; and, such beneficiaries cannot take the plea of past and closed transaction as such plea would apply only in cases where rights were created under a valid law. It may be noted that the case of Shahid Pervaiz supra went under review and the judgment of the said review proceedings is reported as Akhtar Umar Hayat Lalayka and others V/S Mushtaq Ahmed Sukhaira and others, **2018 SCMR 1218**, whereby the review petitions were dismissed / disposed of, and even the exception granted in paragraph 111 of the judgment in Shahid Pervaiz supra read with paragraph 143 thereof was withdrawn. As held by the Hon'ble Supreme Court in various pronouncements that its decisions laying down any proposition in law becomes the law binding on all whether or not they were party to the proceedings before the Hon'ble Supreme Court. Under Article 187(2) of the Constitution, it is the duty of this Court to ensure execution and enforcement of the directions, orders and judgments of the Hon'ble Supreme Court. Therefore, the purported regularization of all such contractual employees / beneficiaries in BS 16 and above under Section 3 of the Act of 2013 is liable to be reversed forthwith in view of the law laid down by the Hon'ble Supreme Court in Shahid Pervaiz supra and Akhtar Umar Hayat Lalayka supra. For the ease of convenience, paragraph 119 of the judgment pronounced in Shahid Pervaiz supra is reproduced here :

*“119. However, when a statute (whether existing or repealed) is found to be ultra vires the Constitution, the Court is empowered – indeed, mandated – to examine whether any person continues to enjoy the benefits of the ultra vires statute, or whether any state of affairs continues to exist as a result, and if it is found so, the Court is mandated to undo the same, provided that the benefit or state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. **On the other hand, employees who***

were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped. Reference in this behalf may be made to the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265).
.....”
(emphasis added)

In the light of the above facts, the circumstances of the case listed application stands dismissed as not pressed with no order as to costs.

J U D G E

J U D G E

Shahzad*