

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 4800 of 2016

Date

Order with Signature(s) of Judge(s)

For hearing of CMA No.21200/2022 (contempt)

23.02.2023

Dr. Rana Khan, advocate for the petitioner
M/S Zain Mustafa Soomro and Iftikhar Ahmed Bhutto, advocate for
responenents No.2 to 8

This Court vide order dated 29.04.2022 observed as under:

“14. In view of what has been noted above and because of the principle of law discussed supra, the order of termination and subsequent order based on the report of the Fact-Finding Inquiry cannot be sustained without holding the regular inquiry as discussed in the preceding paragraphs.

15. Since the petitioner has not been confronted with the original record of the documents (tempered e-CIB data) and no regular inquiry has been conducted, therefore, no conclusive finding can be given in the matter and it is for the respondent Bank to hold a regular inquiry and confront the petitioner with the original documents as discussed supra and pass a speaking order after providing meaningful hearing to the petitioner, within two weeks from today.

16. In view of the foregoing, the impugned order dated 02.05.2016 and subsequent order is set aside. The petitioner shall be reinstated in service forthwith, however, the issue of back benefits shall be subject to the outcome of the regular inquiry proceedings.

The petition stands disposed of in the above terms.”

Learned counsel for the applicant submitted that this court vide order dated 29.04.2022 directed to hold a regular inquiry but the alleged contemnors again imposed the major penalty of dismissal from service for which they are not allowed to recall the order of reinstatement of the petitioner in terms of the ration of the order dated 29.04.2022 passed by this court. Learned counsel referred to the contempt application bearing CMA No.21200/2022 and extensively read the contents of the application as well as the order dated 29.04.2022 passed by this court and finally attempted to convince this court that the alleged contemnors have willfully defied the order passed by this court by removing him from service. The reasons assigned by the learned counsel are that this court set aside the impugned order dated 2.05.2016 and subsequent orders and directed the respondents to reinstate his service forthwith however, subject to the holding of regular inquiry afresh so far as the issue of back benefits is concerned. Learned counsel further submitted that the respondents did not have to terminate his service again and they were required to see only the issue of back benefits, however, they went ahead and imposed the major

penalty of dismissal from service of the petitioner as such they are liable to be proceeded under Article 204 of the Constitution.

In contra learned counsel for the alleged contemnors denied the allegations leveled against them and referred to the counter affidavit filed on behalf of alleged contemnor No.2 and submitted that the scope of de novo inquiry proceedings initiated against the petitioner according to the order dated 29.04.2022 passed by this court was not limited to the issue of petitioner's back benefits only. The respondent Bank was directed to conduct a proper regular inquiry against the petitioner for the charges he was already facing i.e. manipulation of eCIB data. However, in the meantime, the petitioner was reinstated in service, and the issue of the petitioner's back benefits was made subject to the outcome of the de novo inquiry proceedings; in case of dismissal from service, no employee is entitled to receive any back benefits. He further submitted that the petitioner proceeded afresh and a fair opportunity of personal hearing was given to him, he was allowed to cross-examine the witnesses and his reply to the show cause notices was considered which were found contradictory/unsatisfactory, finally, he was removed from bank's service vide speaking order dated 15.8.2022. Learned counsel referred to paragraphs No.4 to 19 of the counter affidavit and submitted that applicant has come to this court with unclean hands by suppressing his own admitted fact that he was incharge of Credit/Branch CAD Officer, Incharge retail who have misplaced the original eCIB reports, however, he was given a meaningful hearing in the de novo proceedings. Learned counsel referred to the annexures `A to Q-5` filed along with the counter affidavit and prayed for the dropping of the contempt proceedings against the alleged contemnors.

We have heard the learned counsel for the parties on the listed application and perused the record with their assistance.

At the very outset, we may observe that the matter of contempt of court is essentially a matter between the court and the alleged contemnor.

We have gone through the compliance report which prima facie shows that the respondent Bank initiated fresh proceedings against the applicant in compliance with the order passed by this court on 29.04.2022. Petitioner participated in the departmental proceedings and the respondent bank allowed him to cross-examine the management representative wherein he put several questions to him after the conclusion he was asked whether he intends to put on any more questions wherein he replied in negative, and finally the proceedings ended, which factum is disclosed in the inquiry proceedings dated

06.06.2022. In the end, the competent authority after going through the inquiry proceedings and other formalities dispensed with his services vide speaking order dated 15.8.2022.

The learned counsel for the petitioner could not explain and satisfy us, as to how the said reasons of the competent authority of the Bank for making the impugned order dated 15.8.2022 is perverse, arbitrary, ridiculous, improbable, or whimsical that may justify interference by this Court.

Accordingly, for the reasons stated hereinabove, we find that substantial compliance with the order passed by this court has been made and the respondent's action seems to be a fresh cause of action and it is for the petitioner to look into that aspect if he is at all aggrieved against the fresh decision discussed supra, he may pursue his remedy under law, which is a fresh action on the part of respondent-bank and does not warrant any interference by this Court under Article 204 of the Constitution. Thus, the present contempt application being bereft of merit is dismissed, and the request to initiate contempt proceedings is declined.

JUDGE

JUDGE

Nadir*