

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D-3913 of 2020

Date	Order with signature of Judge
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Disposed of matter

For hearing of Misc. No.8352/2022 (Review)

03.08.2023

Mr. Muhammad Ashraf Samoo advocate for the applicants
Mr. K.A Vaswani, Assistant Advocate General Sindh

1. This petition was disposed of vide order dated 14.12.2020 as under: -

“20. The appointment order dated 12.06.2018 filed by IGP Sindh as annexure ‘M’ to his compliance report / comments dated 14.12.2020 regarding appointment of contractual employees / ex-army personnel as police constables on regular basis, is hereby set aside. The competent authority / Inspector General of Police Sindh is directed to thoroughly scrutinize the candidature of the petitioner and all other police constables / ex-army personnel in BS-05, and if they are found eligible and fit to be admitted as police constable in Sindh Police, they should be retained on contract basis only for the CPEC project. The competent authority / Inspector General of Police Sindh is further directed to complete this exercise within two (02) months from the date of receipt of this judgment and to submit compliance report to this Court through MIT-II. Issue notice to the Chief Secretary Sindh and the Inspector General of Police Sindh for compliance.

21. In view of the special facts and circumstances discussed above, it is made clear that this order shall not be treated as precedent for allowing any appointment of a police constable in Sindh Police, whether ex-army personnel or otherwise, on contract basis and/or his subsequent regularization.”

2. The petitioner being aggrieved by and dissatisfied with the aforesaid order, filed Civil Petition No.5160 of 2021 before the Supreme Court and the following order dated 27.10.2021 was passed: -

“This petition is barred by delay of 176 days. In its Paragraph 4, the application for condonation of delay states that the petitioners did not challenge the impugned judgment of the learned High Court dated 14.12.2020. Petitioners No.1 to 3 present in person explain that the impugned judgment of learned High Court dated 14.12.2020 was not challenged by them for the reason that their services were terminated vide order dated 30.07.2021. However, the present petition has been filed as a matter of afterthought because the termination order was issued in compliance of the impugned judgment. The explanation given fails to justify the delay. If the impugned judgment does not aggrieve the petitioners directly, then they may pursue their appropriate lawful remedy. Insofar as petitioners’ challenge to the impugned judgment is concerned, this petition is barred by time. Therefore, C.M.A. No.9890 of 2021 being without merit is dismissed. Consequently, the instant civil petition is dismissed for being barred by time.”

3. PC/77 Jan Muhammad & others being aggrieved by and dissatisfied with the aforesaid order preferred CMA No.1233-K of 2021 before the Supreme Court, however, the learned counsel for the petitioners preferred not to press the aforesaid application and requested to pursue his

remedy before this Court. Nevertheless, the Supreme Court dismissed the petition as not pressed vide order dated 16.2.2022.

4. The matter did not end here, the aggrieved parties/applicants again approached this Court by filing CMA No.8352 of 2022 for review of the order dated 21.9.2021 passed by this Court, for restoration of CMA No.21238 of 2021 filed under Section 12(2) CPC in the aforesaid matter whereby the said application was disposed of as not maintainable on the premise that relief about the extension of contract had already been protected in terms of order dated 24.8.2021 passed in C.P. No. D-4870 of 2021. An excerpt of the order dated 24.8.2021 is reproduced as under: -

“24.08.2021

.....
By taking the benefit of judgment dated 14.12.2020 passed by this Court petitioners have been terminated on the plea that they cannot be regularized however the petitioners' case is that they were recruited on contract basis thereafter they were regularized. Though that judgment speaks that retired persons cannot be employed in regular force as criteria of recruitment in regular police force is entirely different. It has not been placed on record that case of other petitioners was considered while terminating them. Learned A.A.G. Sindh has failed to place on record whether petitioners were provided right of hearing while terminating them in view of referred judgment. Further it is contended that CPEC program is in existence and continued. Safety of employees, foreign and/or local(s), is priority as CPEC is a sensitive project. Hence service of petitioners were taken on contract hence till further hearing they shall be considered as contract employees with same perks and privileges however competent authority shall examine each case in terms whether or not petitioners are eligible to continue their services on contract. Such exercise shall be completed within two months with report. Note: It is clarified that this order will not be considered to treat the petitioners as regular employees and matter will be heard on next date. Accordingly impugned notification is suspended in above terms.”

Finally, Constitutional Petition Nos. D-870 and 5793 of 2021 were disposed of vide order dated 06.10.2021.

5. It is, inter alia, contended by learned counsel for the applicants that the listed application is liable to be allowed as they have been condemned unheard on the application under Section 12(2) CPC on the premise that this Court vide order dated 14.12.2020 set aside the appointment orders of the applicants without hearing them as they were not party in the proceedings, therefore, the applicants were/are required to be heard before passing adverse order against them. He prayed for the restoration of their application filed under Section 12(2) CPC [CMA No.21238/2021].

6. It is admitted position that about 2000 ex-army personnel including the present applicants were appointed by the Government of Sindh as police constables on contract for two years to protect the CPEC project and its employees. It is stated by the respondent/police department in their comments that out of the above, the services of 1552 constables had already been regularized including the applicants; however, their services were subsequently terminated in compliance with the orders passed by this

Court, though the protection in terms of order dated 21.9.2021 was given to all the contractual employees.

7. At this stage, we asked the learned counsel as to how this review application is maintainable against the order dated 21.9.2021 when their extension of contract has already been protected under the order dated 24.8.2021 passed in Constitutional Petition No. D-4870 of 2021. Learned counsel simply replied to the query and submitted that their main anxiety is providing them a fair opportunity for hearing as they have not been heard at all in the proceedings though the applicants are regular employees.

8. This Court vide order dated 31.07.2023 issued notice to the respondents as well as to Advocate General Sindh to appear and assist this Court on the listed review application bearing CMA No.8352/2022.

9. Learned AAG has pointed out that this review application is time-barred and is liable to be dismissed in terms of the orders passed by this Court in the present matter as well as in Constitutional Petition No. D-4870/2021. Learned AAG has also pointed out that the applicants approached the Supreme Court, however, they failed to get the order of this Court reversed as such no further indulgence in the matter is required. Learned counsel for the applicants has refuted the claim of the learned AAG on the ground that this Court cannot non-suit the applicants in the matter when they were not party in the proceedings, therefore, judicial propriety demands that they may be heard on the application under Section 12(2) CPC. In support of his contentions, he relied upon the case of *Khawaja Muhammad Yousif v. Federal Government* (1999 SCMR 1516) and *Muhammad Aslam v. Mst. Kundan Mai* (2004 SCMR 843), and prayed for setting aside the order dated 21.9.2021 passed this Court and other orders affecting the rights of the applicants who were legally appointed and regularized as Police Constables to protect the CPEC project.

10. We have heard learned counsel for the applicants on the maintainability of the review application and perused the contents of the application.

11. We have scanned the record and found the contentions of the learned Counsel for the applicants untenable, in view of the findings recorded in paragraphs No.10 to 21 of the main order and order dated 21.9.2021 under review.

12. In our view, we have limited jurisdiction to dilate upon the controversy under review jurisdiction for the reason that the applicants

have assailed the order passed by this Court before the Supreme Court in CMA No.1233-K of 2021 and the same has attained finality.

13. In our view, the review of the judgment/order can only be made by the party, if there is a mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). The applicants through the review application have attempted to call into question the validity of the order dated 14.12.2020 and subsequent orders passed by this Court as the aforesaid orders have been merged into the order of the Supreme Court as discussed supra. Besides, the applicants approached this Court on 15.3.2022 after a considerable period, however, on merit the applicants have no case at all in terms of the findings given by this Court on merits.

14. The grounds taken by the applicants in the review application questioning of reviewing the orders do not merit consideration for the reason that the extension of the contract of all the police constables has already been protected vide order dated 24.8.2021 passed in Constitutional Petition No. D-4870 of 2021.

15. For the aforesaid reasons, we are not persuaded by the contentions of the learned counsel for the applicants that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the order dated 14.12.2020 and subsequent orders passed by this Court in Constitutional Petition No. D-4870 of 2021 was based on the correct factual as well as the legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference. Besides, this Court has already clarified that the aforesaid orders will not be considered to treat the petitioners as regular employees so far as their salaries were concerned, the protection has already been provided to them as discussed supra.

16. Consequently, the application bearing CMA No.8352/2022 is dismissed. Let a copy of this order be transmitted to the I.G. Police Sindh for compliance.

JUDGE

JUDGE

