

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Shafi Siddiqui &
Sana Akram Minhas JJ

High Court Appeal No.216 of 2020

(Riffat Humayun v. Pakistan Television Corporation Ltd & Others)

Appellant:	Riffat Humayun Through Mr. Umer Lakhani, Advocate
Respondents No.1 to 4:	(1) Pakistan Television Corporation Limited (2) Deputy Controller (3) Director (4) Manager Through, Ms. Wajiha Mehdi, Assistant Attorney General
Date of hearing:	24-4-2024
Date of Decision:	24-4-2024

ORDER

1. **Sana Akram Minhas, J:** The Appellant instituted CP No.D-1068/2016 (“**Petition**”) before the Sindh High Court, contesting the Respondents’ office order dated 10.7.2015, which notified her that she would stand retired on 24.4.2016 from the Pakistan Television Corporation Ltd (“**PTV**”). The Appellant contended that her retirement date should have been 6.3.2020, aligning with her date of birth i.e. 7.3.1960. The Court, through an interim order dated 20.4.2016, directed the parties to maintain status quo, which lasted till 2.4.2018, when the aforementioned Petition was dismissed.
2. A CPLA No.637-K/2018 was preferred by the Appellant before the Supreme Court of Pakistan (against High Court’s Petition dismissal order of 2.4.2018), which too failed to yield success and leave was refused by the Supreme Court on 19.7.2018.
3. Following the dismissal of her Petition on 2.4.2018, the Appellant, by letter dated 5.5.2018, called upon the Respondents to treat the period she continued to perform her duties in PTV under the cover of the status quo order (which remained in field from 20.4.2016 to 2.4.2018), as part of her service tenure.

4. However, by reply dated 11.6.2018, the Respondents refuted the Appellant's claims, prompting her to challenge this letter in Suit No.1959/2018. The Respondents raised objections regarding the maintainability of this Suit. Subsequently, by order dated 21.1.2020 ("**Impugned Order**"), a learned Single Judge held the Suit barred on the principles of *res judicata* as per section 11 CPC and due to the absence of a cause of action for filing the Suit. The Impugned Order noted that the controversy concerning recovery of any amount received by the Appellant from the Respondents during the mentioned period had already been settled by the Division Bench in its order of 2.4.2018 (in paragraphs No.16 to 18) dismissing the Petition.
5. The Impugned Order (in paragraph No.2) states that the Appellant's Counsel insisted on a decision on merits and declined the option given to withdraw the Suit and allow the Respondents to act in terms of paragraph 18 of the Petition dismissal order dated 2.4.2018. This would have required the Respondents to resolve the issue of whether the Respondents intended to recover the amounts from the Appellant for the period she received from them after her retirement on 24.4.2016.
6. The learned Counsel for the Appellant argues that the Respondents cannot invoke *locus poenitentiae* in the current situation and cites Engineer-in-Chief v. Jalaluddin (PLD 1992 SC 207), where the application of the principle was considered and it was held that once a government employee has received payment bona fide, such payment is not recoverable from him even if made in error by the government. This argument is flawed. A beneficiary may claim a right under an exception to the principle of *locus poenitentiae* if lawful orders have been issued by the competent authority and received in good faith without any action on the part of the recipient. However, in the present case, no such orders have been issued by the authority, which is a prerequisite for invoking the exception. On the contrary, payments have been made by the Respondents under the pain of status quo orders issued by the Division Bench and obtained by the Appellant in her Petition. Therefore, the absence of a valid order from the competent authority renders the exception inapplicable in this scenario.
7. The Supreme Court in Shakeel Ahmad Zaidi v. Secretary, Higher Education (2021 PLC (CS) 560) considered *Jalaluddin* (supra) and ruled that:

7. Notwithstanding the above even in Jallal-ud-Din's case, the relief was granted in a very structured manner and it was clearly and categorically held that:

“ locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-II, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case.”

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8. We are therefore clear in our minds that only where lawful orders have been passed by an authority having the power to do so under the relevant law and a person bona fide receives a benefit under the said law **without any positive action on his part**, such beneficiary can claim a right under the exception to the principle of locus-poenitentiae and claim that the benefit bona fide received by him by virtue of an a lawful order passed by the competent authority (which at the relevant time and for its duration till its withdrawal was lawfully passed by an authority competent to pass such order) cannot subsequently be recovered by virtue of the protection available under the exception to the aforesaid rule. **[Emphasis added]**

8. The Appellant's decision to persist in working at PTV beyond her retirement was entirely self-initiated. The Respondents neither asked her nor coerced her to do so. Instead, the Appellant took it upon herself to extend her tenure at PTV, and imposed herself on the unwilling employer (PTV). Through legal means she ensured that the Respondents could not legally discontinue her services upon reaching superannuation. By filing a Petition and obtaining status quo orders, she effectively prevented the Respondents from taking any action against her employment status. Given this context, it is particularly audacious that the Appellant now seeks remuneration from the Respondents or intends to retain the payments received during the period in which the Respondents endured her continued presence, as it disregards the circumstances under which the Appellant extended her employment and the inconvenience caused to the Respondents.
9. The Impugned Order references Mohammad Saleem v. National Industrial Relations Commissions (2019 SCMR 142), wherein the Supreme Court ruled that individuals cannot profit from their own wrongdoing or seek refuge behind court orders. This case featured a

petitioner who persisted in working under ad interim orders. Consequently, upon resolution of the case, a salary adjustment was made which, the Supreme Court held, was legally justified.

10. Given the preceding analysis, the Impugned Order does not call for any interference. Consequently, the instant High Court Appeal and pending applications are hereby ***dismissed***. Each party shall bear their own costs.

JUDGE

JUDGE

Karachi
Dated: 24th April, 2024