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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constt. Petitions No.D-1048, ¹⁰⁶³1083, 1105 of 2009 and 1389 of 2010.

Date of hearing	Order with signature of Judge
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Disposed of matter.

11.09.2017.

Mr. Naimatullah Bhurgri State Counsel.

Muhammad Junaid Ghaffar, J:- These matters have been placed before me as a Referee Judge pursuant to directions of the Hon'ble Chief Justice, initially passed on 09.2.2011 and recently on 11.8.2017 for deciding the issue within two weeks' time. It appears that in this matter the petitions were disposed of vide order dated 8.12.2010, which was a consent order in the following terms:-

"The controversy involved in the matter is agreed to be resolved in the following terms:

The respondent No1 to 3 will ensure safe landing as a result of the repatriation in-question, of all the employees in their parents' department, where they would be allowed to work in their appointed capacities, cadre or grade, against payment of salaries without any hindrance from such departments or otherwise, there against and such arrangement will be finalized within one and half month's period of time, in the manner that the petitioners will attend the office of the District Officer, Monitoring and Evaluation, Local Government, of their respective district, who will make necessary enquiry and verification as to their respective parents department, and their service record herewith, and will submit the final report without fail, to the respondents, through respondent No.2, and during the intervening period, the petitioner will be entitled to their salaries, and will remain sole responsibly of the respondents No.1 to 3 like their employees already working with them. The petitions stand disposed of in the above terms".

Thereafter immediately on 22.12.2010 review applications were filed and the matter was placed in Chambers before one of the Judges who passed an order on the same date whereby while issuing notice to the respondents the operation of the consent order dated 08.12.2010 was suspended. However, when the matter was placed before other learned Judge for signatures, another order was passed whereby the learned Judge did not agree with the suspension of the

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consent order on the ground that it was impermissible and the matter was then sent to the Registrar at the Principal seat for appropriate orders by the Hon'ble Chief Justice. Thereafter a Referee judge was appointed at the Principal Seat but the issue could not be decided for various reasons and now it has finally come before me at Larkana Circuit Court again on the directions of the Hon'ble Chief Justice. On 23.8.2017 notices were ordered to the petitioners as well as their counsels however no body turned up and thereafter matter was adjourned to 30.8.2017 and again nobody was in attendance. Bailiff report reflects that notices were sent through fax and were also communicated through telephone but none has shown appearance.

I have perused the record and heard the learned State Counsel. The precise ground for filing of review applications appears to be that a Notification impugned in this petition dated 22.4.2009 regarding posting of officers on OPS basis was also challenged in a number of petitions at the Principal seat including CP No.D-2462 of 2009 and others and through judgment dated 4.9.2010 it was held that the said Notification dated 22.4.2009 was not applicable to Local Government Employees and therefore the order dated 23.10.2009 passed on the basis of the said Notification was also held to be not applicable to the Local Government Employees and was declared to have been issued without lawful authority and of no legal effect. The same Notification dated 22.4.2009 and order dated 23.10.2009 passed in a similar fashion on the basis of this Notification has been impugned in these petitions.

It appears to be an admitted position that when this petition was disposed of through consent order dated 8.12.2010 the judgment dated 4.9.2010 as referred above was not placed before the Division Bench and therefore the said order was passed, review of which has now been sought. The contention of one of the learned Judges that the consent Order could not have been reviewed does not seem to be appropriate for the reason that the petitioners were not at fault for not bringing the judgment dated 4.9.2010 on record which has already set-aside the impugned Notification dated 22.4.2009. It is settled law that a party to a case shall not be prejudiced by the act of the court, whereas; it was also incumbent upon the respondents to have placed before the Court copy of judgment dated 4.9.2010 whereby the very impugned Notification stood set-aside. Moreover, no consent order could be sustained in view of the fact that the impugned Notification already stands set-aside on merits through a detailed reasoned judgment, which otherwise was binding on the learned Division Bench as and when it was brought to their notice.

In view of above hereinafter facts and circumstances, case for review is made out and therefore, the review applications filed in all these

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petitions for recalling order dated 8.12.2010 are allowed and since the controversy in this matter already stand decided by a learned Division Bench at the Principal seat through judgment dated 4.9.2010; the present petitions are also allowed by setting-aside the impugned Notification dated 22.4.2009 and so also the impugned order dated 23.10.2009 on similar terms as contained in the Judgment dated 4.9.2010. All review applications stand allowed as above and consequently after recalling the order dated 8.12.2010 all these petitions are also allowed as above.

S.Ashfaq