

ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

I.C.A.No.118 of 2023

Muhammad Ali.

Vs. Dr. Ali Raza Anwar, Chairman
PAEC, Pakistan Secretariat,
Islamabad.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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22.05.2023. Mr. Ijaz Ahmad Toor, Advocate for appellant.

MUZAMIL AKHTAR SHABIR, J:- Through this Intra Court Appeal filed under Section 19 of the Contempt of Court Ordinance, 2003, the appellant has called in question order dated 28.03.2023 passed by learned Single Judge of this Court, whereby petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, filed by the appellant for proceeding against the respondent for committing contempt of court for non-compliance of order dated 05.12.2022 passed in W.P.No. 10448 of 2019, has been dismissed.

2. The grievance of the appellant is that through the afore-referred order dated 05.12.2022 while setting-aside the previous order dated 21.06.2019 passed by the respondent/Chairman, Pakistan Atomic Energy Commission, by declaring the same as without lawful authority, the matter was remanded to the said respondent for decision of the same afresh, who instead of complying with the direction issued by the court and in contravention of said order has repeated the order earlier passed by him without treating the previous order as illegal and not sustainable,

therefore, he is liable to be proceeded against for committing contempt of court for violating the order dated 05.12.2022 passed by this Court.

3. We have gone through the record and heard the arguments raised by the learned counsel for the appellant.

4. The appellant filed W.P.No. 10448 of 2019, which was decided along with W.P.No. 10444 of 2019, in which the main order was passed. Through his petition, the appellant had called in question order dated 21.06.2019 passed by the respondent, whereby the respondent had refused to extend the appellant's contract and had relieved him from service with immediate effect. The said Writ Petitions were disposed of vide order dated 05.12.2022 while issuing direction as under:-

"4. Under the law, respondents are under legal obligation to give same treatment to petitioners as already given to similarly placed other employees, if their case is on same footing. However, the aspect of discrimination has not been kept in mind while passing the impugned orders, hence, the same do not conform to the provisions of Section 24-A of the General Clauses Act, 1897.

5. In this view of the matter, the impugned orders in instant and connected petitions are declared to be illegal and without lawful authority. Office is directed to transmit copies of this as well as connected petitions, along with all the annexures, to respondent No. 2, with direction to look into the grievance of the petitioners, while treating the same as representations, and redress the same strictly in accordance with law as well as office order dated 22.08.2022, referred above, after hearing petitioners and all concerned, through speaking orders within a period of thirty days from the date of receipt of certified copy of this order. Till then, if petitioners are still in service, they shall not be disturbed.

6. In view of above, all these writ petitions are disposed of accordingly."

5. The claim of the appellant is that as order passed by the respondent dated 21.06.2019 had been declared

as illegal and without lawful authority, therefore, the respondent should have extended the contract of the appellant but instead the respondent through the impugned order dated 21.02.2023 had again relieved the appellant from duty. The operative part of which is reproduced below:-

“In pursuance of PAEC HQs OM No. LAD.23 (1748)/19 dated 21-02-2023 and PAEC NMC-I OM of even number dated 21-02-2023 on the subject cited above. Mr. Muhammad Ali (PIN-68842, CNIC No. 32102-8929430-3) S/O Muhammad Jamil Arshad, Date Entry Operator (SPS-2) Contract (Cat-I), NMC-I is hereby relieved off from his duty with immediate effect with pending clearance.”

The afore-referred order was not the only order passed on 21.02.2023 rather through an office memorandum of even date another order dated 20.02.2023 was conveyed to the appellant as speaking order of the competent authority passed in compliance of direction issued by this Court vide order dated 05.12.2022. The operative part of speaking order dated 20.02.2023 is reproduced below:-

“9. So far as the other alleged cases are concerned, it is found after looking at the record that they were either appointed through fresh appointment by way of merit or their services were extended as per the policy prevailing at that time. However, this policy was abandoned in 2015, which is before the appointment of petitioner. No employee, appointed under the Death Compensation Package, has been granted extension after 2015. Hence, no discrimination whatsoever has been meted out with the present petitioner.

10. For the reasons stated above, I, being the Appellate Authority am satisfied that the case of the Petitioner is not covered under the rules/law on the subject. Accordingly, his representation is hereby dismissed through this order and the order dated 21.06.2019 is upheld as it does not suffer from any illegality. The contract of petitioner has already expired on 12.01.2018 and the injunctive order along with the instant Writ

Petition has been disposed of, hence, the service contract of the petitioner stands terminated."

6. The learned Single Judge of this Court vide order dated 05.12.2022 while allowing the Writ Petition No. 10448 of 2019 had directed the respondents to reconsider the case of the appellant on the ground that the previous order dated 21.06.2019 was a non-speaking order as the question of discrimination had not been considered and had not declared the said order to be absolutely void for all intents and purposes. The respondent after reconsidering the case of the appellant on various grounds including the ground of discrimination vide order dated 20.02.2023 has declined the relief to the appellant and order of this Court to the extent of decision afresh while considering the question of discrimination has been complied with, therefore, there was no need to proceed further with the contempt of court petition filed by the appellant, which aspect of the matter has rightly been considered and the petition for contempt of court has rightly been dismissed by the learned Single Judge of this Court vide order dated 28.03.2023 (*impugned herein*). The appellant has challenged the dismissal of his contempt of court petition by the learned Single Judge by claiming that previous order being void could not be repeated by the respondent but we do not find any illegality or jurisdictional defect arising in the matter on that account to interfere in the order passed by the learned Single Judge.

7. Even otherwise, where a court itself passed an order and refused to proceed with the contempt of court matter on the ground that there was no reason to proceed with the same, the appellate court does not

ordinarily interfere in the order passed by the said court. The said principle has been laid down in judgments reported as **2021 CLC 1** (*Muhammad Rafique and others versus M/s. Siddiqui and Company*), and **PLD 1979 SC 912** (*West Pakistan Water and Power Development Authority through its Chairman versus Chairman, National Industrial Relations Commission*). The relevant portion of latter reproduced in earlier judgment is as under:-

"The matter of contempt is essentially between the Court and the contemnor. If the Court concerned for reasons of its own and in the exercise of its discretion does not feel inclined to take any action or for example accepts an apology in a given case, it is not for any other Court much less an appellate Court or authority to direct the said Court that it must proceed in the matter or to reject the apology. This is on the principle that the power to punish for contempt is to be exercised only by the High Court whose contempt has been committed and not by another Court."

8. When confronted of the afore-said position, learned counsel for the appellant has placed reliance on order dated 20.05.2022 passed in Civil Petition No. 34-Q of 2019 (*Abdul Baqi, etc versus Hajji Khan Muhammad, etc*) reported as **PLD 2022 Supreme Court 546** to state that the afore-referred principle is not absolute principle of law and the appellate court may interfere in the matter if facts of the case so required. There is no cavil to the afore-referred principles of law enunciated by the Hon'ble Supreme Court and this Court while hearing the Appeal can look into the matter to decide whether any contempt of court has been committed in view of the principles laid down in afore-referred judgment of the Hon'ble Supreme Court of Pakistan but the said judgment has also laid down certain principles for proceeding with

contempt of court matter in appeal. The operative part is reproduced below:-

*"7. In the neighbouring jurisdiction also, their apex court has held in *Midnapore People's Cooperative Bank v. Chunilal Nanda*, that in special circumstances, an order declining to initiate proceedings for contempt may be open to challenge before it, by seeking special leave to appeal under Article 136 of their Constitution, which is similar to Article 185(3) of Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"). Thus, while this Court does not ordinarily interfere with the order of a High Court, declining to initiate contempt proceedings, but where such order, particularly passed on a petition of an aggrieved party for civil contempt, is found to be arbitrary, perverse or against the settled principles of law, the same may be corrected by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution on a petition of the aggrieved party.*

*8. It would also be pertinent to observe here that the ultimate jurisdiction of this Court under Article 185(3) of the Constitution to grant leave to appeal against any judgment, decree, order or sentence of a High Court is not circumscribed by any limitation by the Constitution. The principles governing the exercise of this jurisdiction are of self-restraint, settled by the Court itself, keeping in view the considerations of propriety and practice. This Court thus ordinarily exercises its jurisdiction under Article 185(3) of the Constitution, and grants the leave to appeal, as held by a six-member larger bench of this Court in *Noora v. State*, in cases where some serious question of law is prima facie made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such a finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution ."*

(emphasis supplied)

9. The principle laid down in the afore-referred case is that the appellate court can interfere in an order passed in contempt of court petition refusing to initiate proceedings against the contemnor where some serious question of law is *prima facie* made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by the appellate court.

10. In the present case, in the opinion of this Court as already mentioned above, the order passed by learned Single Judge dated 05.12.2022 has already been complied with by the respondent while passing order dated 20.02.2023 and the question that whether the said order passed by the respondent is based on correct determination of factual position or not is not a question that can be summarily determined in the contempt of court petition or proceeding arising therefrom as the same requires deeper probe into internal working of the respondent-department and determination of disputed facts. Besides the grounds for interfering in the matter in terms of principles laid down in the afore-referred judgment of the Hon'ble Supreme Court apparently do not exist in the matter in hand especially when the order passed by the respondent and the learned Single Judge *prima facie*

appear to be based on proper appreciation of facts and conclusions reached by the said forums is not *prima facie* arbitrary, ridiculous, shocking or improbable. This Court would also not like to interfere in the matter for the reason that such interference may prejudice case of either of the parties if further remedy available under the law is pursued in the matter. Moreover, the appellant's counsel when queried that whether the impugned order had been called in question through any proceedings, states that the appellant has already challenged the same by filing constitutional petition before this Court and in view thereof this Court does not find any reason to proceed further with the matter relating to contempt of court as the main relief of reinstatement in service sought by the appellant, if permissible under the law, could be granted in the proceeding arising out of afore-referred petition filed by the appellant and not through contempt of court proceedings or appeal arising therefrom.

11. For what has been discussed above, this Intra Court Appeal being devoid of any merit is **dismissed in limine**.

(TARIQ SALEEM SHEIKH) (MUZAMIL AKHTAR SHABIR)
JUDGE JUDGE

Zeeshan Khan

APPROVED FOR REPORTING

(TARIQ SALEEM SHEIKH) (MUZAMIL AKHTAR SHABIR)
JUDGE JUDGE