

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.112/2019

Higher Education Commission through its Executive Director, Islamabad.

versus

Ms. Zia Batool

Petitioner by: Mr. Binyamin Abbasi, Advocate.

Respondent by: Ch. Abdul Rehman Hur Bajwa, Advocate.

Date of Decision: 20.01.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant Civil Revision petition, the petitioner has called in question concurrent findings of the learned trial Court as well as of the first Appellate Court passed vide impugned judgments and decrees, dated 04.01.2018 and 11.12.2018, respectively, whereby the plaint of suit filed by the petitioner was rejected under Order VII Rule 11 CPC.

2. Succinctly, on 31.01.2008, Ms. Zia Batool (***Respondent***) was appointed as D.G. (Quality and Assurance) in the Higher Education Commission (***HEC***) initially on contract basis for two years, which was extended from time to time up to 29.01.2014. The respondent along with other similarly placed employees filed W.P. No.963/2012 seeking regularization of their services, which was accepted with the direction to the Cabinet Sub-Committee to decide the Respondent's case within a month. Failure whereof compelled the Respondent to file Crl. Org. No.56-W/2013, followed by another contempt application in the latter case bearing Crl. Org. No.330-W/2013, whereby this Court directed the petitioner to release the salaries in favour of respondent. Feeling aggrieved

thereof the petitioner filed ICA No.500/2014, whereby the petitioner undertook to deposit a cheque in the name of respondent in the office of Registrar of this Court to be released subject to final adjudication of the matter, as such, the cheque was released in favour of respondent vide order dated 24.09.2014. The petitioner impugned the said judgment before apex Court through CrI.P.L.A. No.560/2014, which was allowed with the observation that services of the respondent could not be regularized. Resultantly, the petitioner filed a suit for recovery of Rs.1,224,225/- against the respondent having been transferred to her on account of salaries for the period w.e.f. 10.03.2014 to 31.08.2014, however the plaint of suit has concurrently been rejected by the learned trial Court as well as by the first Appellate Court vide impugned judgments and decrees, dated 04.01.2018 and 11.12.2018, respectively. Hence, instant civil revision petition.

3. Learned counsel for petitioner contends that both the Courts below have committed grave illegality while passing the impugned judgments and decrees as they have failed to interpret the order of apex Court whereby the apex Court has only restrained the petitioner from recovering the salaries paid to the respondent during her contract period, whereas the apex Court has nowhere restrained the petitioner from recovering the amount paid to the respondent in excess of the contract period, as such, both the Courts below have passed the impugned judgments / decrees in a mechanical and slipshod manner, which are liable to be set-aside with the direction to the learned trial Court to adjudicate upon the suit filed by the petitioner in a proper manner.

4. Conversely, learned counsel for respondent contends that in earlier round of proceedings this Court had directed the Cabinet Sub-Committee

to decide the respondent's case within the period of one month, but the petitioner had failed to comply with the direction of this Court; that the order passed in W.P. No.963/2012 has been upheld by Division Bench of this Court in ICA No.549/2013, which judgment was not challenged by the petitioner, per se, the same attained finality; that both the Courts below have rightly appreciated the facts and circumstances of the case and concurrently dismissed the suit filed by the petitioner.

5. Arguments heard, record perused.

6. Perusal of record reveals that the HEC / petitioner is mainly aggrieved with the judgments and decrees, dated 04.10.2018 and 11.12.2018, passed by learned Trial Court as well as by the learned first Appellate Court, respectively, whereby the suit filed by the petitioner for recovery of Rs.1,224,225/- having been paid on account of salaries to the respondent has been dismissed.

7. The matter has been agitated up to the apex Court through Crl. P.L.A. No.560/2014 filed against the judgment dated 24.09.2014, passed in ICA No.549/2014, titled Dr. Mukhtar Ahmad, etc. v. Muhammad Anees Saddozai, etc., whereby the apex Court has settled the entire issue vide judgment dated 13.01.2015 by declaring that the respondent is not entitled for regularization of her services or to claim permanent position in the petitioner establishment. The apex Court has further held that since the respondent has served the HEC on account of order of the High Court, the salaries so paid to the respondent for such time period shall not be recovered.

8. Despite the above referred observation of the apex Court, the petitioner filed a suit and claimed recovery of salary for the period starting

from 31.01.2014 till 31.08.2014, as such, the civil suit was rejected in terms of Order VII Rule 11 CPC on the findings given by the apex Court, per se, the said judgment and decree have further been upheld by the first Appellate Court vide impugned judgment and decree, dated 11.12.2018.

9. The primary question before this Court is as to whether the matter, which has already been settled by the apex Court, could be re-agitated by the petitioner before the Civil Court? The answer is in negative as the judgment rendered by the apex Court, dated 13.01.2015, is considered to be *res-judicata* for all the issues agitated / argued before the apex Court and any such claim of the HEC against the settled issues is considered to be against the law in terms of Section 11 of the Code of Civil Procedure, 1908.

10. This Court has also perused the impugned judgments / decrees of both the Courts below and is of firm opinion that the matter has rightly been adjudicated upon with the result of rejection of the plaint filed by the petitioner as the respondent has received the salaries for the period she had served the petitioner establishment, as such, the petitioner has failed to point out any illegality in the impugned judgments and decrees, therefore, the instant Civil Revision petition is misconceived and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.