

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petitions No.175-177-K of 2022

(Against order dated 30.11.2021, passed by the High Court of Sindh, Circuit Court, Hyderabad on M.A.No.1719/2020 moved in CP No.D-217 of 2001)

Muhammad Ishaque
Azira Razvi
Ahmed Ali

(in CP No.175-K)
(in CP No.176-K)
(in CP No.177-K)
...Petitioner(s)

Versus

M/s Zeal Pak Cement Factory Ltd

...Respondent

For the Petitioner(s): In Person

For the Respondent: Not Represented

Date of Hearing: 22.12.2023

Judgment

Muhammad Ali Mazhar-J. The aforesaid Civil Petitions for leave to appeal are directed against the Order dated 30.11.2021, whereby the High Court of Sindh disposed of the application (M.A.No.1719/2020) moved by the petitioners under Section 3 and 4 of the Contempt of Court Ordinance, 2003, for non-compliance of the judgment rendered by the divisional bench of the Sindh High Court in the Constitution Petition No.D-217 of 2001.

2. According to the short-lived facts of the case, the petitioners and some other persons being aggrieved of their termination from service, filed grievance petitions in the Labour Court No.VI, Hyderabad, under Section 25-A of the Industrial Relations Ordinance, 1969 ("IRO"). The said grievance petitions were allowed by the Labour Court *vide* Order dated 27.10.1999, whereby the termination orders were set aside and the petitioners were reinstated in service with all consequential benefits. Being aggrieved and dissatisfied, the management of Zeal Pak Cement Factory filed appeals under Section 37 of the IRO and

vide judgment dated 15.01.2000, the Labour Appellate Tribunal allowed the appeals of the management and set aside the order of the Labour Court. The petitioners challenged the judgment of the Labour Appellate Tribunal *vide* Constitution Petition No.217/2001 in the Sindh High Court and *vide* judgment, dated 20.03.2009, the petition was allowed in the following terms:

"In view of the above discussion the petition is allowed, the Judgment of the Appellate Tribunal is set aside and the Judgment of Labour Court is upheld. The petitioners are reinstated in service with all benefits which they were entitled at the date of termination of their services."

3. On the last date of hearing, we issued notice to the respondents, and according to the process server's report, Islamuddin, the Deputy Director/Manager of the respondent's company, received the notice. Despite numerous calls, nobody appeared on their behalf, and we proceeded with the petitions *ex-parte*.

4. The petitioners, in-person, argued that the High Court failed to realize that its own judgment was flouted. Despite a considerable period, the respondent failed to implement it. Neither did the respondent produce any record showing that any dues were ever paid to the petitioners for complying with the High Court's direction, nor did the High Court ask the management to produce such records to confirm the implementation of the judgment.

5. Heard the arguments. Seemingly, the directions issued by the High Court for reinstatement in service with all benefits, which they were entitled to at the date of termination of their services, were not complied with. Therefore, the petitioners filed an application in the High Court for initiating contempt proceedings for the non-compliance of judgment. However, the High Court declined to initiate contempt proceedings based on the statement of the alleged contemnors that substantial compliance of the judgment had been made. The impugned order does not reflect whether any verified statement of accounts was filed in the High Court by the alleged contemnors to demonstrate compliance and payments, if any, made to the petitioners. Additionally, no due diligence was made by the High Court to ensure compliance with its own judgments.

6. The petitioners have also attached certain order sheets passed by different divisional benches of the High Court in the same proceedings. The order dated 25.03.2021, shows that the High Court directed the Additional Registrar of the High Court to attach the accounts of Zeal Pak Cement Factory to the tune of sums payable to the petitioners, whereas another order, dated 22.4.2021, depicts that as a last opportunity, one-month time was granted to the alleged contemnors to ensure the payment of all dues to the petitioners. Another order dated 26.05.2021 demonstrates that Mr. Islamuddin, Deputy Director of the respondent company, undertook to make payment of wages and sought time and therefore, as a last and final chance, 15 days were granted for compliance, with the rider that in case of noncompliance, the High Court would have the option to seize the assets of the company. At the same time, the petitioners were also directed to file their individual statements, along with their claims, within 5 days. The order, dated 13.10.2021, shows that some more time was granted for ensuring payment, and in case of failure, the court warned that coercive steps would be taken in view of the order dated 26.05.2021. Thereafter, the matter was fixed on 23.11.2021, whereby directions were issued to the counsel for the petitioners to provide the details of back benefits as admissible to the petitioners. However, when the matter was fixed on 30.11.2021, just five days later, despite passing various harsh and deterrent orders on the aforesaid dates for ensuring compliance and implementation of the judgment, the contempt application was disposed of precipitously and inconsiderately. The sole observation was that substantial compliance has been made. We have also observed that in order to comply with the directions given by the Court, the learned counsel of the petitioners filed a statement on 10.11.2021 along with the copies of claims of outstanding dues. However, it is not mentioned whether these claims, which were filed in compliance of the Court order, were ever asked to be verified by the management, or any effort was made to ensure compliance with the various orders of the court passed from time to time for implementation of the main judgment dated 20.03.2009. The matter remained pending for a considerable period of time without ensuring compliance of the High Court judgment. What substantial compliance was allegedly made should have been reflected in the order to determine whether due compliance has been achieved or not. So, in all fairness, it was not enough to dispose of the

contempt application on the ground that if the petitioners have any substantial claim against the respondent, they are at liberty to seek a remedy, if any, under the law, which means that the judgment passed by this Court on 20.03.2009 has been made virtually ineffectual and otiose.

7. The gist of the previously passed orders by different benches, which we have mentioned in the preceding paragraph, demonstrates that the representative of the management undertook to ensure the payment of dues. On various occasions, time was enlarged for making payments. However, surprisingly, the management took a summersault and pleaded that the petitioners were paid all their dues at the time of termination on 13.03.1996 and the remaining salary of the petitioners for 13 days, which was due at the time of termination, was also paid to them; that one petitioner had passed away, therefore, his gratuity and all benefits were paid to his widow Mst. Azra Razvi and the remaining petitioners are regularly getting their salaries and benefits, but we have not found any such record either reflecting from the impugned order or in our paper book.

8. Under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"), both the Supreme Court and a High Court have powers to punish any person who (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court; (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt; (c) does anything which tends to prejudice the determination of a matter pending before the Court; or (d) does any other thing which, by law, constitutes contempt of the Court. The powers conferred by this Article may be regulated by law and, subject to law, by rules made by the Court. According to the Contempt of Court Ordinance, 2003 ("Ordinance"), Section 2 of the Ordinance (Definitions Clause) delineates the nature and gravity of contempt of Court such as (a) "civil contempt", which means the wilful flouting or disregard of (i) an order, whether interim or final, a judgment or decree of a Court; (ii) a writ or order issued by a Court in the exercise of its Constitutional Jurisdiction; (iii) an undertaking given to, and recorded by, a Court; (iv) the process of a Court; (b) "criminal contempt", which means the doing of any act with intent to, or having the effect of, obstructing the administration of justice;

(c) "judicial contempt", which means the scandalization of a Court and includes personalized criticism of a Judge while holding office. Whereas, Section 3 of the Ordinance provides that whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a wilful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit "contempt of Court". The contempt is of three types, namely, the "civil contempt", "criminal contempt" and "judicial contempt". Section 5 of the Ordinance deals with punishment and provides that any person who commits contempt of Court shall be punished with imprisonment which may extend to six months' simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both. Whereas in Sub-section (3), it is clearly provided that in the case of contempt having been committed, or alleged to have been committed, by a company, the responsibility therefore shall extend to the persons in the company, directly or indirectly, responsible for the same, who shall also be liable to be punished accordingly.

9. A noteworthy and acclaimed characteristic of the canons of jurisdiction should not have been relegated, which is that neither should the Court embark on the jurisdiction not vested in it by law, nor should it abdicate or renounce a jurisdiction so vested in it by law. If the judgment of High Court is not implemented in its letter and spirit, it is evident that the High Court ought to have taken all necessary steps for compliance of its judgment or order to alleviate the suffering of the beneficiary, rather than divesting or repudiating its jurisdiction as vested under Article 204 of the Constitution read with the provisions of the Ordinance. Although the impugned order does not reflect any compliance on record, it asserts that "substantial compliance" has been made without requiring any proof. It is not clear whether the petitioners when filed their claims in compliance of the orders passed by the High Court, the respondent filed any reply for challenging or disputing the figure or amount of claim or made any

efforts to account for or set off the amount if already paid to the petitioners in compliance of the judgment of the High Court. All these crucial rudiments are missing. The Court has to assess the contempt and its gravity and may also purge it if an unqualified apology is tendered by the contemnor. However, there is no concept or parameter to relieve or emancipate the contemnors on the notion that substantial compliance has been made, which has not been demonstrated in this case. On the contrary, the High Court must have ensured the due compliance of its own judgment rather than instructing the petitioners to seek an appropriate remedy for compliance or implementation of judgment. The Court has to evaluate the compliance of its judgment in its entirety and not the ratio or percentage of compliance. The denial of exercising jurisdiction proactively in the contempt proceedings for revitalising and assuring the compliance of judgment not only rendered the main judgment worthless and inconsequential, but for all practical purposes, also undermined the writ of the Court and water down the efficacy of the orders passed by different benches in the same proceedings on 25.03.2021, 22.04.2021, 26.05.2021, 13.10.2021 and 23.11.2021 for ensuring the compliance.

10. In view of the above, these petitions are converted into an appeal and allowed. The impugned Order of the High Court is set aside and the matter is remanded back to the High Court for deciding the CMA No.1719 of 2010 afresh and for examining whether the judgment has been implemented as per the directions issued by the High Court or not. The matter shall be decided after issuing notice and providing ample opportunity of hearing to the parties.

Judge

Judge

Karachi
22.12.2023
Approved for reporting

Judge