

THE COURT OF ADDITIONAL DISTRICT JUDGE/JUDGE REFERENCE COURT
MUZAFFARABAD.

Civil Suit No. 20
Date of Institution: 31.10.2018/23.09.2016
Date of Decision: 20.05.2019

Muhammad Zulf Khan S / O Wali Sher Khan, R / O Village Sundgran.
Tehsil and District Muzaffarabad Azad Kashmir (Ex-Office Superintendent
EEAP). **(Plaintiff)**

VERSUS

1. Seretary / Director Geneal, State Earthquake Reconstruction and Rehabilitation Agency (SERRA) AJ&K, Opposite Block No. 5, New Secretariat Chattar, Muzaffarabad,
- 2.Chief Engineer, Earthquake Emergency Assistance Project (EEAP), Block No. 5, New Secretariat, Chattar Muzaffarabad,
3. Azad Government of the State of Jammu and Kashmir, through its Chief Secretary, having his office at New Secretariat, Chattar, Muzaffarabad,
- 4.Director Legal, SERRA, SERRA office, New Secretariat, Muzaffarabad.

(Real Defendants)

Earthquake Reconstructive Rehabilitation Authority (ERRA), though its Deputy Chairman, Prime Minister's Secretariat (Public) islamabad

(Proforma Defendant)

SUIT FOR RECOVERY OF RS. 20,59,166.00

Present: Akhlaq Husain Mughal Advocate for the Plaintiff

agencies for rehabilitation and reconstruction in earthquake affected areas, to achieve the aim and objective of the programme, a project known as Earthquake emergency assistance project (EEAP) was Launched in Azad Kashmir. For the purpose of the project, number of vacancies on contract basis were advertised and the plaintiff was appointed against the post of office superintendent in Road and Bridge Sector EEAP vide Govt order No. SERRA/Admin/1619-43/2007 dated 17.03.2007. He joined his duty on 22.03.2007 against salary package fixed at the rate of Rs. 20,000/- per month, as per rate provided in PC-1. The original PC-1 exhausted on 30.06.2009. However revised PC-1 was prepared in which pay for office superintendent was provided as Rs.59,500/-per month. The anticipatory approval to the revised PC-1 (relating to the period 01.07.2009 to 30.09.2011) was accorded by the chairman ERRRA vide ERRRA,s Letter No. 103(2) ERRRA/PEC/09(Volv) dated 17.11.2011.

It was further contended by the plaintiff that the project Director/Chief Engineer referred the matter of plaintiff to the Secretary/Director General SERRA vide letter dated 11.07.2012 for approval of revised salary package of the plaintiff in the light of the anticipatory approval of the PC-1. Reminder was also issued to the Secretary/D.G SERRA by the project co-ordinator on 25.12.2012. The Secretary/Director General SERRA did not decide the matter for a long time ultimately the plaintiff filed a writ petition before the Hon, able High Court on 13.04.2013. The Hon, able High Court directed the Secretary/D.G SERRA to decide the controversy with regard to payment of salary of the petitioner as submitted by Chief Engineer project

respondents went to the Supreme Court in leave to appeal but their petition for leave to appeal was dismissed by the honourable supreme court. The defendant No.1 failed to comply with the order of the Hon,ble High Court within the stipulated period.

The plaintiff therefore, filed a petition for initiating contempt proceedings against the defendant No.1. During contempt proceedings representative of the defendant submitted a copy of decision dated 5.6.2014 before the court on 01.10.2014, according to which the defendant decided that the petitioner was not entitled to the benefits proposed by the CE/PC.EEAP vide his proposal under Finance Department dated 12.8.2008.

That after receipt of copy of decision of the defendant the plaintiff submitted his claim of payment to defendants. The defendant neither paid the claim nor made any reply as to why payment of dues has not been made for such a long time. On 21.5.2016 the plaintiff through his counsel issued notice to the defendant that during all this period since before filing of the writ petition, the petitioner had to suffer mental tortures, for which he would claim compensation. The defendant was asked to make payment of arrear dues according to approved PC-I amounting to Rs.8,59166/- besides damages for mental tortures immediately and without delay, otherwise the plaintiff will file suit for recovery of the amount of arrear of salary and damages for mental torture and the defendant will be responsible to pay all legal expenses in this regard. The plaintiff has been put to mental torture constantly, all

He further contended that the defendant deliberately put the plaintiff to immense mental torture during all this long period without any reason. Compensation for such mental torture can not be measured in terms of money. However, plaintiff puts nominal compensation for mental torture in the amount of Rs 12 lacs. He prayed that decree for recovery of an amount of Rs 2059,166 00 may kindly be passed in favour of the plaintiff and against the defendants as per following detail;

1. Amount due in the light of approved revised PC-1 coupled with the commitment of the defendant that the plaintiff was entitled to salary as per approved PC-1 from time to time.

Rs.859,166.00

2. Compensation for mental torture for a period at least from date of preferring claim to the defendant for payment as per revised PC-1 and there own commitment i.e. from 18.11.2014 to date (nearly 22 months)=

Rs.12,00,000.00,

Total=

Rs.20,59,166.00.

- B. Cost of litigation may also kindly by awarded.
- C. Separate proceedings may kindly be directed to be taken against the defendant Secretary/D.G SERRA for false statement as pointed out in paras 21& 22 above.

D. He also claimed that any other alternative or further relief to which

statement wherein it was stated that the above title suit has been filed by the plaintiff against law, procedure and decisions of the Apex Court. That amount claimed by the plaintiff in above titled suit was denied in a decision taken by defendant No. 1 under the direction of Hon,ble High Court through judgment dated: 19.02-2014. That plaintiff has no fresh cause of action for filing above titled suit. The proposed amount claimed by the plaintiff was objected by the then Senior Accounts Officer and regarding objection Hon'ble High Court has concluded in its judgment dated: 19-02-2014 in a writ petition titled Muhammad Zulf Khan Vs Secretary / DG , SERRA at page 9 (last line of its page)

“As therefore we have reached to the conclusion that objections raised by the senior accounts officer were not frivolous as alleged by the petitioner”.

That under the Administrative & Financial Rules as enforced in SERRA, the Secretary / DG, SERRA is competent to give approval for the appointment and change in salary from Grade 11 to 17 but the Administrative & Financial approval was not taken in favour of plaintiff while proposing salary claimed by the plaintiff, hence the Claims of the plaintiff were liable to be dismissed. Copies of the Financial and Administrative Powers Rules are attached as annexure- "PRC" . That plaintiff failed to impleade the senior accounts officer as party being necessary party, also stated that plaintiff failed to submit the affidavit in support of his plaint which is a mandatory requirement hence, suit is liable to be dismissed. 13 is correct and it is explained that the PLA was withdrawn on 05-05-2014 due to the observation of Supreme Court that

written statement filed by the defendant before the Hon,ble High Court can not be re-agitated before this court under law. The amount of proposed salary mentioned by the plaintiff on the one hand not approved by competent authority on the other hand hit by the Notification dated:12-08-2008. Matter already been decided by the Honble High Court and by defendant No.1 and therefore, the claim submitted by the plaintiff hit by res-judicata. It is humbly prayed that by accepting this written statement, the suit filed by the plaintiff may kindly be dismissed with cost.

3. From the divergant pleading of the parties following issued were framed.

ISSUES:

1: Whether the plaintiff has cause of action to file the present suit?

(OPP)

2: Whether the controversy in the suit has also been resolved by the High Court? If yes what is its effect on suit? (OPP)

3: Whether the plaintiff is entitled to recovery of Rs. 859166/- as arrears of his salary according to sanctioned PC-1 along with compensation of mental and physical torture to the tune of 200000/- total amount 2059166/- from defendant? (OPP)

4.Relief.

4. The plaintiff recorded his court statement and during his deposition he produced order dated 17.03.2007 as Exh.PA, copy of PC-1 as Exh.PB,

Exh. PC revised PC 1, letter dated 17.11.2011, Exh. PD, copy of writ

Exh.PO, as documentary evidence.

Whereas, on behalf of defendant witnessess Muhammad Iqbal awan and Imtiaz Ahmed recorded their court statements. Moreover, the defendants also produced documentary evidence Exh. DA, Exh.DB, Exh. DC in support of their version. All the evidence produced by the parties are carefully and minutely observed.

5. Argument heard and record perused.

The plaintiff alongwith his counsel appeared in person and argued that he was employed on contract basis against the post of office superintendent in a project known as Road and Bridge Sector EEAP. That project was launched by Government with aid of donor agencies for rehabilitation and re-construction in earthquake effected areas. He joined his duty in pursuance of Govt order No. SERRA/Admin/1619-43/2007 dated 17.03.2007. His salary package fixed at the rate of Rs. 20,000/- per month, as per rate provided in PC-1. However the original PC-1 exhausted on 30.06.2009 and revised PC-1 was prepared in which pay for office superintendent was provided as Rs. 59,500/- per month. Inspite of that the Director/Chief Engineer referred the matter of plaintiff to the Secretary /D.G SERRA vide letter dated 11.07.2012 and 25.12.2012 respectively for approval of revised salary package of the plaintiff in the light of the anticipatory approval of the PC-1, the defendant neither paid salary to plaintiff in accordance with para 1 nor para 2 part iii of the notification issued by Finance Division Government of Pakistan dated

appended.

Whereas, Raja Mazhar Waheed, legal advisor for the defendants submitted written argument which are also appendent. He also contended that no such order for the extention of contract are produced by the plaintiff. Therefore, he is not entitled for any relief. He further argued that the plaintiff failed to implead the necessary party to suit. Therefore, his suit is liable to be dismissed. Matter has already been decided by apex-court hence liable to be dismissed.

06. we have persued the record and evidence provided by the parites with great care and caution and decide the controversy between the parties. Issuewise finding are as under.

Issue No.1.

Whether the plaintiff has cause of action to file the present suit?

Onus to prove this issue was on plaintiff. From perusal of the pleading its reveals that the Plaintiff prayed for decree for recovery of an amount against the defendant as per following details;

I.Amount due in the light of approved revised PC-1 coupled with the commitment of the defendant that the plaintiff was entitled to Salary as per approved PC-1 from time to time=

RS. 8,59,1666.00.

II.Compensation for mental torture for a period at least from the dated of preferring claim to the

Total= Rs.20,59166.00.

In the legal system, a “cause of action” is a set of facts or legal theory that gives an individual or entity the right to seek a legal remedy against another.

From perusal of the record it reveals that after earthquake 8th October,2005 the Government launched a programme with aid of doner agencies for rehabilitation and reconstruction in earthquake affected areas. To achieve the aims and objectives of the programme, a project known as Earthquake Emergency Assistance project (EEAP) was launched in Azad Kashmir . For the purpose of this project number of vacancies on contract basis were advertised and plaintiff was appointed against the post of office superintendent in road and Bridges sector EEAP vide Government order No. SERRA /Admin/1619-43/2007 dated 17.03.2007. ExP.PA. He joined his duty on 22.03.2007 against salary package fixed at the rate of Rs. 20,000/- per month as per rate provided in PC-1 ExP.PB.

The record also shows that the original PC-1 ExP.PB was exhausted on 30.06.2009 . Later on revised PC-1 ExP.PC was prepared and pay for office superintendent was provided as Rs. 59.500/- per month. The Project Director, Chief Engineer on the basis of anticipatory approval by the chairman ERRRA, referred the matter of the plaintiff to the Secretary / D.G SERRA vide letters, dated 11.07.2012,25.10.2012 for

High court on 13.04.2013 regarding the same matter as he prayed before this forum.

In the writ peititon the Hon,ble High Court vide its judgment dated 19.02.2014 ordered as under;

“The crux of above discussion is that by accepting the instant writ petition Secretary/D.G SERRA respondent No.1 is directed to decide the controversy with regard to the payment of salary to petitioner as submitted by Chief Engineer- project Co-ordinator by latter dated 11.07.2012 and 25.10.2012 respectively within one month from the receipt of the instant order”.

The judgment dated 19.02.2014 of Hon,ble High Court was challenged by defendants in supreme Court which was later on withdrawn by defendants vide order dated 05.05.2014.

Meanwhile the plaintiff filed contempt application before Hon,ble High court. The defendant in compliance with order of the Hon,ble High Court resolve the controversy vide order dated 05.06.2014 and sumbitted it before court during contempt proceeding. As paragraph 5 of the aforesaid letter Secretary SERRA is relevant which is reproduced as under;

"Therefore, in light of the direction of Hon,ble High Court it is decided that petitioner Mr. Zulf Khan is not entitled to the benefits proposed CE/PC Earthquake emergency assistance project vide his proposal Annex.G under the Finance Division GoP's OMNO.F.4(9) R-111/2008 dated 12.08.2008 and hence the proposal of CE/PC-Earthquake emergency assistant project is

and court order dated 19.02.2014. A glance perusal of order supra reveals that this Court never directed to respondents to pay salary to the applicant on the basis of Finance Division Notification dated 12.08.2008. The direction was to the extent to decided the controversy with regards to payment of salary to petitioner which was decided by respondent vide order dated 05.06.2014. The applicant if considered order of respondent as unlawful, then he may challenge the same if so advised as per law, however, we are of the considered view that the instant contempt application is not maintainable’.

Despite challenging the order of Secretary/D.G SERRA dated 05.06.2014 the plaintiff filed the instant suit for recovery of money which had already been discussed before the Hon,ble High Court. Legally he cannot be allowed to re-agitate the same facts which he had already narrated before the Hon,ble High Court, and for which gravience of plaintiff had already been discussed by the Hon, ble High court. The plaintiff has not challenged the order of the Secretary SERRA dated 05.06.2014, and without challenging the order he cannot calim the same relief before this forum on which the Hon,ble High Court has given its verdict.

By appraisalment of evidence it appears that during his statement the plaintiff admitted that he has accepted the order of Secretary SERRA. During cross examination he responded as under;

”یہ در & ہے کہ مظہر نے رٹ پٹیشن آفس میموٹم

12.08.2008 کے علمدراآمد کے حوالہ سے دائر کی تھی۔ از خود کہا کہ رٹ پٹیشن میں

سیراکی جان\$ سے ای۔ فیصلہ پیش کیا H جس کے مطابق نوٹیفکیشن مورخہ 12.08.2008 من مظہر کے معاملہ میں اطلاق پڑا ہے۔ مظہر نے اس فیصلہ کو تسلیم کر لیا ہے۔“

Furthermore, it is pertinent to mention here that initially the plaintiff was appointed against the post of office superintendent in Road and Bridge sector EEAP on contract basis through an advertisement/ proclamation in newspaper, vide Government order No. SERRA/admin/1619-43/2009 dated 17.03.2007 as Exh.PPA. That appointment order of plaintiff was subject to condition. Condition No.1 and 2 are relevant which are produced as under;

- 1۔ تقرری کا ابتدائی عرصہ کنٹر 1۔ سال ہوگا جو کہ اچھی کارکردگی کی دپ قابل تجدید ہوگا۔
- 2۔ سیلری پنکچ ہر پوز C کیلئے پی سی ون میں درج شرح کے مطابق ہوگا۔

Although the period of contract was extendable vide appointment order Ex.PPA dated 17.03.2007 but the plaintiff has failed to produce any record which shows that his contract was extended. Admittedly the original PC-1 was exhausted on 30.06.2009. The plaintiff during Cross examination admitted as under;

”یہ در & ہے کہ تقرری کا ابتدائی عرصہ کنٹر 1۔ سال ہوگا جو کہ اچھی کارکردگی کی دپ قابل تجدید تھا۔ یہ * بت در & ہے کہ ابتدائی تقرری کے عرصہ ای۔ سال کی توسیع کے حوالے سے نہ تو کوئی حکم * نوٹیفکیشن مسل کا حصہ ہے اور نہ ہی Exhibit کیا ہے۔ از خود کہا کہ اس حکم کی تجدید ہوئی ہے۔ جس کا کارڈ مدعا علیہم کے * پس موجود ہے۔ یہ در & ہے کہ تقرری میں توسیع کارڈ مظہر نے طلب نہیں کرو *۔ از خود کہا کہ اس دعویٰ کیلئے اسے کارڈ کی ضرورت نہ تھی۔“

cause of action for filling the above titled suit. Hence, this issue is decided negatively.

Issue No. 2: Whether the controversy in the suit has also been resolved by the High Court? If yes what is its effect on suit? (OPP)

The Onus to prove this issue was on defendant. The plaintiff filed the writ petition before the Hon,ble High Court wherein he prayed that:

"1.The respondent be directed to pay to the petitioner arrears of salary from 01.07.2009 to 30.09.2011, and after 7/2012, calculated according to the Finance Division notification No. F.(9)R-III/2008 dated 12.08.2008 (Annexure-E/1) adapted by the ERRA W.e.f. 01.07.2009 as directed in the anticipatory approval of the PC-1 "Capacity Building of public works Department (transport and communication sector, Health sector and education sectors) Establishment of PIU for Extension of the residual works of earthquake emergency assistance project (GOP funded)" accorded by the chairman ERRA as per ERRA's letter No. 103(2)/ERRA/PEC/09 (Vol-V) dated 17.11.2011(Annexure-F) and decision of State Steering committee with regard to pay scale of the post of superintendent in EEAP as B-17(Annexure-H/2 & H/3).

2. The respondent be burdened with heavy exemplary costs keeping in view the fact that they have been responsible for putting the petitioner to immense mental tortures by depriving him of his due rights accruing to him under law for a long time without any lawful reason;

3. Any other relief to which the petitioner may

- i. Decree for recovery of an amount of Rs 2059,166 .00 may kindly be passed in favour of the plaintiff and against the defendants as per following detail.
- ii. Amount due in the light of approved revised PC-1 coupled with the commitment of the defendant that the plaintiff was entitled to salary as per approved PC-1 from time to time.
- iii. Compensation for mental torture for a period at least from date of preferring claim to the defendant for payment as per revised PC-1 and there own commitment i.e. from 18.11.2014 to date (nearly 22 months)=Rs.12,00,000.00, Total= Rs20,59,166.00. Cost of litigation may also kindly be awarded. Separate proceedings may kindly be directed to be taken against the defendant Secretary/D.G SERRA for false statement as pointed out in paras 21& 22 above. Any other alternative or further relief to which the plaintiff may be found entitled or which may be found appropriate by the Hon,ble court may also kindly be granted.

From the minute analysis of the plea made by the plaintiff in the present suit as well as taken in the writ petition decided on 19-02-2014 are same regarding the matter Hon,ble High Court directed the Secretary /DG SERRA to decide the controversy of payment of salary of petitioner as submitted by Chief Engineer Project Co-ordinator vide letter dated 11-07-2012 and 25-10-2012 respectively within one month from the receipt of the instant order i.e.19.02.2014.

Secretary/D.G SERRA By following the directions of the Hon,ble High Court decided the controversy vide order dated 05-06-2014. DG.SERRA submitted that order before Hon,ble High Court in contempt application

OM No. F.4(9) R-111/2008 Dated 12.08.2008 and also mentioned that the proposed letter of CE/PE -EEAP is not maintainable.

While examining the record and court order dated 19.02.2014 the Hon,ble High court finally decided the contempt application. However, the Hon,ble High court while deciding contempt proceeding has given the plaintiff an opportunity that if he considered order of the respondent as unlawful, then he may challenge the same if so advised as per law. As we have already held that the plaintiff despite challenging that order dated 05.06.2014 as unlawful, filed the instant suit which is not maintainable. The defendant proved this issued by producing documentary as well as oral evidence. The record produced by the plaintiff also support the defendant version. Hence this issue is decided affirmatively.

Issue No. 3:

Onus to prove this issue was on plaintiff. As held before that the applicant / plaintiff made the same plea as has already been decided by Hon,ble High Court vide its Judgement EXPPH. In Compliance of Judgment of Hon,ble High Court Secretary /DG SERRA decided the controversy vide letter dated 05-06-2014 . On Compliance of Judgment EXPPH the Hon,ble High Court dismissed the contempt proceeding.

The nub of the above discussion is that once matter has already been decided by apex Courts it cannot be re-agitated before Sub-ordinate courts. Furthermore, the plaintiff was appointed

was extended. He has also not challenged the order of the secretary /DG SERRA Dated 05.06.2014. Therefore he is not entitled to relief as prayed for Hence, this issue is decided against the plaintiff.

Relief :- The plaintiff has no cause of action as well as he failed to prove his case. Hence the suit is dismissed. No order as to costs. File be consigned to the record room after its due completion.

Announced

Dated _____

(NAZIA ASHRAF)

**ADDITIONAL DISTRICT JUDGE
JUDGE REFERENCE COURT
MUZAFFARABAD.**

This judgment consists of 16 pages. It is dictated corrected and signed by me.

**ADDITIONAL DISTRICT JUDGE
JUDGE REFERENCE COURT
MUZAFFARABAD.**

