

1875 7

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
[CONSTITUTIONAL JURISDICTION]

Constitution Petition No.D-7097 of 2016

Karamat Ali & OthersPetitioners

Versus

CMA No. 3008/18

Federation of Pakistan & Others.....Respondents

**APPLICATION UNDER SECTIONS 3, 6 & 12, OF THE CONTEMPT OF
COURT ORDINANCE, 2003, READ WITH, ARTICLE 204 OF THE
CONSTITUTION, 1973**

It is most respectfully and most humbly submitted that for the detailed reasons stated in the accompanying Affidavit, this Honourable Court may graciously be pleased to punish the person named herein below, for consciously, deliberately and willfully subverting, undermining and violating the Judgment dated: 07-09-2017, especially Paragraph 96(a) and (b), Read With, Paragraph 101(k), of this Honourable Court in the present Petition:

- i. Mr. Syed Murad Ali Shah,
Chief Minister,
Government of Sindh,
Chief Minister House,
Dr. Ziauddin Ahmed Road,
Karachi
- ii. Mr. Rizwan Memon,
Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi

The abovementioned prayer is made in the interest of justice and may graciously be granted.

Karachi:
Dated: 3rd February, 2018

Advocate for the Petitioners

1877 04

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
[CONSTITUTIONAL JURISDICTION]**

Constitution Petition No.D-7097 of 2016

Karamat Ali & OthersPetitioners

Versus

Federation of Pakistan & Others.....Respondents

**AFFIDAVIT IN SUPPORT OF THE APPLICATION UNDER SECTIONS
3, 6 & 12, OF THE CONTEMPT OF COURT ORDINANCE, 2003, READ
WITH, ARTICLE 204 OF THE CONSTITUTION, 1973**

I, Zulfiqar Ali Shah, son of, Misri Shah, Muslim, Adult, resident/office at
PILER Centre, ST-001, Sector X, Sub-Sector V, Gulshan-e-Maymar, Karachi,
CNIC No. _____ do hereby state on oath as under:

1. That I am the authorized person of Petitioner No.6, in this Constitution
Petition and I am well conversant with the facts of this Petition.
2. That the accompanying Application has been filed and drafted under my
instructions and for the sake of brevity, the contents of the accompanying
Application under Sections 3, 6 & 12, of the Contempt of Court
Ordinance, 2003, Read With, Article 204 of the Constitution, 1973, may
be read as a part of this Affidavit.
3. That through Judgment dated: 07.09.2017, (Paragraph 96(b)), in the
present Petition, the following directions were given by this Honourable
Court:

“...The draft rules shall be transmitted to the Provincial Government (here meaning the Provincial Cabinet) and also, to ensure transparency, posted simultaneously and prominently on the website of the Sindh Police (i.e., on the home page). The Provincial Cabinet must consider the draft rules at its next meeting or a meeting specifically called for such purpose within 15 days (whichever is earlier). The agenda for the meeting must be circulated in advance and the Inspector General must be invited to attend the meeting. If the rules are approved as proposed, then the same shall take effect in terms of s. 12 from the date of the Cabinet meeting. If any changes, modifications or amendments are made, which are concurred to in writing by the Inspector General, the same result will follow. If the rules are not considered or approved by the Provincial Cabinet or changes, modifications or amendments are made therein which are not accepted by the Inspector General, then the entire exercise will have to be repeated. The exercise shall be subject to judicial review, which may be sought by means of an appropriate application filed in these petitions...”[Underlining added].

→ P. 88

A copy of the Judgment dated: 07-09-2017 is annexed and marked as Annex 'A'.

5-10-17

→ Rules

original → 1571, 1577, 1597-

18-10 ← 1603, 1753

again
sent
↓
13-12-17
↓
18/11

4. That it is submitted that the Provincial Cabinet Meeting was held on 30.12.2017 and one of the items on the Agenda List was to consider the revised and amended draft of “The Sindh Police (Posting, Transfer & Tenure) Rules, 2017” sent by the Inspector General of Sindh Police in compliance of the Judgment dated: 07.09.2017 of this Honourable Court in the present Petition. However, the revised and amended draft of “The Sindh Police (Posting, Transfer & Tenure) Rules, 2017” was deliberately not considered on the pretext that the aforesaid Rules were not circulated, which was a clear violation of the Judgment dated: 07.09.2017 of this Honourable Court.

→ 16

(1757)

→ 165

1815

5. That it is further submitted that the subsequent Provincial Cabinet Meeting was held on 06.01.2018, however, the aforementioned revised and amended draft of “The Sindh Police (Posting, Transfer & Tenure) Rules, 2017,” was not considered as it was not on the agenda list. Therefore, a Legal Notice dated: 08-01-2018, was sent on behalf of the Petitioners,

→ 1855

1881 B

whereby the alleged Contemnors were informed that the Sindh Government is under a legal obligation to rectify its aforementioned mistake by convening a Provincial Cabinet Meeting as early as possible and to include the consideration of the revised and amended draft of "The Sindh Police (Posting, Transfer & Tenure) Rules, 2017" in its agenda list, as 15 days had passed from the submission of the draft of the aforesaid Rules by the Inspector General of Sindh Police.

A copy of the Legal Notice dated: 08-01-2018 and TCS Receipt is annexed and marked as Annex 'B' and 'B-1'.

6. That to the shock and surprise of the Petitioners, in the Provincial Cabinet Meeting held on 24.01.2018, the revised and amended draft of "The Sindh Police (Posting, Transfer & Tenure) Rules, 2017", was not even placed on the agenda. Accordingly, the said draft was neither considered nor any decision in respect of the said draft was taken in the aforementioned Cabinet Meeting, despite the fact that through the Contempt Notice dated: 19.01.2018 against the Chief Secretary, Sindh, the Chief Secretary was directed to comply with the Judgment dated: 07.09.2017. Therefore, the Petitioners issued Contempt Notice dated: 25.01.2018 against both the Alleged Contemnors to ensure that a Cabinet Meeting is convened before 06.02.2018 (i.e. date of hearing of CP No. D-7097 of 2016) and also ensure that the consideration of the revised and amended draft of "The Sindh Police (Posting, Transfer & Tenure) Rules, 2017" submitted by Inspector General Police, takes place in the said Cabinet Meeting. However, despite such notices, neither a meeting has been held nor any response has been sent by the Alleged Contemnors on the aforementioned Notices.

1883

48

A copy of the Contempt Notices dated: 19-01-2018 and 25-01-2018 and TCS Receipt is annexed and marked as Annex 'C' to 'C-3'.

7. That it is submitted that the Appeals filed by the Sindh Government against Judgment dated: 07.09.2017, before the Honourable Supreme Court were fixed on 18.01.2018. However, the Honourable Supreme Court was pleased not to suspend the Sindh High Court Judgment dated: 07.09.2017. Therefore, the aforesaid Judgment is still in field and the Sindh Government is under a legal obligation to implement the directions issued by the Honourable Sindh High Court in Judgment dated: 07.09.2017, for enactment of the said Rules.

A copy of the Order dated: 18.01.2018 of the Honourable Supreme Court is annexed and marked as Annex 'D'.

8. That the aforementioned omission of the Alleged Contemnors to firstly, consider the revised and amended draft of "The Sindh Police (Posting, Transfer & Tenure) Rules, 2017" in the already convened Cabinet Meetings, and secondly, the failure and omission to convene another Cabinet Meeting to consider the aforementioned draft tantamount to clear cut, deliberate and willful violation of the Judgment dated: 07-09-2017 of this Honourable Court. The deliberate and willful violation of the aforementioned Judgment is obvious from the fact that the Alleged Contemnors are flagrantly violating the Orders and have not responded to and/or denied the allegations in the aforementioned Contempt Notices, thereby admitting that the allegations stated above are correct and true.
9. That the Chief Minister is the Head of the Provincial Cabinet in terms of Article 130, Constitution, 1973, and is responsible for calling and chairing Cabinet Meetings. The Chief Minister being the highest elected official of

1885 #7

the Province with powers given under the Constitution, 1973, is responsible for upholding the legal and constitutional obligations by ensuring that the above directions given through the Judgment of this Honourable Court are complied with in letter and spirit. However, he has constantly failed to fulfill his legal and constitutional obligations, which render him liable to punishment for Contempt of Court's Order.

10. That the Chief Secretary is the Head of Bureaucracy in the Province, and being a civil servant at the senior most position, it is his legal and constitutional duty and responsibility to ensure compliance of the above directions in the High Court Judgment in letter and spirit. However, he has constantly failed to fulfill his legal and constitutional obligations, which render him liable to serious punishment for Contempt of Court's Order.

11. That in view of the above, it is most respectfully and most humbly prayed that this Honourable Court may graciously be pleased to punish the Alleged Contemnors named in the accompanying Application, for consciously, deliberately and willfully subverting, undermining and violating the Judgment dated: 07-09-2017, especially Paragraph 96 (a) and (b), Read With, Paragraph 101 (k), of this Honourable Court.

12. That whatever has been stated above is true and correct to the best of my personal knowledge and law stated, I believe to be correct in view of the advice from my legal counsel.

DEPONENT
CNIC No. 42401-1554261-7