

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1677 of 2011

Present:

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Adnan-ul-Karim Memon

Zulfiqar Ali ----- Petitioner

Versus

Province of Sindh and others ----- Respondents

Date of Hearing and order : 12.02.2019

Ms. Naseem Abbasi, advocate for petitioner

Mr. Allah Bachayo Soomro, Addl.A.G along with Muhammad Bux
Lashari, TEO (Primary) Male Tando Adam, Mr. Naseer Ahmed Jogi for
Deputy DEO Primary Sanghar

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant petition, the petitioner is seeking reinstatement of his service as Primary School Teacher under the Sacked Employees. (Reinstatement) Ordinance 2009 and or Act 2010, which was cancelled vide order dated 26.12. 1996, by the respondents on the premise that he was politically appointed, during the period of 1995-97.

2. Brief facts arising out of the present petition as averred therein that on 7.12.1995, the petitioner was appointed as Primary School Teacher in BPS-7 on regular basis. The petitioner has averred that after his appointment on the aforesaid post, he completed all the codal formalities and submitted his joining report, which was duly accepted and he started working in primary Masjid School Ghulam Hussain Shahani sub-Division Tando Adam. The petitioner has submitted that due to change of Government, the Primary School Teachers and other low paid employees were terminated from the Government service on political basis vide termination order dated 28.12.1996; that his application along with others was submitted before the competent authority/ Chief Minister Sindh for reinstatement in service, for which the Government of Sindh constituted a committee to

scrutinize the candidatures of the candidates, who were dismissed, removed or terminated from service on political grounds, during the period from 1st November 1996 to 31st of December 1998. The petitioner has submitted that in compliance of the directives of the competent authority, the respondents reinstated the services of chowkidars vide order dated 28.8.011 (available at page 53 of the memo of petition), however his service was not reinstated on the premise that his appointment was in access. Petitioner has added that he denied the assertion of the officials and submitted various applications to the competent authority for his reinstatement in service but to no avail. The petitioner being aggrieved by and dissatisfied with the aforesaid action of the respondents filed the instant petition on 14.10.2011.

3. Upon service of notice of this petition, respondents filed their respective comments, controverted the allegations levelled by the petitioner.

4. We queried from learned counsel for the petitioner that how this petition is maintainable under the law.

5. Ms. Naseem Abbasi, learned counsel for petitioner has replied that as per Section 10 of the Sacked Employees (Reinstatement) Act, 2010, the Petitioner ought to have been reinstated in service as PST; that services of the Petitioner was terminated on political grounds without any fault on his part; that a number of Petitioners' batch-mates having been appointed subsequently to the termination of the Petitioner are presently holding the posts, while the Petitioner is not reinstated on the same terms and conditions as mentioned in the appointment order, which is arbitrary, illegal and not warranted under the law and against the fundamental rights as guaranteed in the Constitution of the Islamic Republic of Pakistan, 1973; that the Petitioner has not been treated in accordance with law. Learned counsel seeks disposal of this petition in the light of decision given by this Court in C.P. No. D-116 of 2006, order dated 7.5.2009 passed by this Court in C.P. No. D-109 of 2009, CP No. D-176 of 2009, CP No. D-177 of 2008, CP No. D-178 of 2008

and CP No. D-233 of 2009. At this stage we posted another question with regard to laches, she has submitted that the petitioner has filed the instant petition just after promulgation of the Act 2010, therefore, the petition does not suffer from laches. She lastly prayed for allowing the instant petition.

6. Mr. Allah Bachayo Soomro, Addl.A.G has opposed the petition with the assertion that SDEO (Male) Tando Adam could not complete the codal formalities therefore the basic appointment of petitioner was illegal; that he was appointed as PST by the then SDEO (male) Tando Adam but codal formalities were not completed for which he was punished accordingly; that his appointment was over the sanctioned strength and he was not appointed by the competent authority, therefore his service was rightly terminated; that a letter for medical fitness was issued in favour of the petitioner by the then SDEO (Male) Tando Adam who was not the competent authority to issue such letter; that the then SDEO (male) Tando Adam was himself not gazetted official, thus was not authorized to issue appointment order of the petitioner; that he was not terminated from service on political ground but treating him appointee over and above the sanctioned strength and illegal appointment which was later on cancelled vide order dated 28.12.1996 passed by the competent authority. Learned AAG lastly referred the Act 2010 and argued that it does not apply to the Employees of Respondent-department as it pertains to the employees of Federal government. He lastly prayed for dismissal of the instant petition.

7. We have heard learned counsel for the parties at some length and with their assistance perused the record.

8. The case of the petitioner precisely is that his service was terminated on 28.12.1996 on the basis of political victimization. However, when the petitioner had applied for his reinstatement, seeking the treatment as that of other colleagues meted out to them, whereby the request of the petitioner for reinstatement was regretted on the premise that the basic appointment of the petitioner is illegal.

Consequently, the petitioner filed the present petition on the ground that his grievance has not been redressed.

9. The moot question involved in this petition is that whether the Petitioner is entitled to be reinstated under provisions of the Sacked Employees (Reinstatement) Ordinance, 2010. This Ordinance was promulgated on 05.02.2010 and the Sacked Employees (Reinstatement) Act, 2010, was enacted on 08.12.2010. The aforesaid enactments were made to provide relief to the persons, who were appointed in a corporation service of autonomous or semi-autonomous bodies or in the Federal Government Service during the period from 01.11.1993 to 30.11.1996 (both days inclusive).

10. In order to get the answers of above questions, various provisions of the Ordinance and the Act as well as their applicability to the facts and circumstances of this case has to be examined first. For the sake of convenience, Section 3 of the Ordinance is reproduced hereunder:-

“(3) Reinstatement of Employees.----Notwithstanding anything contained in any law for the time being in force, judgment of any Tribunal or a Court including the Supreme Court and the High Court, contract or terms and conditions of service, all persons appointed in corporation or Government service, during the period from the 1st days of November, 1993 to 30th day of November, 1996 (both days inclusive) and dismissed, removed, terminated or given forced golden handshake during the period from the 1st day of November, 1996 to the 31st day of December, 1998 (both days inclusive) shall be reinstated immediately in service on one scale higher to their substantive scale of the post at the time of termination of service and report for duty to their respective departments or organizations.”

11. Section 3 of the Ordinance is a non-obstante clause which provides that notwithstanding anything contained in any law or judgment of any Tribunal or Court, contract or terms and conditions of service, all person appointed in Corporation and Federal Government service between 01.11.1993 to 30.11.1996 and dismissed, removed, terminated or forcibly given golden hand shake between 01.11.1996 to 31.12.1998 shall be reinstated immediately in service one scale higher to their substantive scale of post at the time of termination. The said

Ordinance was converted into an Act (Sacked Employees (Re-instatement) Act, 2010) and was duly published in the Gazette of Pakistan on 08.12.2010. Similar rather more beneficial provision as compare to section 3 of the Ordinance was introduced through Section 4 of the Act as under:-

“4. Re-instatement of employees in service and regularization of employees’ service.---Notwithstanding anything contained in any law, for the time being in force, or any judgment of any tribunal or any court including the Supreme Court and a High Court or any terms and conditions of appointment on contract basis or otherwise, all sacked employees shall be re-instated in service and their service shall be regularized with effect from the date of enactment of this Act.”

12. Section 4 of the Act is also a non-obstante clause which says that notwithstanding anything contained in any law and judgment of any Court, all the sacked employees shall be reinstated in service and their services shall be regularized with effect from the date of enactment of this Act in the manner provide in section 4 of the Act.

13. Section 2(f) (i) and (iii) of the Act defines the Sacked Employees as under:-

“2(f)(i) a person who was appointed as a regular or ad hoc employee or on contract basis or otherwise in service of employer, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed removed or terminated from service or whose contract period was expired or who was given forced gold hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);”

“2(f)(iii) a person who was appointed or re-instated in service of employer during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and who was subsequently dismissed or removed or terminated from service during the period from 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive) or who was intermittently dismissed, removed or terminated from service from time to time and re-instated through status quo order or judgment of any tribunal or through ay court including the Supreme Court or a High Court or through any administrative order or through withdrawal or any order conveying dismissal, removal or termination or by any other way on any date after the 1st day of November, 1996;”

14. As per Section 2(f)(i) of the Act, a person is “Sacked Employee” if he was appointed as regular or *ad hoc* employee or on contract basis or otherwise in service of employer from 01.11.1993 to 30.11.1996 (both days inclusive) and was

dismissed, removed or terminated from service during the period from 01.11.1996 to 12.10.1999 (both days inclusive).

15. A bare reading of the above definitions indicates that provisions of Ordinance and the Act is applicable only to employees who fall within the very limited category i.e. recruited during November 1993 to November 1996 and removed during November, 1996 to December, 1998. It may be noticed that the word used between the two described periods, is “And”. Therefore unless an employee concurrently meets both these conditions, petitioner is not entitled to the benefit of the Ordinance and Act. Reliance in this regard is placed on the case Masroor Hussain and 45 others V. Chairman, Pakistan International Airlines and another [2010 PLC (C.S.) 630].

16. In the light of forgoing provision of law, the case of the Petitioner does not fall within the ambit of Ordinance and the Act, 2010. Which is even otherwise federal law deals with Federal Government Employees.

17. On merit, as per record on 7.12.1995, the petitioner was appointed as Primary School Teacher in BPS-7 on two years’ probation and his service was not terminated on the political basis as agitated by the petitioner. An excerpt of the termination order is reproduced as under:-

“ DIRECTORATE PRIMARY EDUCATION MIRPURKHAS
DIVISION MIRPURKHAS

NO:DSE/ADMN/4490-91/96.97 Mirpurkhas dated 28.12.1996

To

The Sub-Divisional Education Officer
(Male) (Female) Tando Adam

Subject: Excess Appointment Orders

Ref. Your letter Confidential No.A/01 Dated
26.12.1996

With reference to your letter no cited above the offer order issued by the District Education Officer (male) (Female) Sanghar. Then S.D.E.O (M)/(F)/ Tando Adam in excess after May, 1995 upto date may be cancelled with immediate effect.

Deputy Director
Directorate Primary School Education
Mirpurkhas Division Mirpurkhas”

18. Petitioner has failed to establish case of discrimination and/or violation of any Law. Besides, we do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of October 2011 whereas the alleged cause of action accrued to him in the month of December 1996, i.e. approximately 15 years prior to the filing of the instant Petition.

19. It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of the High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259). Reverting to the contention of the learned counsel for the petitioner that his case may be sent to the Committee constituted under the sacked Employees Act, 2010 for appropriate order. We do not agree with the contention of the learned counsel for the petitioner as the aforesaid Act does not provide the constitution of the committees by the provincial government to deal with the employees of Federal Government, therefore, the case of the petitioner cannot be sent.

20. Besides the above, this Petition is not maintainable in law; therefore Constitutional jurisdiction of this Court cannot be invoked under Article 199 of the Constitution.

21. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed with no order as to cost along with the listed application(s).

JUDGE

JUDGE

karar_hussain/PS*