

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-1662 of 2016**

Muhammad Urs Chutto & 11 others ..... Petitioners

Versus

Federation of Pakistan & others ..... Respondents

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**Date of hearing: 15.10.2018**

Mr. Ali Asadullah Bullo Advocate for Petitioners.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

Mr. Ali Jan, Deputy Director Intelligence Bureau.

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### **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:** In the present Petition, Petitioners have called in question the recovery proceedings initiated through office Memorandum dated 08.02.2016 issued by Government of Pakistan, Intelligence Bureau Islamabad, regarding payment of compensation on reinstatement of the Petitioners, who were purportedly gainfully employed in Government departments prior to their reinstatement in Intelligence Bureau.

2. Brief facts of the case, as narrated by the Petitioners in the memo of petition are that they were appointed as Inspector in BPS-16 in Intelligence Bureau, Government of Pakistan in the year 1996, later on their services were terminated in the year 1997 vide different Notifications issued in the month of February 1997.

Petitioners have submitted that their services were reinstated vide Notification dated 27.05.2009 and subsequently their services were regularized vide Notification dated 31.01.2011, in the light of the Sacked Employees (Re-instatement) Act 2010.

Basically the Petitioners are aggrieved by recovery of over payment of compensation made to them by the Respondent department through office Memorandum dated 08.02.2016, have approached this Court on 22.03.2016.

During the course of arguments, we asked from the learned AAG as to how the department initiated recovery of over payment of compensation and under what law they were authorized to do so. He in reply to the query raised by this Court submitted that there is no specific law available on the subject, however the Respondent-department initiated the recovery proceedings on the premise that they were gainfully employed in between the period of termination and reinstatement as such they were not entitled for compensation as provided under Section 16 of the Sacked Employees (Re-instatement) Act 2010. Learned AAG in support of his contention has relied upon the statement dated 03.08.2016 filed on behalf of the Respondent No.1 and argued that Establishment Division was of the view that payment of compensation on reinstatement under SERA-2010 was not admissible to those, who were gainfully employed in other departments / posts. He further submitted that the Respondent department had paid the compensation to the Petitioners mistakenly and inadvertently without prior knowledge of their previous employments. He next added that in order to recover the

aforesaid amount, the Respondent-department had issued the office Memorandum from time to time to all the set-ups. He further added that at the time of reinstatement of the Petitioners in service they were asked to submit undertaking as to whether they were engaged in any gainful employment during the intervening period and the same factum was concealed by the Petitioners misleading the Respondent department to make compensation to them which is required to be recovered from them. He next added that the case of the Petitioners were dealt with by the Respondent department in accordance with the clarification sought by the anomaly resolution committee duly established under SERA 2010, communicated vide Establishment Office Memorandum dated 08.06.2010. He lastly prayed for dismissal of the instant Petition.

3. Mr. Ali Asadullah Bullo, learned counsel for the Petitioners has contended that upon reinstatement of the service of the Petitioners they were granted benefit of compensation as admissible under Section 16 of the Sacked Employees (Re-instatement) Act 2010, which was accepted by the Petitioners as a matter of right which cannot be called in question at latter stage by the Respondent department; that law does protect the issue of compensation awarded to the Petitioners under the SERA, 2010 and the Respondent department cannot initiate recovery proceedings against the Petitioners after lapse of 7 years, which act of the Respondent department is illegal and unlawful thus no sustainable in law; that the Respondents have created trouble for the smooth working of the Petitioners in violation of Article 4,10,18

and 25 of the Constitution of the Islamic Republic of Pakistan 1973. He lastly prayed for setting aside the office Memorandum dated 08.02.2016 issued by the Respondent department.

4. We have considered the contentions of the learned counsel for the Parties and have minutely gone through the material available on record with their assistance.

5. The controversy at hand is as follows:

- i) **Whether the Petitioner's case comes within the ambit of Section 16 of the Sacked Employees (Reinstatement) Act, 2010?**
- ii) **Whether under the Sacked Employees (Reinstatement) Act, 2010 the Respondent department can initiate the recovery proceedings regarding compensation paid to the Petitioners upon their reinstatement in the light of Section 16 of the Act.?**

6. It is obvious from the above factum of the case that the Sacked Employees (Re-instatement) Act, 2010 is a special law enacted as a beneficial legislation for reinstatement of employees defined under section 2(f) of the said Act:-

(f) "Sacked employee" means-

- (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 golden hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);**

7. It is also pertinent to point out that the Sacked Employees (Re-instatement) Act, 2010 is enacted only to the extent of entities established or controlled by the Federal Government as defined in Section 2(d).

8. As already noted above, the Sacked Employees (Re-instatement) Act, 2010 has been enacted for the benefit of and to provide relief of reinstatement in service to the employees. Employer as defined in section 2(d) essentially is confined to such entities which are Ministries or Division of the Federal Government or are established or controlled by the latter and the case of the Petitioners falls within the ambit of aforesaid Act.

9. In order to resolve the controversy as emerged in the present proceedings, it is expedient to shade light on Section 16 of the Act 2010, which provides as under:-

***“ Payment of compensation on reinstatement---(1) Each sacked employee, whether reinstated in service of corporation or autonomous or semi-autonomous Organization or Government under provisions of this Act or regularized, where sacked employee is already taken back in service under order of any tribunal or any court including the Supreme Court or a High Court, shall be paid compensation out of employer’s own resources without waiting for any type of transfer or receipt of funds from any other organization or Ministry, equal to gross monthly emoluments of three years, at the rate of monthly pay and allowances payable at the time of disbursement of installment for the relevant post, grade cadre, group or designation, whatever the case may be, in which the sacked employee is being reinstated or regularized, if already taken back in service.***

***(2) the emoluments under subsection (1) shall be paid to the sacked employee in lump sum or in the following manner, namely:-***

***(a) first installment equal to twelve months emoluments shall be paid immediately and shall not be delayed beyond seven days of reinstatement;***

***(b) second installment equal to twelve months emoluments shall be paid immediately after payment of first installment and shall not be delayed beyond three hundred sixty days of reinstatement.***

***(3) Payment under subsections (1) and (2) shall stand sanctioned and approved under this Act and shall not be subject to any type of further approval or sanction from any officer or the Board of Directors or any other type of Board or from any other authority of the autonomous or semi-autonomous organization or Ministry or Division concerned or Finance division.***

**(4) The Accountant General Pakistan Revenue in relation to the Ministries, Divisions or their attached departments or subordinate officers and any officer holding the charge of budget, finance, treasury or accounts in relation to any autonomous or semi- autonomous organization shall not delay the payment and shall ensure to effect payment of the amount payable to Sacked employee under this Act within the time period as provided under subsection”**

10. We have noticed that Petitioners were appointed in the year 1996 in the Respondent department, as Inspectors and served the Respondent-department for one year till 18.02.1997, subsequently Respondent department vide Notification dated 27.5.2009 reinstated their services in Intelligence Bureau, followed by regularization of their service vide Notification dated 31.01.2011.

11. Now the only issue of payment of compensation is to be resolved through the instant proceedings. Upon perusal of the Act 2010, the payment of compensation on reinstatement of sacked employees under the Sacked Employees (Re-instatement) Act 2010, the concerned department is required to pay compensation to the employees, equal to gross monthly emoluments of three years, at the rate of monthly pay and allowances payable at the time of disbursement of installment for the relevant post, grade cadre, group or designation, whatever the case may be, in which the sacked employee is being reinstated or regularized, if already taken back in service. Prima facie the Act-2010 does not provide that the compensation on reinstatement can be taken back at any stage of the employment. The question arises as to what promoted the Respondent department to ask for recovery of the amount of compensation paid to the Petitioners in pursuance of Section 16 of the Act supra. Record reflects that there is nothing in the said

employees Re-instatement ordinance or Act that those sacked employees, who remained gainfully employed during that period will not be entitled for compensation. The beneficial legislation as discussed supra provided relief to the persons who were in service of corporation or autonomous or semi-autonomous or in government service, who were dismissed, removed or terminated from service. We are of considered view that the Petitioners were sacked employees as defined under the Sacked Employees (Re-instatement) Act, 2010 and reinstated in service, were entitled for compensation as provided under Section 16 of the said Act.

12. From the foregoing provision of law it is crystal clear that the recovery proceedings initiated against the Petitioners through the office Memorandum dated 08.02.2016 is an act of hardship, thus the Petitioners cannot be called for payment already received by them upon their reinstatement in service, but subject to Section 19 of the Act 2010, and shall not of course be entitled any double benefits.

13. In view of forgoing, we conclude that the Petitioners have made out a case of relief under the Sacked Employees (Re-instatement) Act 2010.

14. In the light of facts and circumstances of the case and reasons alluded hereinabove, this Petition is allowed with directions to the competent authority of the Respondent-department to reconsider his decision regarding recovery proceedings of compensation awarded to the Petitioners in the light

of the Sacked Employees (Re-instatement) Act 2010 and take a fresh decision in accordance with law within a period of two months from the date of receipt of this Judgment.

15. The above Petition is disposed in the above terms along with listed application(s).

16. These are the reasons of our short order dated 15.10.2018, whereby we have allowed the instant petition.

JUDGE

JUDGE

**Shafi Muhammad / P.A**