

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D-2562 OF 2015

PRESENT:**MR. JUSTICE MUHAMMAD ALI MAZHAR.****MR. JUSTICE ARSHAD HUSSAIN KHAN.***Tasawar Abbas Tanveer**Versus**Federation of Pakistan and others*

Petitioner: Tasawwar Abbas Tanveer in person.

Respondent No.1: Through Mr. Shaikh Liaquat Hussain,
Standing Counsel.

Respondent No.2: Through Mr. Ashfaq Hussain Rizvi, Advocate

Date of Hg: 10.10.2016

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant constitutional petition has sought relief as follow:-

- i. *To direct the respondents No.1 and 2 to re-instate the petitioner back into his office with full back benefits, accumulated till now, with effect from 17-04-1998 as the petitioner is jobless unemployed person in these dearest days, hence this prayer may be allowed on humanitarian grounds and suspend the order date 20-04-2015 and 10-03-2015 (Annex- F & F/2.)*
- ii. *To direct the respondents No.1 and 2 to treat the petitioner with fair and equitable basis likewise the respondents No.6 to 25 to implement orders dated 16-12-2014, 16-05-2014 and 15-03-2012 passed by the Hon'ble Supreme Court of Pakistan Karachi Registry at the earliest.*
- iii. *To direct the respondents 1 and 2 to award promotion to the petitioner to the post of Manager, in the light of completion of more than a 25 years period, in the same manner as awarded to some of the respondents among respondents No.6 and 25.*
- iv. *Cost of all the legal proceedings, which the petitioner was, is and shall be constrained to bear, due to the undue acts of the respondents No.1 and 2.*
- v. *Any other relief/relief(s), which this Honourable Court may deem fit and proper under the circumstances of the case.*

2. Brief facts arising out of the present petition as averred therein are that on 30.11.1989, the petitioner was appointed in Rice Export Corporation of Pakistan (RECP). In the year 1997 the government introduced Golden Handshake Scheme and accordingly employees of the RECP were given opportunity to leave the job voluntarily after receiving stipulated amount. It is also averred in the petition that in the year 1998 as per office order dated 17.4.1998 RECP forcibly retired 189 non-opted employees including the petitioner by offering a very meager amount. The respondents No.6 and 7 were also forcibly retired on the same date as that of petitioner, that is, on 17.4.1998. However, on 31.7.2009 upon application for reinstatement filed by the respondents 6 and 7, the Review Board, constituted under Section 4 of the Sacked Employees (Reinstatement) Ordinance, 2009, set aside the order dated 17.4.1998 passed by SECP in respect of respondents No.6 and 7, who were later on reinstated in their office of Trading Corporation of Pakistan (TCP) in which RECP was merged. It is also averred in the petition that respondents No.8 to 17, who voluntarily opted for the said scheme, were later on reappointed in TCP by further giving undue favour that the Golden Handshake retirement amount was even not taken back from those employees/officers. The respondents No.18 to 25 were appointed in 1989 and terminated in December 2007 and reinstated in TCP by Sub-Committee of Cabinet held on 11.6.2006 under the Chairmanship of Syed Khursheed Ahmed Shah the then Minister of Labour and Manpower. The petitioner, keeping in view the above said reinstatements and reappointments of his colleagues also applied for reinstatement in the TCP but his request was not acceded to resultantly the petitioner filed C.P.No.D-3264 of 2010 before this Court, which was disposed of with direction to the petitioner to avail remedy by filing petition before the Review Board. The petitioner against the said order filed review application before this Court, which was dismissed on 13.10.2011. The petitioner challenged the said order before the Honourable Supreme Court by filing C.P.L.A. No.871-K of 2011, wherein initially vide order dated 15.03.2012 the leave was granted and subsequently on 16.05.2014, Civil Appeal No.09-K of 2012 filed by the petitioner herein was disposed of upon the statement of Deputy Attorney

General that the Review Board will decide application of the present petitioner strictly in accordance with law within one month from the date of order passed in the case. The petitioner pursuant to said order filed several applications to the concerned officer for redressal of his grievance but yielded no fruits. Consequently, the petitioner again approached the Honourable Supreme Court through Civil Review Petition No.30-K of 2014, which was disposed of on 16.12.2014 with the direction that instead of Chairman, Review Board, Establishment Division, Cabinet Secretariat Building, Islamabad, the Review Committee comprising of the Secretary, Ministry of Commerce Islamabad and respondent No.4, Chairman Trade Corporation of Pakistan, Karachi will comply with the order dated 16.05.2014. The petitioner having failed to get any relief despite clear direction from the Honourable Supreme Court approached this Court and filed the present petition.

3. Upon service of notice of this petition, respondent No.2 (Chairman TCP), respondent No.3 (Chairman Review Board) and respondent No.4 (Secretary Law and Justice) filed their respective comments. The petitioner also filed his affidavit-in-rejoinder to the objections/parawise comments filed by the respondents.

4. The respondent No.2 in its para-wise comments has stated that this Court in C.P.No.D-3264 of 2010, filed earlier by the present petitioner, has held that the Sacked Employees Act, 2010, is not applicable to the case of petitioner, which order has not been set aside by the Honourable Supreme Court in Civil Appeal No.9-K of 2012 filed by the petitioner against the order passed in the above referred petition. The Honourable Supreme Court disposed of said civil appeal by referring the matter to the Board for decision in the petitioner's case. The Board in compliance of the direction of the Honourable Supreme Court heard the petition and dismissed the appeal filed by the petitioner vide Order dated 10.03.2015. It is also stated that RECP introduced Voluntary Retirement Scheme (VRS) for its employees on 16.10.1997. In pursuance thereof all the employees (2282 employees) opted for VRS except 235 employees of RECP, who did not opt. It is also stated that petitioner also did not opt the VRS and instead he along with 189 employees approached

NIRC Karachi and filed a case against RECP. The said case was decided by the NIRC vide its decision dated 16.04.1998. Under the order of the NIRC, these employees were retired under VRS and had received all legal dues in full and final settlement. None of the above mentioned 189 employees including the petitioner had filed any appeal in any forum for assailing the said order of NIRC. The said order, therefore, attained finality in the eyes of law and still holding the field.

It is also stated that the case of the petitioner is not identical to respondents No.6 and 7 as they were appointed in defunct RECP during 1989 and their services were terminated during 1991 and again appointed/reinstated during 1994 which date is coincide with the dates prescribed in the Sacked Employees (Reinstatement) Ordinance / Act. 2010. The Review Board of Sacked Employees reinstated the services of respondents No.6 and 7 on the basis of their re-appointments/ re-instatements during 1994, as such the order passed by the learned Review Board was complied with by the TCP. Whereas, on the other hand, petitioner was appointed in defunct RECP on 28.11.1989 which date do not coincide with the dates prescribed in the Sacked Employees. (Reinstatement) Ordinance 2009 and or Act 2010.

The Sacked Employees (Reinstatement) Ordinance, 2009 was promulgated on 14.02.2009 which provides relief to the persons who were appointed in a corporation service of autonomous of semi-autonomous bodies or in Government Service during the period from 01.11.1993 to 30.11.1996 (both days inclusive). Subsequently, the Sacked Employees (Reinstatement) Ordinance Act, 2010 was promulgated which also provides relief to the persons who were appointed in a corporation service or autonomous or semi-autonomous bodies or in Government Service during the period from 01.11.1993 to 30.11.1996. It is stated that the respondents mentioned at Sr. 8 – 17 opted for Voluntary Retirement Scheme (VRS) at their own freewill and their options were accepted by the Competent Authority. However, they were not relieved to complete the residual work in hand and their services were required by TCP. They were not re-instated in TCP. Their services were regularized by the TCP's management.

It is also stated that in response to Ministry of Commerce Islamabad Office Memorandum dated 29.12.2014 to resolve the issue, a detailed report was forwarded to the Ministry of Commerce, Islamabad vide TCP's Letter No.TCP(HR)/14-103/2014 Vol-III dated 05.01.2015. In compliance of the order dated 16-12-2014 of the Honourable Supreme Court of Pakistan, a Review Board was duly constituted consisting of Secretary Commerce and Chairman TCP to hear the plea of petitioner. The petitioner was heard at length. The Board observed that his request for reinstatement does not merit consideration under Sacked Employees (Reinstatement) Act 2010, as the incumbent was never dismissed / terminated and reinstated / appointed in service of employer (RECP) during the period from 1.11.1993 to 30.11.1996 (both days inclusive). Therefore, his request was regretted within the meaning of Section 2(f)(i-vi) of Sacked Employees. (Reinstatement) Act, 2010. The findings of the Review Board was accordingly informed to the petitioner and Registrar Supreme Court of Pakistan, Islamabad, vide Order No.3(11)/2009-Admn-III dated 10-03-2015.

5. The respondent No.3 in its comments has stated that Review Board in its meeting held on 30-04-2015 also considered the application of the instant petitioner but did not find the Review Board a proper forum to decide the dispute as the petitioner alleged the discrimination. The respondent No.3 also prayed for dismissal of this constitution petition.

6. The **respondent No.4** in its comments has stated that since the petitioner through the present petition sought his reinstatement in service w.e.f. 17.04.199 with all back benefits etc. the said issue relates to Ministry of Commerce and other respondents, which have already been impleaded in the petition, whereas respondent No.4 has been impleaded unnecessarily as it has no role to play in the present case, therefore, the petition is defective for mis-joinder of necessary parties. The respondent No.4 also prayed that the name of the said respondent may be deleted from the array of respondents and the petition may be decided as deemed appropriate in the circumstances of the case.

7. We have heard the petitioner appeared in person, learned counsel for the parties and with their assistance perused the record and relevant law on the point.

8. The case of the petitioner precisely is that on 28.11.1989 he was appointed in RECP. In the year 1998 the RECP through office order 17.04.1998 forcibly retired 189 of its employee, which include petitioner as well, who had not opted for voluntary retirement scheme introduced by the Government in the 1997. The respondents No. 6 and 7 were also amongst the said 189 employees who had forcibly retired from the service. The said respondent No.6 and 7, however, subsequently, reinstated in the service by a Review Board established under 'The sacked Employees (Reinstatement) Ordinance 2009 (the said ordinance subsequently became the Act in 2010). However, when the petitioner had applied for his reinstatement, seeking the treatment as that of respondent No. 6 and 7, his application was not replied to by the review board upon which the petitioner started litigation which went upto Hon'ble Supreme Court and pursuant to the direction of the Supreme Court the Review Board comprising Secretary Commerce and Chairman Trading Corporation of Pakistan was constituted who after hearing the petitioner and examining his case, passed the order whereby the request of the petitioner for reinstatement was regretted. Consequently, the petitioner filed the present petition on the ground that his grievance has not been redressed.

9. Before going into any further detail, it would be appropriate to refer the orders passed by this court in the earlier constitutional petition bearing No. D- 3264 of 2010 filed by the present petitioner.

Order dated 24.8.2011

“ 1. Granted.

2. The Petitioner seeks reinstatement in service of the respondent No.2 on the basis of Sacked Employees (Reinstatement) Ordinance 2010. The said very ordinance by its Section 5 provides that a person in corporation or Government service, who was dismissed, removed or terminated from the service on account of closure of organization, absence from duty, misappropriation of Government money or stock or medical unfitness may within sixty days of the commencement of this Ordinance, prefer petition for review of the order of dismissal, removal

or termination from service to the Review Board which shall decide the case within thirty days of its first hearing.

It appears that the petitioner has not petitioned to Review Board until now and unless such remedy is availed by him, which is provided in law, the present petition will not be maintainable. Consequently, the petitioner is directed to avail remedy of making petition before the Review Board. In case the Petitioner's grievance is not redressed, he can avail remedy against the order of the review Board in accordance with law.

The petition in the above terms stands disposed of.

The petitioner filed review application against the above said order which was decided on 13.10.2011, relevant portion whereof is reproduced as under:

“In respect of the application of review, the petitioner has contended that his case is similar to that of one Muhammad Riaz Khan, who was reinstated in the service of the respondent pursuant to the sacked Employees (Reinstatement) Ordinance, 2009. It may be noted that the impugned order dated 24.8.2011 was passed after granting extensive hearing to the petitioner, where prima facie it was found that he was appointed by the Rice Export Corporation of Pakistan Pvt. Ltd., subsequently merged into Trading Corporation of Pakistan on 28.11.1989, while the said Ordinance covers the cases of such employees, who were appointed between 1.11.1993 and 30.11.1996 and who were removed from service between 1.11.1996 and 31.12.1998. In the case of MASROOR HUSSAIN & 45 OTHERS V/S CHAIRMAN PAKISTAN INTERNATIONAL AIRLINES & ANOTHER (2010 PLC (CS) 630) a division Bench of this Court, of which one of us (Gulzar Ahmed, J) was member, has held that benefit of the Ordinance could not be given to an employee of corporation who did not meet both such conditions concurrently. The date of appointment of petitioner is not covered by the Ordinance and therefore, the Ordinance has no application to the case of petitioner. In any case, the matter was not finally decided by this court rather petitioner was allowed to approach the Review Committee and it is not stated before us that he has approached the Review Committee and has got his matter decided.

For the foregoing reasons we find no merit in this review application and therefore, dismiss the same.”

[Underlining is to add emphasis]

10. The petitioner challenged the above said order before the Hon'ble Supreme Court. On 16.05.2014 the Hon'ble Supreme Court disposed of the civil appeal bearing No. 9-K of 2012 filed by the present petitioner, order whereof for the sake of ready reference is reproduced as under:

“ In order to consider the grievance of the appellant that the application submitted by him before the Review Board constituted under the Sacked Employees (Re-instatement) Act, 2010 (in short “the Act of 2010”), in compliance of the order dated 24.08.2011,

has not yet been disposed of. We had issued notice to DAG to appear and assist the Court. Today, Syed Mohsin Imam, learned DAG has appeared. After going through the record, he submits, that in case the appellant has already moved an application before the Review Board in compliance of the order dated 24.08.2011, passed by the learned Division Bench of the High Court of Sindh, Karachi in C.P. No. D-3264/2010, or even before that, the same will be heard and decided strictly in accordance with law within one month from the date of this order.

2. Keeping in view the overall facts and circumstances of the case, we feel that disposal of this appeal in the above terms will be just, fair and equitable. Order accordingly. Learned DAG shall ensure communication of this order to the chairman, Review Board, Establishment Division, Cabinet Secretariat Building, Islamabad for compliance.”

11. Petitioner filed review application against the said order which was disposed of on 16.12.2014, order whereof is reproduced as under :-

“After hearing the petitioner in person, the learned ASC on behalf of the respondent No.4 and careful perusal of the contents of Review Petition, it is disposed of in the terms that instead of Chairman, Review Board, Establishment Division, Cabinet Secretariat Building, Islamabad, compliance of order dated 16.5.2014 now be made by respondent No.4, Chairman, Trade Corporation of Pakistan, Karachi. Copy of this order and the earlier order referred to above be sent to them urgently.”

12. Thereafter on 10.03.2015, the Review Board, constituted in compliance with the direction of the Hon’ble Supreme Court, passed the order, relevant portion whereof for the sake of ready reference is reproduced as under:

“2. During hearing Mr. Tasawar Abbas Tanveer stated that his colleague Mr. Muhammad Riaz khan was also appointed in RECP as Food Inspector in 1989. He was terminated from the service on 26.02.1991 and was reinstated in the year 1994. Mr. Riaz got retired from the service with VRS benefits. Later on, Review Board, Establishment Division on 31-07.2009 set aside the retirement Order dated 17.01.1998 passed by RECP and reinstated Mr. Muhammad Riaz, Ex-Food Inspector in service of TCP within the meaning of Section 5 of the Sacked Employees (Reinstatement) Act, 2010 subject to the condition that he would pay back Rs.150,000/- already drawn by him under VRS in one month. He also apprised that the Honorable Supreme Court of Pakistan, Karachi Registry, in its short order dated 15.03.2012 in CPLA No. 871-K of 2011 granted leave in the matter to consider the issue whether the Petitioner, in the circumstances of the case, should be treated at par with Muhammad Riaz khan. He claimed that since the Review Board has set aside the order dated 17.01.1998 passed by RECP, therefore, he may also be appointed in TCP on the precedence of Mr. Muhammad Riaz Khan.

3. After detailed deliberation, it has been decided that the case of Mr. Tasawar Abbas Tanveer, Ex-Assistant, RECP does not fall under Sacked Employees (Reinstatement) Act, 2010 and has no analogy with the case of Mr. Muhammad Riaz Khan on the reason that he was never dismissed/terminated and reinstated/appointed in service of employer (RECP), during the period from 1st day of November 1993 to 30th day of November 1996 (both days inclusive). Therefore, the request of Mr. Tasawar Abbas Tanveer, Ex-Assistant RECP is regretted within the meaning of Section 2(f) (i-vi) of Sacked Employees (Reinstatement) Act, 2010.

[Underlining is to add emphasis]

13. The moot question involved in this petition is that whether petitioner is entitled to be reinstated under provisions of the Sacked Employees (Reinstatement) Ordinance, 2009 (**Ordinance**) promulgated on 14.2.2009 and the Sacked Employees (Reinstatement) Act, 2010 (**Act**) enacted on 08.12.2010. And whether the case of the petitioner is at par with Muhammad Riaz Khan who having similar fact as that of petitioner had been reinstated in the service under the above provisions of Ordinance and the Act.

14. 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.

15. 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 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.

16. 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.

17. 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 statues 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;

As per Section 2(f)(i) of the Act, a person is “Sacked Employee” if he was appointed as regular or adhoc 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).

18. 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 of a corporation concurrently meets both these conditions he 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]

19. As regards the question of reinstatement of petitioner’s colleague namely Muhammad Riaz Khan, the record reveals that Muhammad Riaz Khan was appointed in RECP as Food Inspector in year the 1989. He was terminated from the service on 26.02.1991 and was reappointed/reinstated in the year 1994. The said Muhammad Riaz Khan subsequently retired with VRS on 17.01.1998. Since both the dates, that is, reappointment / reinstatement and retirement of Muhammad Riaz Khan was coincided with the cut of dates mentioned under the Ordinance and the Act therefore, he was reinstated in the service under the provisions of Ordinance and the Act. We have noted that the petitioner at the time of his retirement, was paid full and final dues.

20. It is now a well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution. This extra ordinary jurisdiction of 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 objects 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 v. Abdul Waheed Abro and 2 others (2015 PLC 259).

21. After careful examination of the record and the order passed by the Review Board, constituted under the orders of Hon'ble Supreme Court, we feel no illegality or irregularity in the order which is in accordance with law.

22. The upshot of the above, there is no merit in the petition, which is accordingly dismissed with no order as to costs.

Judge

Karachi;
Dated:

Judge