

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Constitutional Petition No. D - 5281 of 2021

Order with signature of Judge(s)

For order as to maintainability of petition

07.09.2021

Mr. Zamir Hussain Ghumro, advocate for the petitioners
Mr. Muhammad Nishat Warsi, DAG.

Mr. Kashif Hanif, advocate files Vakalatnama on behalf of respondents No.2 and 3, taken on record.

Through this petition, the petitioners have prayed that: -

i. Declare that the impugned Notice/action of the respondents to relief or terminate the services of the petitioners is illegal unlawful, unconstitutional and in violation of the principles of natural justice.

ii. Declare that the matter of the petitioners' employment is a past and closed transaction under Sacked Employees Ordinance, 2009, as such, pursuant to the Honorable Supreme Court's own ration via judgment dated 17.8.2021, the petitioners' employment is not liable to be transferred with.

2. Learned counsel for the petitioners has mainly focused at paragraph No.61 of the judgment passed by the Honourable apex Court dated 17.8.2021 in Civil Appeal No.491/2012. Learned counsel for the petitioners has referred Section 6 of the General Clauses Act and Article 264 of the Constitution of the Islamic Republic of Pakistan, 1973 with the plea that reinstatement of the petitioners is in pursuance of the Ordinance and not by the Sacked Employees (Re-instatement) Act, 2010, hence relieving letters of employer (SSGC Limited/respondents No.2 and 3) is against the spirit of the judgment and that paragraph 61 of the judgment cannot be treated as against the petitioners, hence SSGC has taken wrong decision in interpretation of that judgment.

3. Learned counsel for SSGC has referred that on 14.2.2009, an Ordinance was promulgated for reinstatement of Sacked Employees i.e. Sacked Employees (Re-instatement) Ordinance 2009 thereafter same was again extended in 2010 and ultimately such legislation attained its finality through the Sacked Employees Act, 2010, hence judgment of the apex Court is in field, hence employer is bound to obey that judgment;

petitioners, if aggrieved, can approach the apex Court by filing review application or to avail appropriate remedy under the law. Learned DAG also adopted those arguments.

4. In rebuttal, learned counsel for the petitioners has referred Criminal Review Petition No.96 of 2015 in CrI. O.P. No.121/2013 in CrI. O.P. No.89/2011 with the plea that this Court can interpret the judgment of the apex Court and remedy is only writ jurisdiction. He has also referred the case reported as **2015 PTD 2368** [*Commissioner Inland Revenue v. Messrs Shafi Spinning Mills Ltd.*] and further he has contended that since services of the petitioners were not governed by that Act of 2010, hence action taken by the employer is not in accordance with law as the Ordinance which was lapsed after the expiry of four months and that is the closed chapter, therefore, it amounts that they were regularized before 2010, hence employer is bound to continue their services as they were reinstated before 2010.

5. It is settled principle of law that promulgation of Ordinances are passed *only* when the assembly is not in session. The Ordinances are meant to deal with a situation of emergency required to be endorsed by the Assembly.

6. Keeping in view the contentions raised by parties, it is pertinent to mention that the Constitution itself provides age of the Ordinance, hence any protection through Ordinance is for certain period and cannot be extended for unlimited period unless there is complete legislation by the Legislative Assembly, hence the Ordinances were merged into the Act 2010 and all employees were reinstated or reinstatement was confirmed by that Act.

7. Without prejudice to the above, it may safely be added that interpretation may be done of the judgment of Honourable Apex Court but such course would not be available when the consequence of judgment of Honourable Apex Court is being challenged while referring to interpretation thereof by this Court. If such view is allowed to hold the field, the same shall open the rooms for making a challenge to consequences of judgment(s) of Honourable Apex Court which, we would insist, may prejudice the binding effect thereof, as insisted by Article 189 of the Constitution. In the instant matter, the authority claims to have passed the order in compliance of the judgment of Honourable Apex

Court. The legal position, being so, leave us with no other option but to add that appropriate remedy to challenge the consequence of judgment of Honourable Apex Court is *only* by approaching the Apex Court. The instant petition, being incompetent, is dismissed in limine.

JUDGE

JUDGE

Zahid/*