

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No D 4581 of year 2022  
(Mohammed Hassan Versus Province of Sindh and others)

## PRESENT

**Mr. JUSTICE MUHAMMAD KARIM KHAN AGHA**

**Mr. JUSTICE NISAR AHMED BHANBHRO**

Petitioner: Through Mr Ali Asadullah Bullo Advocate  
Respondents: Through Mr Ali Safdar Depar Assistant Advocate General Sindh  
Date of Hearing : 14.03.2025  
Date of Order: 21.03.2025

## ORDER

**Nisar Ahmed Bhanbhro, J.** The Petitioner has invoked the writ jurisdiction of this Court for grant of following relief(s):

- i. Declare the impugned order dated 28.03.2022 passed by the Respondent No 1 as illegal, discriminatory, and in violation of the fundamental rights as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and set aside the same.
- ii. Direct the Respondents to consider the case of the Petitioner in light of the sacked Employees Reinstatement Act, 2016 and if found within the Parameters, then, may be reinstated into service from the date his colleagues were reinstated vide Notification dated 27.10.2016 along with all consequential benefits.
- iii. Direct the Respondents to release all back benefits as admissible under the Act of 2016, in case the Petitioner is found within the precincts of the aforementioned period.

2. Succinctly stated, the facts of the Petitioner's case are that he was appointed as Junior Clerk BS - 05 in Sindh Arid Zone Development Authority (**SAZDA**), in year 1989. The **SAZDA** was wound up by the Government of Sindh. The Petitioner worked in **SAZDA** until 1997 when his services were terminated without disclosing any reason or justification but some of his colleagues were reinstated in services and absorbed in surplus pool. The Petitioner continuously pursued his case for restoration of services, despite several representations to Respondents, he remained unattended. In the year 2009, the Federal Government promulgated the **Sacked Employees Reinstatement Ordinance**

2009, which was subsequently enacted as the act of the Parliament as the **Sacked Employees (Reinstatement), Act 2010**. The Sindh Assembly also passed the **Sacked Employees (Reinstatement) Act 2016 (the said Act)**. Chief Minister Sindh was pleased to constitute a committee comprising Respondents No 1 to 3 to scrutinize the cases of employees of Government of Sindh whose services were dismissed, curtailed or terminated on political grounds from the period of 1996 till 1999 to extend benefits to employees of Government of Sindh. The committee did not consider the case of Petitioner, compelling him to file Constitution Petition No D 6807 of 2021 before this Court. The Petition was disposed of by Order dated 23.11.2021 with directions to Respondents to decide the pending appeal of the Petitioner in accordance with law. Respondent No 1 declined the appeal of Petitioner for reinstatement in service vide order dated 28.03.2022 (**the impugned order**), giving a fresh cause to the Petitioner to file the instant Petition.

3. Respondents No 1 and 2 in their reply denied the claim of Petitioner. The Respondents No 1 and 2 in their joint statement averred that the case of Petitioner did not fall under the purview of the “**Sacked Employee**” defined under **the said Act**. Per Respondents No 1 and 2 the Petitioner was appointed as a Junior Clerk in a Project namely **Pak Swiss Management & Livestock Improvement Project** of the defunct **SAZDA** of the Planning & Development Department Government of Sindh. The Petitioner had filed CPD 6807 of 2021 before this Court for reinstatement in service seeking benefit of **the said Act**. This Court was pleased to dispose of the CPD 6807 of 2021 vide order dated 23.11.2021 directing the Chief Secretary Sindh to decide the appeal of the Petitioner. The Chief Secretary Sindh heard Petitioner, examined his service record and decided the appeal of the Petitioner vide order dated 28.03.2022. The appeal of the Petitioner was rejected as his case did not fall under the provisions of **the said Act**. Respondent No 3 in reply stated that the matter pertained to the Respondents No 1, 2 & 4, the Law Department had nothing to do with the case of the Petitioner. Respondent No 4 filed a statement and adopted the stance taken by Respondents No 1 & 2.

4. Mr Ali Asadullah Bullo Learned Counsel for the Petitioner contended that the Petitioner was a sacked employee, he was an employee of **SAZDA**. He contended that the Petitioner was sacked from the services in year 1997 and operation of **the said Act** covered the employees who lost their job in between 1997 to 2008. The case of the Petitioner was not considered properly, and the Competent Authority passed **the impugned order** in an arbitrary manner without appreciating the pleas raised by Petitioner in his appeal. He contended that the Petitioner was discriminated against and not treated at par with his colleagues who were reinstated in service under similar circumstances. He asserted that Petitioner was a sacked employee, therefore, benefit of the legislation of **the said Act** be extended to him.

5. Mr Ali Safdar Depar Learned Assistant Advocate General Sindh while controverting the submissions of the Learned Counsel for Petitioner, argued that the Petitioner was an employee of the **Pak Swiss Management & Livestock Improvement Project** undertaken by the defunct **SAZDA**. The Project started in the year 1989 and ended in 1997, the services of all the employees working in the Project were relieved at the end of the Project. He contended that Petitioner was not a regular employee of **SAZDA**, as all employees of **SAZDA** were placed in Surplus Pool and absorbed in other Government Departments on winding up of the authority. The Chief Secretary Sindh /Competent Authority examined the case of Petitioner and declined his appeal through a speaking order. The case of the Petitioner did not fall under the category of sacked employees as defined under **the said Act**. The Petitioner was a Project Employee, he could not seek regularization. He prayed for dismissal of the Petition.

6. Heard arguments of Parties and perused material available on record.

7. The Petitioner seeks reinstatement in services, by extending to him the benefit of **the said Act**, beneficial legislation enacted by the Provincial Assembly of Sindh to provide relief to the employees axed during the period of 1997 to 2008. The claim of the Petitioner has been opposed by the Government on the ground that his case did not fall under the category of sacked employees defined under **the said Act**, therefore, he cannot be reinstated in service.

8. To understand whether the case of Petitioner falls under the category of sacked employees as defined in **the said Act**, it is necessary to take a review of the subject law. To bring a case for reinstatement in services the person must fall into the category of sacked employees defined in section 2(b) of **the said Act** which reads as under:

*“sacked employee” means person who was employed as regular or adhoc or on contract basis or otherwise in service of employer or who was a member of the civil service of the Province of Sindh or who held a civil post in connection with the affairs of the Province of Sindh, or Department and was dismissed, removed or terminated from service during the period from the 3<sup>rd</sup> day of February 1997 to the 18<sup>th</sup> day of February, 2008 (both days inclusive) and who was subsequently reinstated in service at the recommendation of Committee.*

Bare reading of section 2(b) of **the said Act** makes it clear that the sacked employee was a person, who was in service of province of Sindh as a regular or adhoc or contract employee and removed or dismissed or terminated from service between 3<sup>rd</sup> day of February 1997 to 18<sup>th</sup> day of February 2008 and subsequently recommended by the

Committee to be reinstated in service. Legislature has not only provided the cut-off dates for removal or dismissal or termination but also imposed a condition that reinstatement in service would be subject to the recommendations of the Committee. It was the Committee constituted for the purposes of **the said Act** to examine and recommend the cases of employees removed or dismissed or terminated from services during the referred period. The recommendation of the Committee was significant for the purposes of determination of an employee to fall under the category of “**sacked employee**”.

9. Role of the Scrutiny Committee was significant in the entire process, as if the Committee recommended a person to be sacked employee than he would stand regularized in terms of Section 3 of the said Act, which reads as under:

**3. Regularization of Reinstatement of Employees in Service:**  
*Notwithstanding anything contained in any law for the time being in force, or any judgment of of any tribunal or any court including the High Court and the Supreme Court or any terms and conditions of of appointment on contract basis or otherwise all employees to which the provisions of this Act apply shall deemed to have been validly reinstated in service of employer in the scale, grade, group, post or designation, whatever the case may be or as held by the employee at the time of his dismissal or removal or termination from service on regular basis with effect from the date of his reinstatement.*

The non obstante clause to section 3 of gives an overriding effect to the provisions of **the said Act**. To give effect to the provisions of **the said Act** the Government of Sindh was pleased to constitute a two-member Committee comprising Minister for Law and Prisons and Minister for Local Government Sindh vide Notification dated 17.04.2018 issued by the then Chief Secretary Sindh. (available at page No 103 of the memo of the Petition). The language of the Notification further clarifies the purposes of **the said Act**, for ease of reference the notification is reproduced below:

**SERVICES GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT**

Kaarchi dated the 17<sup>th</sup> April 2018

**Notification**

No SO(C-V) SGA&CD/4-83/09: In pursuance of the clause (b) of section 2 of the Sindh Sacked Employees (Reinstatement) Act, 2016, the Government of Sindh are pleased to constitute a Committee to examine the cases of employees of Government of Sindh who were removed, dismissed or terminated from service on political grounds; with following composition and Terms of References (TOR)

1. Minister for Law and Prisons Sindh
2. Minister for Local Government Sindh

### **Terms of References**

The Committee shall examine the cases of such employees who were employed as regular or adhoc or on contract basis or otherwise in service of employer or who was a member of the civil service of the Province of Sindh or who held a civil post in connection with the affairs of the Province of Sindh, or Department and was dismissed, removed or terminated from service during the period from the 3<sup>rd</sup> day of February 1997 to the 18<sup>th</sup> day of February, 2008 (both days inclusive) and who was subsequently reinstated in service at the recommendation of Committee.

*Sd*

*Chief Secretary Sindh*

The referred notification through which the Committee was constituted lays down that the cases of those employees would be considered for reinstatement who lost jobs under political victimization.

10. The Petitioner filed CPD. 6807 Of 2021 before this Court making almost a similar prayer for extending him the benefit of regularization under **the said Act**. The Petition was disposed of directing the Respondents to decide the pending appeal of the petitioner in accordance with law. In compliance of this Court Order the Chief Secretary Sindh rendered its deliberations on the appeal and rejected it through a detailed order (**the impugned order**) giving a finding that the case of the Petitioner did not fall under the category of Sacked Employees. Perusal of the impugned order reveals that a thorough probe into the service record of Petitioner was made before passing **the impugned order**.

11. The contention of the Learned Counsel for the petitioner that he was an employee of **SAZDA** and removed from service without assigning any reasons appears to be incorrect as **SAZDA** was an Authority established under **SAZDA Act 1985**. The employees of the authority were permanent and subject to SAZDA Act and service rules framed there under, whereas the Petitioner was appointed under a project initiated under SAZDA. The employees appointed under a project and those under permanent service stand at different footings, as in case of former the job of an employee is always subject to the life of the project. The moment the project ends, the employment itself vanishes. The definition of the sacked employee does not cover the person employed in projects of Government of Sindh. The Petitioner was a project employee his employment was subject to the continuity of the project. He cannot claim regularization of services as a matter of right as he himself accepted the terms of his employment. The clause (1) of the appointment order of the Petitioner (available at page No 21 of the memo of the Petition, reveals that he was appointed by the Project Manager Pak Swiss Range Management & Livestock Improvement SAZDA Nara Region Hathongo purely on temporary basis and could be

terminated at any time without assigning an reasons. The clause (1) of the appointment order reads as under

**Appointment Order**

**Office of the\ Project Manager Pak Swiss Range  
Management & Livestock Improvement  
SAZDA Nara Region Hathongo  
No Hathongo / 39 / 1989 – 90  
Hathongo Dated 01.04.1990**

Mr. Mohammed Hassan son of Faiz Mohammed Kaim Khani R/O Khipro Town District Sanghar is offered Post of Junior Clerk in the basic pay scale (Grade – 5) of Rs 700 – 25 – 1200 on monthly pay of Rs 700 plus allowances as admissible under the Rules on the following terms and conditions against existing vacancy of Junior Clerk in the office of the Project Manager Pak Swiss Range Management & Livestock Improvement SAZDA Nara Region Hathongo subject to the following terms and conditions:

1. **His appointment is purely temporary, and his services can be terminated at any time without assigning any reason thereof.**
2. ....

Sd/

Project Manager Pak Swiss Range  
Management & Livestock Improvement  
SAZDA Nara Region Hathongo

12. The Petitioner, by accepting the terms and conditions of employment joined the project job. The Project ended in year 1997 and services of all the employees in project were discontinued. The Petitioner was not a permanent employee of **SAZDA**, his case was considered by the authority in line with the provisions of **the said Act**. During scrutiny, it was found that the services of Petitioner were neither terminated nor curtailed under any victimization, but relieved on closure of project, thus did not fall under the category of Sacked Employee, hence his appeal was turned down.

13. In a similar position, in the case of **Muhammad Raqeeb Versus Government of Khyber Pakhtukhwa through Chief Secretary and others** reported in **2023 SCMR 992** while dealing with the issue of Project Employee seeking regularization of services under Khyber Pakhtunkhwa (Regularization of the Services) Act 2009, the Honorable Supreme Court of Pakistan has been pleased to hold in Para 10 of the judgment as under:

*“On one hand, the appellant is pleading that he was a permanent employee and is also requesting the grant of pensionary benefits, but on the contrary, in the memo of his Petition in W.P No 86-B 2010 he himself pleaded that some other project employees were regularized by the Board, and therefore he should also regularized in service, which is sufficient to divulge by his own conduct that he*

*was not a regular employee, but performing his duties as project employee, otherwise there was no logical purpose to approach the High Court for regularization of services in terms of the 2009 Act. If we look at the niceties of the 2009 Act, the definition of “employee” refers to the employment status of an employee appointed by the Government on adhoc or contract basis or second shift/night shift, but does not include the employees for project posts, or those appointed on work charge basis, or those who were paid out of contingencies.”*

14. The Petitioner admittedly was a project employee and legislature in its own wisdom has not included the project employees in the definition of “sacked employee”, thus the benefit of **the said Act** cannot be extended to the employees who were appointed under a project and lost their jobs on closure of project. The discussion herein above leads us to the conclusion that the case of the Petitioner was not covered by the provisions of **the said Act**; hence it was rightly declined by Respondent No 1.

15. Adverting to the next contention of the Learned Counsel for the Petitioner that colleagues of Petitioner were reinstated in service and had singled him out for no reason. Per Learned Counsel for the Petitioner that the discriminatory treatment against the Petitioner was violation of his fundamental rights envisioned under article 25 of the Constitution. We have examined the case of other employees who filed Constitution Petition No D 4344 of 2012 and find that the services of those petitioners / employees were reinstated on humanitarian grounds but not under the provisions of **the said Act**. The proposed summary seeking the regularization of services of those employees (available at page No 77 of the memo of Petition) reflects that the Additional Chief Secretary Development had opposed the regularization of those employees as they were project employees, but Chief Minister Sindh approved the regularization on humanitarian grounds. The regularization of other employees by no means would create a right in favor of the Petitioner as one wrong if committed would not rectify the other wrong. The project employee cannot seek regularization in services as a matter of right in absence of any statutory backing. More so article 25 of the Constitutions does not enshrine the concept of negative equality, it provides for an equal treatment for the actions permissible under the law but not for the actions done beyond authority and in violation of law.

16. While dealing with the issue of granting relief under humanitarian grounds and touchstone of doctrine of equality, in the case of **Superintendent of Police Headquarters Lahore and others versus Ijaz Aslam and others** reported in **2024 SCMR 1831**, the Honorable Supreme Court has been pleased to hold in Para 7 and 8 of the judgment as under:

**“Any relief granted on the touchstone of subjective standards of leniency and compassion, rather than the law, cannot be sustained. Any such decision disregards the importance of institutional autonomy which rests on well thought out values, ethos, policies and internal discipline of the institution”**

***“Moreover, the ground of discrimination as alleged by the respondents is also untenable in law as the article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It only comes into operation when some persons are granted a benefit in accordance with law but others, similarly, placed are denied that benefit. But where a person gains or is granted a benefit illegally, other persons cannot plead, nor can the courts accept such a plea, that the same benefit must be allowed to them in violation of law. “***

17. We have minutely examined the case of the Petitioner and perused **the impugned order** carefully and find that the Competent Authority passed a well-reasoned and speaking order after thorough examination of the service record of the Petitioner, We therefore find no illegality or infirmity in the impugned order calling for a judicial review, needless to say that this Court while exercising its powers under article 199 of the Constitution cannot sit as a Court of appeal and will sparingly interfere into the affairs of executive authority only when it established that the authority seized with the matter exercised powers arbitrarily and such exercise infringed the rights of an individual. The Petitioner after his termination of service in the year 1997 remained in deep slumber and woke up in the year 2020 by filing appeal before the department and petition before this Court without accounting for the reasons of 23 years delay, as such the Petition was even not entertainable on account of Laches as the Petitioner was guilty of laxity, he should have resorted to legal course with promptitude.

18. Sequel to the above discussion, We find no reasons to disturb the well-reasoned discretion exercised by the Respondents while deciding the appeal of the Petitioner and do not find any perversity or illegality in **the impugned order** and are of the candid view that the case of the Petitioner was not covered under the provisions of the Sacked Employees (Reinstatement) Act 2016, consequently this petition fails being devoid of merits and accordingly dismissed with pending applications if any.

Judge

Head of the Const. Benches