

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-5570 of 2017

[Amjad Ali Pechuho v. National Bank of Pakistan and others]

Petitioner : through Ms. Raana Khan advocate.

Respondents No.1 : through Mr. Aamer Latif advocate

Respondent No. 2 to 5 through Ms. Zehra Sehar, Assistant Attorney General

Dates of hearing : 08-05-2025

Date of order : 08-05-2025

ORDER

Adnan-ul-Karim Memon, J. The Petitioner prays to the Court to declare that the inquiry's findings of unproven charges entitled him to reinstatement as Officer Grade-III from 1996, including seniority, promotion, and all associated benefits. He further states that the Respondents' failure to properly reinstate him under the Sacked Employees (Reinstatement) Ordinance 2009 and Act 2010 entitled him to reinstatement as Officer Grade-III from 1996, followed by promotion to Officer Grade-II as per the Act 2010. His averments are that his termination in 1996 without written notice was illegal, and the issuance of a charge sheet in 2001 (after a five-year delay) implies the Respondents' acceptance of his Officer Grade-III status, rendering their subsequent actions unlawful.

2. Petitioner has urged that he was appointed as Officer Grade-III in NBP in 1996 after obtaining an MA in Economics & Political Science (1993), the Petitioner faced an abrupt, unjustified bar from duty despite satisfactory performance. Subsequently reinstated as Senior Assistant by the respondent bank and later promoted back to Officer Grade-III, he was denied seniority and benefits from his initial 1996 appointment, as mandated by NBP rules. Responding to a 1995 advertisement, the Petitioner was appointed and joined as Officer Grade-III in 1996. However, he was verbally dismissed from service, allegedly for lacking a Master's in Economics, and prevented from working, with his appeals unanswered. Five years later, in 2001, he received a charge sheet for alleged absence since April 1996, lacking initial qualifications, concealing facts, and declining a lower-grade offer. He refuted all charges. An Enquiry Officer was appointed by the Respondents, who concluded enquiry in 2001. However, the Bank failed to prove willful absence of the petitioner. Despite this finding, the

Petitioner was not reinstated as Officer Grade-III and repeatedly appealed, pointing out that others without the supposed required degrees held similar positions. In the intervening period, the Ministry of Law & Justice, under the Sacked Employees (Reinstatement) Ordinance, 2009, recommended his reinstatement in respondent bank. However, NBP, while acknowledging his recruitment date fell within the Ordinance's scope, only offered him a "Senior Assistant" position from his rejoining date in 2009. He accepted and then sought his previous service to count towards seniority and back benefits as OG-III. Compensation was calculated under the Ordinance. His requests for OG-III seniority and back benefits from 1996 were denied, based on his reinstatement under the 2009 Ordinance. A 2014 Mercy Appeal was also unsuccessful, even though his colleagues hired alongside him had progressed based on their 1996 seniority. A 2014 internal legal opinion suggested negotiating without back benefits but considering his promotion based on his entire service from 1996-2014, warning of financial and reputational risks if his initial dismissal was not addressed or if he was not reinstated as OG-II from 2001 under a different interpretation of the Reinstatement Ordinance. Notably, NBP's internal SAP system still records his original 1996 joining date. Feeling aggrieved by the Respondents' malafide refusal to reinstate him as Officer Grade-III since 1996 or according to the Sacked Employees (Reinstatement) Act 2010, despite numerous attempts to resolve this, the Petitioner seeks legal redress through this petition.

3. Learned counsel for the petitioner argued that the Bank failed to follow due process by not issuing a show cause notice or seeking an explanation for the alleged issues, and the inquiry's finding of unproven charges necessitates his reinstatement as Officer Grade-III (OG-III) from 1996. Counsel emphasized the Petitioner's lawful appointment as OG-III in 1996, his unjust prevention from duty without written orders, violating natural justice and Bank rules, and his wrongful reinstatement as Senior Assistant instead of OG-III under the Sacked Employees (Reinstatement) Ordinance 2009, despite his illegal termination as OG-III in 1996. Repeated appeals for OG-III reinstatement were ignored. The issuance of a charge sheet after a five-year delay was argued to imply the Bank's acceptance of his OG-III status, and the inquiry's exoneration entitled him to OG-III benefits from 1996. Counsel further contended that the Respondents did not fully comply with the 2009 Ordinance by reinstating him as Senior Assistant with malafide intent, despite his eligibility for OG-III reinstatement, which he accepted under duress. She highlighted that Section 10 of the Sacked Employees (Reinstatement) Act 2010 entitled him to one grade higher (OG-II) upon reinstatement from OG-III, which was discriminatorily denied. Finally, counsel asserted the Petitioner's entitlement to OG-III seniority from 1996 due to the illegal termination without written notice, arguing that the Respondents'

discriminatory actions violated Article 25 of the Constitution and the 2010 Act. The reinstatement as Senior Assistant was accepted under duress and protest, also violating the 2010 Act, especially given the inquiry and legal opinion finding no fault on his part, and repeated attempts to resolve the grievance were unsuccessful. She prayed for allowing the instant petition.

4. Learned counsel for the respondent bank argued that the petition is not maintainable due to the Petitioner's reinstatement with full benefits under the Sacked Employees (Reinstatement) Ordinance, 2009, which he accepted, thus barring further claims under Section 10 of that Ordinance. The petition is also barred by laches, and the Petitioner is estopped from re-agitating the issue after his reinstatement in 2009. Having benefited from the 2009 Ordinance, he cannot now go back on it, and the matter should be considered a closed transaction. Furthermore, the Petitioner made false statements in his pleadings. Counsel stated that the Petitioner did not meet the advertised qualifications for the initial Officer Grade-III position and was offered a lower role he declined, leading to his absence. His placement as OG-III was a result of the 2009 Ordinance, not a promotion. The Bank does not dispute certain procedural facts but maintains the initial ineligibility. The Petitioner accepted a position as Office Assistant in 2009 with a no-demand undertaking and was reinstated under the 2009 Ordinance with due benefits; therefore, subsequent demands under the 2010 Act are legally inadmissible. The Bank's counsel, concluded that the prayers in the petition may be rejected because the initial OG-III claim was not in line with the advertisement and is time-barred, the reinstatement issue was settled under the 2009 Ordinance and cannot be reopened, the Petitioner service was not dispensed with but refused a lower role and was then absent without authorization, and any further relief is precluded by the 2009 Ordinance. Consequently, the petition lacks merit and may be dismissed with special costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The Supreme Court's 2021 judgment declared the Sacked Employees Ordinance 2009 and the Act 2010 unconstitutional, rendering the Petitioner's reinstatement under the Ordinance and his higher grade claim under the Act legally questionable. This revives his original grievance regarding his 1996 termination as Officer Grade-III, weakening the Bank's defenses of a settled matter, estoppel, and laches. The legality of the 1996 termination and the fairness of subsequent proceedings, particularly the Enquiry Officer's report (no proof of willful absence), became the central point. The ultra vires declaration significantly strengthens the Petitioner's case on merit. Therefore, the Bank's competent authority is directed to reconsider its decision after hearing the Petitioner within

three months, focusing on the legality of the 1996 termination order and subsequent reinstatement on a lower grade. If the termination was illegal, reinstatement to his 1996 position should be considered strictly in accordance with the law and policy of the bank. However, the observation recorded hereinabove is tentative, subject to the final decision of the respondent bank on the merits of the case.

7. This petition is disposed of accordingly.

JUDGE

HEAD OF CONST. BENCHES

SHAFI