



Intelligence Bureau, to issue his retirement notification and ensure release of all pensionary benefits, including gratuity and monthly pension along with arrears.

3. The learned AAG and submitted that in 1995-96, a large number of posts in different ranks were created by Finance Division in the Intelligence Bureau Division (IBD). Subsequently, two advertisements were published in the newspapers on 09.03.1995 and 23.06.1996, followed by tests and interviews. In pursuance thereof, the petitioner was appointed as Assistant Director (AD) (BS-17) on probation on 25.08.1996 vide IBD Notification dated 25.08.1996. However, certain irregularities were committed during the recruitment process which were communicated to Secretary Establishment Division vide letter dated 26.12.1996. Subsequently, his services were terminated on 15.02.1997 alongwith his other colleagues, during probation, vide IBD Notification dated 15.02.1997. However, the petitioner availed his legal remedies against the termination, firstly, by way of filing departmental representation dated 02.06.1997 which was rejected. The petitioner was informed vide Memorandum dated 01.08.1997 that there lies no appeal against order of termination of service under Civil Servants Act, 1973 and rule 4(d)(ii) of Civil Servants Appeal Rules, 1977. The other batch mates of the petitioner filed different appeals before the Federal Service Tribunal (FST), Islamabad, which were dismissed vide consolidated judgment dated 03.10.1997. The judgment of FST was challenged in Supreme Court of Pakistan by way of different Civil Appeals which were also dismissed by the Supreme Court vide consolidated judgment dated 29.11.2000 reported as 2001 PLC(CS) 1275. It is submitted that the Federal Government promulgated Sacked Employees Re-instatement Ordinance (SERO), 2009 to provide relief to persons in corporation service or autonomous or semi-autonomous bodies or in government service who were dismissed, removed or terminated from services. It is added that on promulgation of SERO, 2009, an intimation was issued to the petitioner to report for duty within 15 days from the receipt of letter to the office from where their services were terminated, in view of provisions of the said ordinance vide IBD's Memorandum dated 18.03.2009. The petitioner was issued offer of appointment under SERO, 2009 vide IBD's Memorandum dated 08.04.2009 and he accepted the terms and conditions of service provided in the said memorandum, which inter-alia included that he shall not be entitled to claim seniority or arrears of pay or other service benefits. Accordingly, he was reinstated as AD(BS-17) w.e.f.27.03.2009 vide IBD, Islamabad Notification dated 27.05.2009 and he was allowed to draw emoluments in one scale higher i.e; BS-18. Subsequently, his services were regularized under Section 4 of Sacked Employees (Reinstatement) Act (SERA), 2010 from the date of enactment of the Act, i.e., 08.12.2010. It is submitted that the Notifications of termination of services of the petitioner dated 15.02.1997, rejection of his departmental appeal,

the Judgments dated 03.10.1997 and 29.11.2000 rendered by FST and Supreme Court against the petitioner are still in field and have never been set aside. It is submitted that SERA, 2010 were challenged in the Supreme Court of Pakistan in Civil Appeal No.491/2012 titled as "Muhammad Atzal VS Secretary Establishment Division etc. Subsequently, SERA, 2010 was declared ultra vires of the constitution vide judgment dated 17.08.2021 of the Supreme Court, in pursuance whereof, the petitioner was relieved of his services in IBD we.f. 17.08.2021 vide IBD Notification dated 30.08.2021. The Judgment dated 17.08.2021 in CA 491/2012 was challenged in the Supreme Court through different review petitions, including one filed by the Federation. The Supreme Court, however, upheld the Judgment dated 17.08.2021 and dismissed all the 108 Civil Review Petition filed against the Judgment dated 17.08.2021, including the one by Federal Government. Later, in pursuance of the judgment of the Supreme Court dated 17.12.2021 in Civil Review Petitions arising out of Civil Appeal No. 491/2012, the Intelligence Bureau issued administrative orders and notifications restoring the affected employees, including the petitioner, with effect from 17.08.2021. They were reinstated subject to applicable terms and conditions, including requirements such as scrutiny and departmental formalities. Subsequently, in continuation of the said judgment and restoration orders, the petitioner's pay and service benefits were also provisionally activated, and he was placed in the relevant grade (BS-17) with admissible pay and allowances. Finally, vide notification dated 25.07.2024, the petitioner was granted leave preparatory to retirement for 144 days from 14.04.2024 to 04.09.2024, and it was formally notified that he would stand retired from Government service on attaining the age of superannuation with effect from the afternoon of 04.09.2024. learned AAG submitted that the petitioner's service has throughout been governed by judicial determinations, and his initial termination in 1997, having been upheld up to the Supreme Court, attained finality. His subsequent reinstatement under SERO, 2009 and regularization under SERA, 2010 were conditional statutory concessions, expressly excluding claims of arrears, seniority, and other benefits, and the very basis of such reinstatement stood nullified when SERA, 2010 was declared ultra vires by the Supreme Court in its judgment dated 17.08.2021. It was further argued that although limited protection was later extended by the Supreme Court through order dated 17.12.2021 to a specific category of employees, the petitioner does not fall within the defined parameters. His continuation in service, therefore, remained dependent upon a legal framework that has since been struck down, and cannot confer any vested right. While the petitioner formally retired on 04.09.2024, the dispute pertains only to the intervening period from 17.08.2021 to his formal retirement, during which his service lacked lawful basis. Learned AAG contended that pensionary benefits can only arise from lawful and subsisting

service, and in the absence of any protection by the Supreme Court or independent entitlement, the petitioner cannot claim such benefits for the disputed period. Consequently, the petition is devoid of merit and liable to be dismissed. She also prayed that the petitioner is not entitled the pensionary benefits for the three years period with effect from 17.08.2021 to 04.09.2024 when he reached the age of superannuation.

4. In rebuttal, learned counsel for the petitioner submitted that the stance taken by the learned AAG is legally misconceived and proceeds on an incorrect appreciation of both facts and law. It was argued that although the petitioner's initial termination in 1997 attained finality, his subsequent reinstatement under SERO, 2009 and regularization under SERA, 2010 created a fresh and independent legal status, whereby he re-entered service and continued uninterruptedly for more than a decade, ultimately retiring on attaining the age of superannuation on 04.09.2024. Such long, continuous, and recognized service cannot be treated as non est merely because the parent statute was later declared ultra vires. Counsel contended that even after the judgment dated 17.08.2021, the Supreme Court, through its subsequent order dated 17.12.2021 in review petitions, consciously mitigated the harsh consequences of striking down SERA, 2010 by restoring employees, including the petitioner, subject to administrative scrutiny. In compliance thereof, the respondents themselves reinstated the petitioner, restored his service, paid him salary, and ultimately allowed him to continue till superannuation. Having treated the petitioner as a lawful employee for all practical purposes, the respondents are now estopped from denying the legal consequences of such service, particularly pensionary benefits. It was further argued that the petitioner's case is not one of claiming benefits under a void statute, but of seeking recognition of service actually rendered and accepted by the department. The principle is well-settled that where an employee has worked, been paid, and retired in due course, such service cannot be retrospectively invalidated to his detriment, especially in matters of pension, which is a vested and earned legal right and not a bounty. Reliance was placed on the doctrine of past and closed transactions, under which actions already taken and rights accrued during the subsistence of a law are ordinarily protected, notwithstanding its subsequent invalidation. Learned counsel emphasized that the petitioner does not seek seniority or arrears barred under SERO/SERA, but only pension for the period during which he admittedly served, particularly with effect from the date of termination till his retirement that period needs to be counted. The respondents' contention that this period lacks lawful basis is contradicted by their own conduct of reinstating, retaining, and ultimately retiring the petitioner through formal office order. Such selective recognition of service accepting it for work and retirement but denying it for pension is arbitrary, discriminatory, and violative of

Articles 4, 9, and 25 of the Constitution. It was further submitted that the classification sought to exclude the petitioner from pensionary benefits, despite his continued service and retirement, has no rational nexus with any lawful object, particularly when similarly reinstated employees were allowed to continue and draw benefits. The petitioner cannot be penalized for legislative or administrative actions over which he had no control. In conclusion, learned counsel argued that the petitioner's service during the disputed period with effect from date of termination till his forma retirement was de facto and de jure recognized by the respondents, culminating in lawful superannuation, and therefore, he is fully entitled to pensionary benefits for the entire qualifying service, including the period from 17.08.2021 to 04.09.2024. The denial thereof is illegal, arbitrary, and liable to be set aside.

5. From the material available on the record, it transpires that the controversy primarily relates to the petitioner's entitlement to pensionary/service benefits and issuance of formal retirement notification, which requires proper factual determination and consideration of the relevant service record in light of the applicable legal framework and the directions of the Supreme Court.

6. In these circumstances, we deem it appropriate to remit the matter to the competent authority for fresh consideration on the subject issue. The competent authority shall examine the petitioner's case, after affording him a meaningful hearing, and determine his entitlement to pensionary/service benefits for the relevant period, including issuance of formal retirement notification, in accordance with law and the observations made above.

7. The aforesaid exercise shall be completed strictly within a period of one (01) month from the date of receipt of this order, and a reasoned decision shall be communicated to the petitioner in the said period.

8. This petition stands disposed of in the above terms, along with pending applications. Let a copy of this order be communicated to all concerned for compliance within the stipulated period, failing which appropriate proceedings under Article 204 of the Constitution shall follow against the delinquent officials for non compliance.

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