

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

### **C.P No.D-6370 of 2016**

Syed Yawar Hussain Shigri ..... Petitioner

Versus

Federation of Pakistan & others ..... Respondents

### **C.P No.D-3411 of 2017**

Civil Aviation Authority ..... Petitioner

Versus

Federation of Pakistan & others ..... Respondents

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**Date of hearing: 06.09.2017**

Mr. Muhammad Jaffar Raza, Advocate  
for Petitioner in C.P. No.D-6370/2016  
and Respondent No.2 in C.P No.D-3411/2017.

Mr. Khalid Mehmood Siddiqui Advocate  
for the Petitioner in C.P. No.D-3411/2017  
and Respondents in C.P. No.D-6370/2016.

Mr. Muhammad Aslam Butt, DAG.

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## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:** The above captioned Constitutional Petitions are being disposed of vide this common judgment as common points of law and facts are involved.

The Petitioner in C.P. No.D-6370/2016 seeks implementation of the reinstatement order No. F.5 (16)/2015/04/RB (2031) dated 04.07.2016 passed by the Sacked Employees Review Board, under Section 13 (5) of Sacked Employees (Re-Instatement Act 2010) in his favour and seeks service benefits as allowed vide the said order for intervening period so as to ensure continuity of his service i.e. arrears of unpaid salary from 1998 to 2016.

2. The facts as averred in the pleadings of the parties are that the Petitioner was appointed as Airmarsher (PG-3) in the Civil Aviation Authority (hereinafter referred to as CAA) in the year 1987; he was then promoted to Aerodrome Fire Fighter (PG-4) in the year 1988. Petitioner was dismissed on several occasions, first in the year 1992, thereafter his service was restored in the year 1994; but was again dismissed from service by CAA vide letter dated 30.07.1998. Petitioner asserts that he was dismissed from service without giving him a fair opportunity of hearing by the CAA. He contends that in pursuance of the Sacked Employees Reinstatement Act, 2010 ("the Act 2010"), the Sacked Employees Review Board (hereinafter referred to as SERB) vide its order 14.7.2016 held that dismissal of the petitioner from service was wholly unjustified on merits and reinstated the petitioner in service. The SERB further directed that all other service benefits would be allowed for the intervening period as per its order. The CAA was directed to implement the said order and report compliance within 15 days of the receipt of the order.

03. The Petitioner has averred that in spite of the clear order dated 14.07.2016 passed by the Sacked Employees Review Board for reinstatement of the Petitioner in service, the Civil Aviation Authority did not implement the said order. Hence, the Petitioner was compelled to write three letters, each dated 08.08.2016, 22.08.2016 and 21.09.2016 to Respondent No.2/ the CAA with request for implementation the said order and accept his joining report, but to no avail. The Petitioner further added that he still has two years of service, but he is being deprived of his right of livelihood. During the pendency of Constitution Petition No. D-6370/2016, Civil Aviation Authority/Respondents filed a Constitution Petition No. D-3411/2017, whereby they have impugned Order dated 14.07.2016 passed by the Sacked Employees Review Board, whereby the Petitioner has been reinstated in service. Since, common question of law and facts are involved in both the Petitions, therefore were ordered to be tagged together, which were heard on 06.09.2017 and reserved for judgment.

04. Mr. Muhammad Jaffar Raza learned Counsel for Petitioner in C.P. No.D-6370/2016 has argued that the Petitioner was serving in Civil Aviation Authority and was wrongfully dismissed from service on political grounds, without giving him fair opportunity and audience; that in pursuance of the Sacked Employees Reinstatement Act, 2010, Sacked Employees Review Board, vide Order dated 14.07.2016 reinstated the Petitioner in service and

directed that CAA shall implement the order and report compliance within 15 days of receipt of the order. The Petitioner's Counsel contends that that the said order has not been implemented.

5. Mr. Khalid Mehmood Siddiqui learned Counsel for the Respondent/ Civil Aviation Authority and Petitioner in C.P. No. D-3411/2017 has raised the issue of maintainability of the Petition bearing No. 6370/2016 and argued that the Petitioner did not file any appeal/application with the Sacked Employees Review Board; that the Board has no jurisdiction to pass an order to reinstate the Petitioner in service, therefore the order is bad in law and on facts; that the petitioner filed repeated Appeals against his dismissal from service, which were all rejected, thus the orders passed against him were not challenged before the competent Court of law and have attained finality; that the Petitioner cannot be allowed to circumvent the law by obtaining the order dated 14.07.2016 from Sacked Employees Review Board. learned Counsel emphasized that when law provided a thing to be done in a particular manner it should be done in that manner and not otherwise; that the order dated 14.07.2016, purportedly passed by the Sacked Employees Review Board in absence of the respondents, even without issuing any notice to them; that the order dated 14.07.2016 passed in favour of the Petitioner is illegal and void order cannot be implemented under the law, the same has been assailed in C.P. No. D-3411/2017 before this Court by the CAA/Respondents. Learned counsel has referred to Section 3 of the Act 2010 and argued that it does not apply to the Employees of CAA; that under

the Act 2010 a Sacked Employee may file an application to his employer within ninety (90) days of enactment of this Act, which he failed to file. Per learned counsel, the petitioner did not file an application to the Sacked Employees Review Board for such relief, therefore, the SERB has no jurisdiction to entertain the Petitioner's Petition suo-moto; that the impugned order passed by the Sacked Employees Review Board is suffering from jurisdictional error, therefore not sustainable in law; that the Sacked Employees Review Board did not adhere the mandatory provision of Section 11 of the Act 2010 to decide the Petition within 90 days from the date of petition filed if any by the Petitioner; that the Review Board decided the matter on 14.07.2016 after lapse of six years, which order is void cannot be enforced under the law; that the case of the Petitioner does not fall within the purview of Sacked Employees (Reinstatement) Act 2010. Learned counsel for CAA has stated at the bar that the order of SERB was officially communicated by Aviation Division through letter dated 21.04.2017 received by CAA on 27.04.2017 and the captioned Petition No. 3411 of 2017 was filed on 22.05.2017 i.e. within 26 days of the receipt of official copy, which is well within time and the grounds taken in the memo of said Petition may be considered while deciding the Petition in accordance with law; that the Petitioner in C.P. No. D-6370 of 2016 failed to produce a copy of any representation sent to the SERB nor he claimed that he had ever applied to the Review Board; therefore, by no means Petition could be termed filed with the Sacked Employees Review Board as provided under Section 13 of the Act 2010. Learned counsel

referred to Section 3, 11, 13 of the Act 2010 and argued that the Petition bearing No. D-6370 of 2016 is liable to be dismissed, consequently the Petition No. D-3411 of 2017 filed by CAA may be allowed.

6. Mr. Muhammad Aslam Butt, learned DAG, representing Respondent No.1 adopted the point of view of the learned counsel for the Petitioner in C.P. No. D-6370 of 2016 and argued that order passed by the Sacked Employees Review Board has to be complied with by the Respondents/ Civil Aviation Authority.

7. We have considered the contentions of the learned counsel for the Parties and have minutely gone through the material available on record with their assistance.

8. Firstly, we address the question of jurisdiction of this Court under Article 199 of the Constitution. Undoubtedly, CAA has non-statutory rules/regulations of service framed by the Board of CAA pursuant to Section 27 of Civil Aviation Authority Ordinance, 1982 without prior approval of the Federal Government. In the given circumstances, we are fully fortified by the Hon'ble Supreme Court view enunciated in Para 50 of judgment delivered in the case of Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed (2013 SCMR 1707) as follows: "that an aggrieved person can invoke constitutional jurisdiction of this Court against a public authority". The said principle is also enunciated in the case of Muhammad Rafi and another vs. Federation of Pakistan

and others (2016 SCMR 2146). Therefore, we are of the view that both Petitions could be heard and decided on merits by this Court in Constitutional jurisdiction.

9. Having decided the question of maintainability of the Petitions, the controversy at hand is as follows:

- i) *Whether the Petitioner's case comes within the ambit of Section 2(f) of Sacked Employees (Reinstatement) Act, 2010?*
- ii) *Whether the Sacked Employees (Reinstatement) Act, 2010 is applicable to the Civil Aviation Authority?*
- iii) *Whether under section 13 of the Sacked Employees (Reinstatement) Act, 2010 the Petitioner can be re-instated in service by the Sacked Employees Review Board?*

10. First of all we have perused the decision dated 14.07.2016 rendered by Sacked Employees Review Board (page 45 of the memo of petition) and the same is reproduced as follows:-

**“GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION  
(SACKED EMPLOYEES REVIEW BOARD)**

NO. F.5(16)/2015/04/RB

ISLAMABAD, 14 JULY, 2016

PETITIONER: Syed Yawar Hussain Shigri, Aerodrome Fire Fighter, CAA Aviation Division

Department: Aviation Division

Attendance: Petitioner is present.  
Mr. Hassan Baig, Joint Secretary  
Aviation Division  
Mr. Masood-ur-Rehman Additional/ Director (HR), Civil Aviation Authority.

Date of Hearing: 14 July, 2016.

The Petitioner Syed Yawar Hussain Shigri was appointed as Airmarsher (PG-3) in the Civil Aviation Authority in the year 1987. His trade was changed as Aerodrome Fire Fighter (PG-4) in the year 1988. He was dismissed from service in the year 1992. On appeal the appellate authority re-instated him in service in 1994 but was again dismissed from service by the CAA vide letter dated 30.07.1988 on account of willful absence from duty without a furlough.

2. The Petitioner stated that he was not given fair opportunity of hearing by the competent authority and his dismissal was by way of victimization and malafide.

3. On the other hand the Additional Director (HR); Civil Aviation Authority has taken the position that since the petitioner was appointed in the year 1987, therefore, his case does not fall within the purview of the Sacked employees (Re-instatement) Act, 2010.

4. We have heard the parties and have perused the available record. In our view, Section 2(f) (ii & iii) read with Section 7 of the Act, adequately covers the case of the petitioner so as to treat him as a Sacked Employee. We further find that the dismissal of the petitioner from the service was ordered in a perfunctory manner without holding regular full-fledged inquiry and providing him a reasonable opportunity of hearing thereby violating the principles of natural justice. Even otherwise the dismissal of the petitioner from service is wholly unjustified on merits. Consequently, the petitioner is reinstated in service. At this stage, the petitioner stated before us that during the intervening period he gainfully served in other Airline organizations. Therefore, he would not be entitled to the payment of arrears of pay and allowances for the intervening period which will be treated as Extra Ordinary Leave without pay and allowances. All other service benefits would be allowed for the intervening period so to ensure continuity of service. This petition is accepted in the above terms.

5. The Civil Aviation Authority shall implement this order and report compliance within 15 days of the receipt of this order.”

11. The Sacked Employees Review Board is established under sub-Section (1) of Section 12 of Sacked Employees (Reinstatement) Act, 2010 and consists of five members including a Joint Secretary or any other officer equivalent to a Joint Secretary or a BPS-20 officer from (a) Establishment Division, (b) Ministry of Law and Justice, (c) Ministry of Finance and (d) the Ministry under which the sacked employee or his employer was working on the day of enactment of this Act and as its head a Chairman, who shall be a person who is a retired Judge of the Supreme Court or of a High Court and appointed by the Federal Government to review the cases of sacked employees as provided in Section 11. This composition is of significance for the purposes of interpreting the ouster clause of section 13(8) of the Act, 2010.

12. Section 13 the above specified Act describes the procedure, powers and the functions of the Review Board. Subsection (1) of section 13 specifies the time for the purpose of filing a petition. Subsection (3) of section 13 provides that the Review Board shall



not redirect or divert the sacked employee to his employer for any purpose including verification for his service data or record or any other reason for the purposes of registering the petition. The later provision is showing the legislative intent for the purposes of assuming jurisdiction by the Review Board. The powers vested in the Review Board are described in subsection (5) (6) and (7) to be 'final' and that such orders cannot be called in question in any Court, Authority or Tribunal. In case of disobedience or willful creating of hurdles in the implementation of the Provision of the Act, 2010 or disobedience of the Provision thereof penalty is provided under Section 20 giving overriding effect to the provisions of the Sacked Employees Act, 2010 notwithstanding anything to the contrary, contained in any other law or in any judgment of any Tribunal or Court including the Hon'ble Supreme Court and a High Court.

13. It is obvious from the above discussion that Sacked Employees Act, 2010 is a special law enacted as a beneficial legislation for reinstatement of employees defined under section 2(f) of the said Act.

14. The Review Board established under section 12 has been constituted so as to virtually give power to the Members, who are senior officers of the Federal Government. It also includes the representative of the Ministry having the administrative control over the employer of the Sacked Employee. Therefore, the ultimate

decision making power lies with the representatives of the Federal Government.

15. It is also pertinent to point out that the Sacked Employees Act, 2010 is enacted only to the extent of entities established or controlled by the Federal Government as defined in Section 2(d). The composition of the Review Board definitely becomes crucial in interpreting the ouster clause contemplated in subsection (8) of Section 13. The combined reading of the Provisions of the Sacked Employees Act, 2010 clearly highlights the legislative intent.

16. As already noted above, the Sacked Employees Act, 2010 has been enacted for the benefit of and to provide relief of reinstatement in service to the employees. Employer as defined in section 2(d) essentially is confined to such entities which are Ministries or Division of the Federal Government or are established or controlled by the latter.

17. In this context the legislature in its wisdom has declared the orders and decisions of the Review Board to be final under Section 13(8) of Act, 2010 and that it cannot be called in question in any Court authority or tribunal.

18. Before further examining the scope of interference in the decisions and orders of the Review Board in exercise of jurisdiction under Article 199 of the Constitution it is essential to reproduce section 13(8) of the Sacked Employees Act, 2010 as follows:-

*“The order of the Sacked Employees Review Board passed on the review petition under subsection (5) or (6) or the sacked employee stood re-instated and regularized under subsection (7), shall be final and shall not be called in question in any court, authority or tribunal”.*

19. From the foregoing provision of law it is crystal clear that intent of the legislature is that the orders/decisions of SERB are final. However, it does not bar jurisdiction of the High Court under Article 199 of the Constitution.

20. We are cognizant of the fact that the orders and decisions which are without jurisdiction, Coram non judice or tainted with mala fide intention can be interfered in writ jurisdiction. Moreover, it clearly makes the decision final on facts but not the law. As already discussed in detail, an employer is represented on the SERB through its controlling Ministry or Division while rest of the Members are Senior Officers of the Federal Government not less than the BPS 20 and the Chairman enjoys a neutral status.

21. Learned Counsel for the Petitioner in C.P No.D-3411 of 2017 during course of hearing emphasized that the Petitioner did not file an application to the Sacked Employees Review Board for such relief, therefore, the SERB has no jurisdiction to entertain the Petitioner's Petition. However, said assertions have been refuted by learned counsel for the Respondent No.2 in C.P No.D-3411 of 2017 by stating that the documents furnished by him along with statement on 5.9.2017 supports his stance and argued that petitioner made correspondence with the CAA on the subject issue

and referred to a copy of Notice dated 21.5.2013 issued by the Review Board to the petitioner for appearance before the Sacked Employees Review Board on 28.5.2013, contents of the same are reproduced as under:-

“GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION  
(SACKED EMPLOYEES REVIEW BOARD)

NO. 4(15)/2013-D-RB-II

ISLAMABAD, 21 May, 2013

Syed Yawar Hussain Shigri  
FCO. AFF (CAA)  
Karachi

Subject: **NOTICE OF APPEARANCE BEFORE THE SACKED EMPLOYEES REVIEW BOARD AT EASTABLISHMENT DIVISSION, ISLAMABAD.**

***“Reference your application regarding reinstatement into government service and review boards meeting dated 21.5.2013, it is to be informed you that your case has been fixed for hearing before the sacked employees review board.***

***You are, therefore requested to submit a copy of your service record to General Manager (HR) Civil Aviation headquarter office Karachi to prove your claim and also before the Sacked Employees Review Board on 28.5.2013 at 1000 hours in the committee room of the Establishment Division located at 2<sup>nd</sup> floor of the Cabinet Block, Islamabad alongwith defence documents.”***

22. The above factual position prima-facie shows that Sacked Employees Review Board issued notice to the petitioner on his application regarding his reinstatement in service, therefore at this juncture we are unable to agree with the contentions raised by the learned counsel for the Respondent/CAA that the petitioner cannot

be reinstated in service in view of the bar contained in Section 13 (1) of the Act, 2010.

23. It may be observed that, during the course of arguments, we asked the learned DAG to ensure presence of the representative of CAA, before this Court to ascertain the actual position of the matter, who attended the hearing on 14.07.2016 before the Sacked Employees Review Board. Learned DAG, in compliance of the direction of this Court passed on 17.04.2017, procured the attendance of Mr. Masood Rahman, Additional Director (HR), CAA, who appeared before this Court on 25.04.2017 and on query by the Court, he informed that the impugned decision was given by the Sacked Employees Review Board in his presence.

24. In view of such statement of Mr. Masood Rahman, Additional Director (HR), CAA, the stance taken by the learned counsel for CAA that they were condemned unheard by the Sacked Employees Review Board while deciding the matter, is not sustainable. Learned DAG has also endorsed the view point taken by the Petitioner in C.P. No. D-6370 of 2016 and filed statement dated 22.05.2017 thereby placed on record copies of the order dated 14.07.2016 passed by the Sacked Employees Review Board and stated that the said order of the Review Board was communicated to CAA through letter dated 02.08.2016. When the learned counsel for Civil Aviation Authority was confronted with this position, he failed to give satisfactory reply.

25. In view of forgoing, we conclude that the Petitioner in C.P. No. D-6370/2016 has made out a case for implementation of order dated 14.07.2016 passed by Sacked Employees Review Board. Consequently, this Petition is disposed of with direction to Respondents/ Civil Aviation Authority to implement the order dated 14<sup>th</sup> July 2016 passed by Sacked Employees Review Board, accordingly. Consequently, the Petition No. 3411 of 2017 filed by Civil Aviation Authority is devoid of merits, hence, dismissed with no order as to cost.

26. The above Petitions are disposed in the above terms along with listed application(s).

JUDGE

JUDGE

Shafi/ P.A

For convenience Section 13 (6) of the Act is reproduced as follows:-

**“13(6) After enquiring into facts, if the Review Board is satisfied that:-**

- (a) The Sacked employee was not guilty of charges on the basis of which he was removed, dismissed or terminated from service; or**
- (b) Decision from removal, dismissal or termination of Sacked employee from service was based on mala fide intention; or**
- (c) The sacked employee was not guilty of willful absence from duty or the circumstances were so created for that he was compelled to remain absent or;**
- (d) The sacked employee was not guilty of willful misconduct he was instigated on circumstances were so created for him to cross humanly possible limits of good conduct; or**
- (e) The sacked employee was not really involved in miss-appropriation, he did not really occur or the sacked employee was dragged into such misappropriation or it was so manipulated or maneuvered to indulge him to such case; or**
- (f) The sacked employee was not really suffering the ailment which he was accused of or on basis of which he was removed, dismissed or terminated from service or the medical certificate or decision from service or the medical certificate or decision of the medical board was misunderstood or it was maneuvered or manipulated to get medical certificate or decision of the medical board in such a way, which may lead to removal, dismissal or termination of the sacked employee from service; or**
- (g) For any other reason, the removal, dismissal or termination of the sacked employee from service was unlawful, the Review Board shall pass an order in writing to**

**reinstate and regularize the sacked employee in regular service of the employer, as provided in Section 4, 5 and 6 and other provisions of this Act.”**