

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7908 of 2015

Shankar Lal Petitioner

Versus

Federation of Pakistan & others Respondents

Date of hearing: 19.02.2018

Mr. Imdad Khan Advocate for Petitioner

Barrister Hussain Bohra Advocate for Respondent No.2

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J: The Petitioner seeks Re-instatement in service under the Sacked Employees (Reinstatement) Act, 2010.

2. Brief facts of the case, as narrated by the Petitioner in the memo of Petition are that he was appointed as Engineer (Electronic) in Pakistan Steel Mills / Respondent-Company on 10.9.1995, however his services were terminated with effect from 13.5.1999. He was appointed afresh on monthly or quarterly basis for short terms with effect from 1.9.999 to 31.12.1999 and his contract was renewed for another three months period with effect from 01.01.2000 to 31.01.2000. Petitioner has submitted that two identical Petitions bearing C.P. No.D-2573 & C.P. No.D-2574 of

2009 were allowed by this Court vide order dated 15.1.2011 and another C.P. No.D-6216 of 2014 was disposed of as the matter of Petitioner in the aforesaid petition was resolved, however his case is on the same footing. Petitioner being aggrieved by and dissatisfied with discriminatory treatment meted out with him has filed the instant Petition on 21.12.2015.

3. Upon notice, the Respondents filed para-wise comments.

4. Mr. Imdad Khan learned Counsel for Petitioner has argued that the Petitioner was appointed on 10.9.1995 in Respondent-Company, as Engineer (Electronics) and served the organization for four years till 31.12.1999, finally services of the Petitioner were terminated on expiry of last period of contract; that Respondent No.2 started conducting new process of recruitment, Petitioner participated and appeared in interview for the post of Engineer and was appointed as afresh candidate for the said post for two months with effect from 01.09.1999 to 31.10.1999 on temporary/ contract basis and his contract was further extended for another three months period with effect from 01.11.1999 to 30.11.1999 and 01.12.1999 to 31.12.1999. Learned counsel next submitted that the Petitioner is sacked employee as per Section 2(f) of the Sacked Employees (Reinstatement) Act 2010. He added that on 24.12.2010, Petitioner submitted an application for reinstatement in service, the Respondent-Company, vide its letter dated 17.2.2011 informed him that his request cannot be acceded to, since it does not fall within the ambit of said Act; that Respondent-Company without considering the legal aspect of the case

erroneously declined the Petitioner to join his duties under the Sacked Employees (Reinstatement) Act 2010; that the assertion of the Respondent-Company that Petitioner was a fresh appointee for two months, whereas Petitioner's contractual services were not extended even after fresh appointment. He next contended that this is hardly a ground to refuse the Petitioner to join his duties under the Sacked Employees (Reinstatement) Act 2010. Learned counsel has further added that the Petitioner has been politically victimized by the successor Government; that Petitioner is entitled for Reinstatement in service on the rule of consistency in view of order dated 15.1.2011 passed by this Court in C.P. No.D-2573 of 2009 and C.P. No.D-2574 of 2009; that the Petitioner has been given highly discriminatory treatment for no plausible reason, which is in violation of Article 25 of the Constitution. Learned counsel for the Petitioner in support of his contention has relied upon the order dated 3.10.2016 passed by the Sacked Employees Review Board and argued that in identical circumstance his colleague Wahid Bux Jokhio filed C.P. No. D-6216 of 2014 before this Court and was reinstated by the Sacked Employees Review Board and Petitioner is required to be treated alike. He lastly prayed for allowing the instant petition.

5. Barrister Hussain Bohra, learned counsel for Respondent-Company has raised the issue of maintainability of the Petition and argued that Petitioner was continued in service till 31.12.1999 without any break, therefore he could not be treated to be a sacked employee within the meaning of Section 2(f) of the Sacked

Employees (Reinstatement) Act, 2010. He further contended that Petitioner was appointed in the year 1995 as an Engineer on retainer-ship basis for one year on fixed stipend. He further added that his contract of employment period was extended from time to time till 31.03.1999 and thereafter with a gap of five months he was reappointed on temporary basis and lastly his contract period was extended upto 31.01.2000; that Petitioner left the service on expiry of his contract period; that his relief was declined by the Sacked Employees Review Board (SERB) on the premise that his case does not fall within the ambit of the Sacked Employees (Reinstatement) Act, 2010. He lastly prayed for dismissal of the instant Petition.

6. 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.

7. Firstly, we would address the question of the jurisdiction of this Court with regard to maintainability of the Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. The profile of the Pakistan Steel Mills reveals that it is a Public Sector non-statutory entity. In view of the above background and status of Pakistan Steel Mills, the same can ordinarily be regarded as a 'Person' performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Mere fact that company is a Limited Company, registered under the Companies

Ordinance, 1984, limited by shares, is not sufficient to hold that Constitutional Petition could not be maintained against it. Even if companies are registered under the Companies Ordinance but are funded by the Federal or Provincial Government and are under the dominative control of the State, the jurisdiction under Article 199 of the Constitution would lie against such companies.

9. In the given circumstances, we are fully fortified by the view enunciated by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K and 122-K of 2017, M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against M/s Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills). We are further fortified by the decision rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd Vs. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274). The aforesaid view was further affirmed in the cases of Pakistan Defence Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383), Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), Aitcheson College, Lahore through Principal Vs. Muhammad Zubair (PLD 2002 SC 326), Pakistan International Airlines v. Tanweer-ur-Rehman (PLD 2010 SC 676), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257).

10. In the light of aforesaid cases decided by the Honorable Supreme Court, the first objection about the maintainability of the captioned writ Petition has no force and is accordingly rejected.

11. The moot question involved in the present petition 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 Pakistan Steel Mills?**

12. To decide the issue involved in the present proceedings, we think it appropriate to have a look at the special law, enacted as the Sacked Employees (Reinstatement) Act, 2010, which is a beneficial legislation for reinstatement of employees, as defined under section 2(f) of the said Act:-

(f) "Sacked employee" means-

(i) a person who was appointed as a regular or ad hoc employee or on contract basis or otherwise in service of employer, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service or whose contract period was expired or who was given forced golden hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);

13. As per Petitioner, he meets the conditions mentioned in the aforesaid section 2(f) of the Act, 2010.

14. We have perused the order dated 03.02.2014 passed by this Court in C.P. No.D-2573 & 2574 of 2009, which reads as under:-

***“Therefore in our view that fact the contract of the petitioners was not extended would mean termination and therefore they are entitled to the benefits of the Ordinance is to be given its broadest meaning and it would mean “brining and employment to an end. If a person is in employment on contract and the period of contract comes to an end, it would mean that employment is terminated and the reasons for termination would be expiry of the contract. It would be termination nevertheless. Even within the four corners of the Ordinance of 2009, where it is provided that even where employee takes a Golden Handshake and is forcibly given it termination has been stated to be the effect would amount to termination.*”**

15. Therefore in our view the fact that contract of the petitioners was not extended would mean termination and therefore, they are entitled to the benefits of the Ordinance of 2009.

16. Mr. Mazhar Jafri argued that they were recruited on political pressure and for extraneous consideration. If that was so it will be available to the Organization to issue them show cause notice and thereafter decide in accordance with the law. The Organization must also proceed against those employees who buckled to such pressure. It may also consider suing those who exerted such pressure. Leaving everybody aside and only targeting a helpless employee would not fair to say the least about it.

17. Mr. Jafri, also contended that jobs on which the present petitioners were hired were jobs of temporary nature. We are afraid, we cannot agree, firstly because nowhere in any of the letter it is specified as to what was the job on which they were hired. If it was a temporary, it must have stated in the appointment letter as to what was the job on which they were fired and what was the expected duration. Secondly they continued in employment for almost 2 years and it is difficult to see that the job became temporary when the government changed. Thirdly repeated hiring for temporary period constitutes a fraud on stature as has been held by the Supreme Court in Ikram Bari’s case (Supra).

18. Consequently these petitions are allowed. The petitioners are ordered to be re-instated in service with effect from February 14, 2009. They shall be entitled to all the benefits under the Ordinance of 2009 and also to back benefits for the period starting from February 14, 2009.”

15. Record reflects that the Sacked Employees Review Board vide its order dated 3.10.2016 reinstated one Wahid Bux Jokhio colleague of the Petitioner and the Respondent-Company complied with the order of the Sacked Employees Review Board vide its letter dated 10.11.2016. Pakistan Steel Mills under the beneficial enactment of the Federal Government cannot deny relief to pensioner, by giving the same benefit to the colleague of Petitioner, which attitude on their part is discriminatory and violative of Article 25 of the Constitution.

16. We are of the view that the Petitioner has been given highly discriminatory treatment for no plausible reason whatsoever by Pakistan Steel Mills.

17. In this view of the matter, the decision taken by Pakistan Steel Mills, vide letter dated 10.11.2016 by reinstating the Sacked Employee namely Engineer Wahid Bux Jokhio, the colleague of the Petitioner, excluding Petitioner from reinstatement in service is erroneous and is of no legal effect.

18. We are of the considered view that the Sacked Employees Act, 2010 is enacted only to the extent of Government owned entities established or controlled by the Federal Government. As per profile of Pakistan Steel Mills as discussed supra, which is funded by the Federal Government and is under dominative control of the State, thus falls within the definition of Section 2(d) of the Sacked Employees (Reinstatement) Act, 2010.

19. Reverting to plea raised by the learned counsel for the Respondent- Company that contract period of Petitioner was extended from time to time till 31.03.1999 and thereafter with a gap of five months he was reappointed on temporary basis and lastly his contract period was extended up to 31.01.2000. We do not agree with such calculation of period of contract of the Petitioner, this assertion of the learned counsel for Respondent- Company is rejected for the simple reason, firstly the contract period of the Petitioner was extended upto 31.12.1999 only and thereafter his period was not extended and he was reappointed after certain gap in his service, which prima facie shows that he was sacked from his job, therefore attracts Section 2(f) of the Sacked Employees Reinstatement Act, 2010. Secondly, Section 9 of the Act, 2010 is very much clear, which Provides that:-

“Sacked employee presently engaged in any other service.–If any sacked employee is presently engaged in any employment, other than the employment he was dismissed or removed or terminated from, as provided under this Act, shall exercise an option in writing to either resume his service under this Act or continue his present employment, within forty five days of issuance of letter of his re-instatement or within forty five days of the day the sacked employee stands re-instated under the provisions of this Act.”

20. We have noticed that Petitioner was appointed on 10.9.1995 in Pakistan Steel Mills, as Engineer (Electronics) and served the organization for four years till 31.12.1999, subsequently Respondent-Company, vide its letter dated 17.2.2011 stated that Petitioner does not fall within the ambit of Sacked Employees Act, 2010. Again this assertion of Pakistan Steel Mills is based on surmises and conjunctures. Section 2(f) of the Act, 2010 as

discussed supra supports the contention of the Petitioner that he was a sacked employee. There is nothing on record to show any justification, whatsoever for the termination/removal of the Petitioner from service.

21. In view of the foregoing, Petitioner is declared to be sacked employee within the meaning of Section 2(f) of the Sacked Employees (Reinstatement Act) 2010.

22. In the light of above facts and circumstances of the case we conclude that the Petitioner has made out a case for relief under the Sacked Employees (Reinstatement Act) 2010.

23. This Petition is allowed with direction to the Chief Executive Officer/ Competent Authority of Respondent-Company to reinstate the Petitioner in service Petitioner is also entitled to all other benefits of which he may be expressly entitled to under the Sacked Employees (Reinstatement Act) 2010, however subject to Section 19 thereof and will not be entitled to any double benefit.

24. The above Petition is disposed of in the above terms along with the listed application(s).

25. These are the reasons of our short order dated 19.2.2018, whereby we have allowed the instant Petition.

JUDGE

JUDGE

Karachi
Dated:-20.02.2018

Shafi Muhammad / P.A