

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

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-3408 of 2013**

Zafar Iqbal Zahid and others ..... Petitioners

Versus

Federation of Pakistan & others ..... Respondents

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**Date of hearing: 28.02.2018**

Syed Shoa-un-Nabi Advocate for Petitioners

Syed Ashfaq Hussain Rizvi Advocate for Respondent No.4.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

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

**ADNAN-UL-KARIM MEMON, J:** The Petitioners are seeking Re-instatement in service under the Sacked Employees (Reinstatement) Act, 2010.

2. Brief facts of the case, as narrated by the Petitioners in the memo of Petition are that they were appointed as Junior Assistant, Yard Assistant, Dispatch Riders, Messenger and Sample Room Assistant in the year 1975 to 1984 in the Cotton Export Corporation of Pakistan (CEC). Petitioners claim that their services were forcibly terminated with effect from 17.4.1998 by way of giving forced Golden handshake under the Voluntarily Retirement Scheme (VRS), without providing any opportunity of hearing or

option under the said Scheme. Petitioners have submitted that being aggrieved by and dissatisfied with the illegal action of CEC, they approached Cabinet of Sub-Committee on Regularization of Contract / Daily Wages Employees in the Ministries / Divisions / Attached Departments / Autonomous Bodies/ Organization, for redressal of their grievances and the Sub-Committee held its meeting on 02.08.2012 and directed the Chairman Trading Corporation of Pakistan (TCP) to implement the aforesaid minutes, but the Respondent-Company refused to comply with the directives of the Cabinet Sub-Committee. Petitioners have further submitted that they approached the Respondent-Company several times to reinstate them under the Sacked Employees (Reinstatement) Act, 2010, but of no avail. Petitioners have asserted that their case falls within the ambit of Section 4 of the Act, 2010 and the Respondent-Company is bound under the law to reinstate the Petitioners in service. Petitioners have voiced their grievance that the Respondent-Company has reinstated the service of their colleagues i.e. Respondent No.5 and 6 vide orders dated 31.07.2009 and 14.02.2010 passed by the Review Board, established under Section 4 of the Reinstatement Act 2010. Petitioners have added that the employees of Rice Export Corporation of Pakistan having similar type of grievances were reinstated into service in TCP vide letter 11.06.2009 but the Petitioners have been treated discriminately. Petitioners being aggrieved by and dissatisfied with the discriminatory treatment meted out with them have filed the instant Petition on 20.08.2013.

3. Upon notice, the Respondents filed para-wise comments.
4. Syed Shoa-un-Nabi learned Counsel for Petitioners has argued that the Petitioners are sacked employees as per Section 2(f) of Sacked Employees (Reinstatement) Act 2010. He added that on 30.03.2009, Petitioners submitted applications for reinstatement in service and the General Manager of Cotton Export Corporation Pakistan vide its letter dated 17.4.1998 passed the order that the NIRC, Karachi Bench, directed CEC to retire the Petitioners from service and pay VRS benefits up to date of their retirement; that on 15.03.2012 the Cabinet Sub-Committee on regularization of Daily Wages/ Contract Employee in the Ministry /Divisions/ Attached Department/ Autonomous Bodies/ Organization took up the matter of Petitioners and decided that the Petitioners be reinstated in service; that in spite of clear instructions / orders of the Cabinet Sub-Committee, the Respondent-Company informed them that their request cannot be acceded to since they do not fall within the ambit of said Act; that Respondent-Company without considering the legal aspect of the case erroneously declined the Petitioners to join their duties under Sacked Employees (Reinstatement) Act 2010; that the assertion of the Respondent-Company that Petitioners were appointed in the year ranging from 1975 to 1984 therefore do not come within the ambit of Section 2 (f) of the Act, 2010. He next contended that this is hardly a ground to refuse the Petitioners to join their duties; that the Petitioners have been politically victimized by the successor Government; that Petitioners are entitled for Re-instatement in service on the rule of consistency

in view of orders dated 31.07.2009 and 14.02.2010 passed by the Review Board for Sacked employees and subsequently implemented by the Respondent-Company; that the Petitioners have been given discriminatory treatment for no plausible reason, which is in violation of Article 25 of the Constitution. He lastly prayed for allowing the instant Petition.

5. Syed Ashfaq Hussain Rizvi, learned counsel for Respondent-Company has raised the issue of maintainability of the instant Petition and argued that the Sacked Employees (Reinstatement) Ordinance, 2010 (Ordinance No. II of 2010) provides for reinstatement of only those employees, who entered in employment from 01.11.1993 to 30.11.1996 and who were removed from service from 01.11.1996 to 31.12.1998; that the services of the Petitioners were dispensed with by the parent organization of the Petitioners vide letter dated 17.4.1998 and the Respondent-Company has nothing to do with the Petitioners, however Petitioners were given all benefits under Voluntary Retirement Scheme within (VRS) against their option and decision of NIRC much before the scheme of arrangement for merger of defunct CEC into TCP, therefore the above law is not applicable to the Petitioners and the Petitioners do not qualify for reinstatement in the Sacked Employees Reinstatement Ordinance/Act, 2010. He next argued that the Petitioners in pursuance of NIRC decision dated 16.04.1998 all the employees of the defunct RECP and CEC were stood retired under VRS against their option; that the aforesaid decision of NIRC is much before the scheme of

arrangement for merger of the defunct CEC into TCP; that the employees of defunct CEC were converted into and status of regular employees of TCP at the time of merger of the defunct CEC into TCP; that the scheme was for Civil Servants and the same was circulated amongst Government Servants and nothing was concealed by the Management from the Employees of the Corporation; that the retirement from the service of CEC had no nexus with the merger of defunct CEC; that in compliance with the order dated 16.04.1998 passed by NIRC Karachi, Bench and the Petitioners stood retired from the Service of CEC vide order dated 17.04.1998; that the decision for reinstatement of 27 ex-employees of the defunct CEC was first taken by the Cabinet Sub Committee in the meeting held on 24.11.2011 and again on 15.03.2012 and that the Respondent No.4 was neither taken on Board for the said meeting of Cabinet Sub-Committee nor had received notice for the said meeting in TCP; that the minutes of the meeting of the committee held on 15.03.2012 were received in TCP on 10.08.2012; that TCP clearly stated that these employees do not fall within the purview of Sacked Employees (Reinstatement) Act 2010 as their date of appointment do not correspond with the dates provided in the Act; that in case these employees are reinstated in service, it will create discrimination amongst other thousands of employees of the defunct CEC & RECP; that the services of Mr. Muhammad Riaz Khan was reinstated under the order of Review Board; that the TCP was supposed to comply with the judicial order as neither the TCP under its own decision reinstated Mr. Barkat Ali Jokhio nor to Mr. Muhammad Riaz Khan.

He lastly prayed for dismissal of the instant petition being not maintainable.

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 Respondent No.4 indeed is a Company, which is performing function in connection with the affairs of the Federation and as such, is amenable to Constitutional jurisdiction of the High Court. Mere fact that it 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 1973 would lie against such companies. In the given circumstances, the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defence Officers Housing Authority vs. Lt. Col. Jawed Ahmed (2013 SCMR 1707) has laid down that an aggrieved person can invoke Constitutional Jurisdiction of this Court against a public authority. The Petitioners are seeking Re-instatement in service under the Sacked Employees (Reinstatement) Act, 2010 in the organization i.e. Trade

Corporation of Pakistan, and in terms of Article 199 (5) of the Constitution of the Islamic Republic of Pakistan 1973 hence TCP is a “person”. The same principle is also enunciated in the case of Muhammad Rafi and others vs. Federation of Pakistan & others (2016 SCMR 2146). The Hon’ble Supreme Court has already held that Constitutional Petition is maintainable against an organization, which has non-statutory rules of service. Our view is further strengthened by the decision rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.)(2004 SCMR 1274) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In the light of aforesaid cases decided by the Honorable Supreme Court, we therefore are of the view that the instant Petition is maintainable and can be heard and decided on merits. 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?***

9. To understand the controversy in a proper perspective, we consider it appropriate to have a look on the Sacked Employees (Reinstatement) Act, 2010, which is a special law enacted as a beneficial legislation for reinstatement of employees defined under Section 2(f) of the said Act. 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).

10. 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 and are established or controlled by the latter.

11. On merits, the case of the Petitioners precisely is based on two folds, firstly that they were appointed as Junior Assistant, Yard Assistant, Dispatch Riders, Messenger and Sample Room Assistant in the year 1975 to 1984 in the Cotton Export Corporation of Pakistan (CEC) and claim that their services were forcibly terminated with effect from 17.4.1998 by way of giving forced Golden Handshake under the Voluntarily Retirement Scheme (VRS), without providing any opportunity of hearing or option under the said Scheme as well, who had not opted for Voluntary Retirement Scheme introduced by the Government in the year 1997. Secondly the issue of discrimination that the case of the Petitioner is at par with Muhammad Riaz Khan and Mr. Barkat Ali Jokhio is concerned. In this regard, we have to go through various provisions of the Ordinance and the Act as well as their applicability to the facts and circumstances of this case. For the sake of convenience, Section 3 of the Ordinance is reproduced hereunder:-

***“(3) Reinstatement of Employees.----Notwithstanding anything contained in any law for the time being in force, judgment of any Tribunal or a Court including the Supreme Court and the High Court, contract or terms and conditions of service, all persons appointed in corporation or Government service, during the period***



***from the 1st days of November, 1993 to 30th day of November, 1996 (both days inclusive) and dismissed, removed, terminated or given forced Golden Handshake during the period from the 1st day of November, 1996 to the 31st day of December, 1998 (both days inclusive) shall be reinstated immediately in service on one scale higher to their substantive scale of the post at the time of termination of service and report for duty to their respective departments or organizations”***

12. Section 3 of the Ordinance starts with non-obstante clause, which provides that notwithstanding anything contained in any law or Judgment of any Tribunal or Court, contract or terms and conditions of service, all person appointed in Corporation and Government service between 01.11.1993 to 30.11.1996 and dismissed, removed, terminated or forcibly given Golden Handshake between 01.11.1996 to 31.12.1998 shall be reinstated immediately in service one scale higher to their substantive scale of post at the time of their termination. The said Ordinance was converted into an Act (Sacked Employees (Re-instatement) Act, 2010) and was duly published in the Gazette of Pakistan on 08.12.2010. Similar rather more beneficial provision as compared to Section 3 of the Ordinance was introduced through Section 4 of the Act as under:-

***“4. Re-instatement of employees in service and regularization of employees’ service.---Notwithstanding anything contained in any law, for the time being in force, or any judgment of any tribunal or any court including the Supreme Court and a High Court or any terms and conditions of appointment on contract basis or otherwise, all sacked employees shall be re-instated in service and their service shall be regularized with effect from the date of enactment of this Act”.***

13. Section 4 of the Act also starts with a non-obstante clause, which says that notwithstanding anything contained in any law

and Judgment of any Court, all the sacked employees shall be reinstated in service and their services shall be regularized with effect from the date of enactment of this Act in the manner provide in Section 4 of the Act.

14. Section 2(f)(i) and (iii) of the Act defines the Sacked Employees as under:-

***“2(f)(i) a person who was appointed as a regular or adhoc 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 gold hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive); 2(f) (iii) a person who was appointed or re-instated 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 who was subsequently dismissed or removed or terminated from service during the period from 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive) or who was intermittently dismissed, removed or terminated from service from time to time and re-instated through status quo order or judgment of any tribunal or through ay court including the Supreme Court or a High Court or through any administrative order or through withdrawal or any order conveying dismissal, removal or termination or by any other way on any date after the 1st day of November, 1996”***

15. As per Section 2(f)(i) of the Act, a person is “Sacked Employee” if he was appointed as regular or adhoc employee or on contract basis or otherwise in service of employer from 01.11.1993 to 30.11.1996 (both days inclusive) and was dismissed, removed or terminated from service during the period from 01.11.1996 to 12.10.1999 (both days inclusive).

16. A bare reading of the above definitions indicate that provisions of Ordinance and the Act are applicable only to the employees, who fall within the very limited category i.e. recruited during November 1993 to November 1996 and removed during November, 1996 to December, 1998. It may be noticed that the word used between the two described periods, is "And". Therefore unless an employee of a corporation concurrently meets both these conditions he is not entitled to the benefit of the Ordinance and the Act. Reliance in this regard is placed on the case of Masroor Hussain and 45 others V. Chairman, Pakistan International Airlines and another [2010 PLC (C.S.) 630] 19. As regards the question of reinstatement of Petitioners colleague namely Muhammad Riaz Khan, the record reveals that Muhammad Riaz Khan was appointed in RECP as Food Inspector in the year 1989. He was terminated from service on 26.02.1991 and was re-appointed/reinstated in the year 1994. The said Muhammad Riaz Khan subsequently retired with VRS on 17.01.1998. Since both the dates, that is, reappointment / reinstatement and retirement of Barkat Alo Jokhyo and Muhammad Riaz Khan was coincided with the cut of dates mentioned under the Ordinance and the Act therefore, they were reinstated in the service under the provisions of Ordinance and the Act.

17. We have noted from the pleadings of the parties that the Petitioners at the time of their retirement were paid full and final dues. Besides above, we do not concur with this assertion of the learned counsel for the Petitioners with his explanation of laches

and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioners filed the instant Petition on 20.08.2013, whereas the alleged cause of action accrued to them on 17.4.1998. It is now a well-established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259).

18. We have noticed that Petitioners were Sacked by Cotton Export Corporation vide letter dated 17.4.1998 on the basis of order dated 16.04.1998 passed by the learned single bench of NIRC Karachi, in case No. 4-A(206)/97-K and 24(290)/97-K which reads as under:-

***“The assertion of Applicant CBA that respondent Corporation has re-engaged some workers who had opted for VRS on contract basis has not been denied by the Respondent Corporation. It is admitted fact that since the year 1996 the RECP has stopped the procurement of Rice from the Growers and RECP intends to wind-up its business and it is to be merged in TCP. It appears that it is not viable for RECP to run its business anymore and for this reasons VRS/CHS was therefore offered to the employees by the Respondent Corporation and so far 1828 work2063 workers have been terminated under this VRS/CHS by the respondent Corporation. From the facts,***

*circumstances and material on record it appears that the remaining 235 workers did not opt for VRS with view that RECP will be merged in TCP and they will be continued in employment in TCP after merger or RECP. Now as threat of their termination by the Respondent Corporation without being merged in TCP to continue their employment, the applicant CBA has filed the present petition. Admittedly at the Government level the fate of these remaining 235 workers is yet to be decided, as it appears from the notice of the Senate Secretariat dated 01.03 1998, whereby the meeting of Standing committee on Commerce was to be held at Islamabad on 06.04.1998. As to what has been decided in that meeting dated 06.04.1998 of Standing Committee has not been brought on record by either party. Although the fate of these remaining 235 workers who did not opt for VRS, is yet to be decided by Standing Committee of Commerce, yet the Respondent Corporation has threatened to terminate these remaining 235 workers from service without allowing them VRS/CHS by accepting their options. However observing the facts and circumstances of the case that it is not viable for the respondent Corporation to continue the remaining workers in the employment, who have not opted for VRS/CHS, I find that it will be justified that interim prohibitory order dated 06.11.1997 is modified to the extent that the respondent Corporation may be allowed to retire the remaining workers, who have not opted for VRS/GHS, by allowing them benefits of VRS/GHS effective from the date of their retirement and not giving it retrospective effect, in case it is not feasible for the respondent Corporation to continue their employment by merger in TCP, as has been done in case of other workers who opted for VRS/GHS, in order to avoid any occurrence of unfair labour practice on the part of respondent Corporation of making discrimination in the case of these workers by simply terminating them without giving them benefits of VRS/GHS.*

*With these modifications in the interim prohibitory order passed on 06.11.1997, the application under Regulation 32(2)( c ) of HIRC (P&F) Regulations, 1973 stands disposed off.”*

19. The aforesaid order of the NIRC reflects that there was a dispute between Rice Export Corporation Pakistan Liberal Union

and M/s Rice Export Corporation of Pakistan and the Petitioners were not party in the proceedings nor they were merged in TCP under the said order of the NIRC. It is well settled law that a decision behind the back of the parties is a nullity in the eyes of law. Record further reflect that the Petitioners did not exercise their options under the said Voluntarily Retirement Scheme, however they were paid VRS benefits. As per Respondents CEC vide office order dated 17.4.1998 passed the following order:-

***“ In compliance with the order dated 16.04.1998 passed by the NIRC, Karachi Bench, Karachi modifying the order dated 19.11.1997 and directing CEC to retire from service and pay VRS benefits upto date of retirement of all employees who did not opt for VRS, it has been decided that instead of terminating the services of the remaining 339 workers, they will be retired from service of the CEC with VRS benefits in term of CEC Circular No. CEC/Estt/VRS-22/93 dated 12.09.1993.***

***Accordingly 339 workers mentioned in the list (A) attached herewith are retired from the service of the CEC and except for the 54 persons mentioned in list (B), will stand relieved immediately from today. The persons mentioned in the list (B), though retired have, however, been retained purely on temporary basis till further orders in exigency of work.***

***The payment of the VRS benefits shall be made after adjustment of necessary dues against them if any as per rules.***

***Final settlement of their dues will be made on receipt of usual clearance as well as relieving order from the duties from the respective section heads.”***

20. Prima-facie the above action was taken by the CEC before the merger of CEC in TCP. Hence in our view there is

nothing on record to show any malafide on the part of Respondent-Company whatsoever for retiring the Petitioners from service.

21. In view of forgoing, we conclude that the Petitioners have not made out a case of relief under the Act 2010. This Petition being devoid of merit is accordingly dismissed along with the listed application(s).

JUDGE

JUDGE