

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -4635 of 2020

Javed Raza Bhatti & 14 others

Versus

Province of Sindh and 03 others

Date of hearing &
Decision : 11.02.2021

Mr. Tanveer Aftab, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, the petitioners have called in question the office order dated 12.10.2017 whereby their request for calculation and counting past service towards pensionary benefits, payment of back benefits/arrears from the date of termination, and counting of 19 years' increment in the salary was declined by the respondent-department. The petitioners being aggrieved by and dissatisfied with the aforesaid order approached this Court in C.P. No. D-2360/2018 which was not pressed on the premise that they would avail their remedy before the competent forum for redressal of their post-retirement benefits. Now again, they have filed this petition with a similar cause of action with the assertion that the impugned orders dated 12.10.2017 and 11.3.2020 passed by the respondents are illegal, arbitrary, malafide, and having no force of law. They are also seeking direction to the respondents not to discriminate against them and to treat them at par with their other colleagues by calculating and releasing their back benefits/arrears with effect from 01.07.1997 to 27.10.2016.

2. We asked the learned counsel to satisfy this Court about the maintainability of this petition on the ground of laches.

3. Learned counsel for the petitioners contended that the petitioners have suffered a lot without any cogent reason and victimized politically by losing their jobs in defunct Sindh Arid Zone Development Authority (SAZDA); that the actions of the respondents are without lawful authority and the same can be termed as *Coram-non-judice*; that the respondents nevertheless preferred to

exercise discretion arbitrary, malafidely, capriciously and whimsically; and, this is a violation of their fundamental rights as protected under Article 4,9,18 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He relied upon the cases of *Walayat Ali Mir v. Pakistan International Airlines Corporation*, 1995 SCMR 650 and *Abid Hassan v. P.I.A.C.*, 2005 SCMR 25. He lastly prayed for allowing the instant petition.

4. We have heard the learned counsel for the petitioners on the maintainability of the instant petition and perused the material available on record as well as the case-law cited at the bar.

5. As per record, petitioners were appointed in a project of defunct SAZDA namely Ground Water Investigation in Thar, Nara and Kohistan Region of Sindh Arid Zone in the year 1989. On closure of the project, the services of the project employees including the petitioners were terminated with effect from 1.7.1997 as their departmental appeals stood regretted, some of the aggrieved employees filed C.P. No. D-4344/2012 before this Court which was disposed of vide order dated 30.10.2013 directing the competent authority to decide their appeals within two months. In compliance whereof, the respondent-department floated a summary for Chief Minister for reinstatement of their services on humanitarian grounds. The competent authority approved their reinstatement, however, without back benefits vide notification dated 27.10.2016.

6. The question arises as to whether the project employees of defunct SAZDA, upon closure of the project and their subsequent reinstatement in service on humanitarian grounds, are entitled to claim back benefits with effect from the date of termination of their service and reinstatement in service.

7. Prima facie, the petitioners were not regular employees of the defunct department rather contract employees of a project of defunct SAZDA. Record does not reflect that their services were subsequently regularized by the respondent-department at any stage, as such they are precluded to claim back benefits after their reinstatement in service in the year 2016 on the premise that if a regular employee is terminated from service and subsequently his service is restored, the benefit of section 54 of Fundamental Rules could be awarded to him, but here situation is altogether different as the petitioners have been reinstated into service vide notification dated 27.10.2016 with immediate effect, even otherwise in the intervening period they have not

produced any concrete evidence that they were not gainfully employed, thus not entitled to claim back benefits and other ancillary relief(s).

8. The reasoning assigned by the respondent-Secretary, Planning and Development Department Government of Sindh Karachi vide a statement dated 11.03.2020 (page 323) is tenable under the law. Merely their reinstatement in service on humanitarian grounds does not depict automatic regularization of their service, as such the intervening period i.e. 1.7.1997 to 27.10.2016 they rendered no services to the department.

9. The case law cited by learned counsel for the petitioners are distinguishable from the facts obtained in this petition.

10. Petition being misconceived stands dismissed in limine along with pending application(s) with no order as to costs.

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