

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-1661 of 2019

Syed Noor Hussain Shah,
Petitioner through:

Mr. Babar Hussain Shah, advocate

Respondents
Through:

Mr. Rana Khan, advocate for WAPDA
Mr. Muhammad Nishat Warsi, DAG.
Mr. Ali Safdar Depar, AAG.

C.P. No. D-1662 of 2019

Muhammad Nawaz Soomro,
Petitioner through:

Mr. Babar Hussain Shah, advocate

Respondents
Through:

Mr. Rana Khan, advocate for WAPDA
Mr. Muhammad Nishat Warsi, DAG.
Mr. Ali Safdar Depar, AAG.

C.P. No. D-3590 of 2020

Aijaz Ahmed Qureshi,
Petitioner through:

Syed Ali Ahmed Zaidi, advocate along with
Ms. Tehreem Aijaz Qureshi.

Respondents
Through:

Mr. Rana Khan, advocate for WAPDA
Mr. Muhammad Nishat Warsi, DAG.
Mr. Ali Safdar Depar, AAG.

Dates of hearing:
Date of judgment:

16.02.2021 and 25.02.2021
04.03.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The above-referred constitutional petitions are being disposed of by this common judgment as the issue raised therein is similar.

2. The case of the petitioner in C.P. No. D-1661 of 2019 is that he was initially appointed as Sub-Engineer (BPS-16), in Water and Power Development Authority (WAPDA), in the year 1985, through the competitive process, then he was promoted to the post of Junior Engineer (BPS-17). However, on account of the policy decision dated 19.5.1979 of both the Governments i.e. Federal and Provincial, his services were permanently transferred from WAPDA along with staff en-block, assets including machinery and equipment, residential colonies, tube wells, etc., to the Irrigation and Power Department, Government of Sindh with effect from 1.1.1994 vide Notification dated 7.3.1994 (Page 37). Petitioner

continued his job in Sindh Government and succeeded in getting the promotion to the higher rank in BPS-18, till he was asked to report back to his parent department i.e. WAPDA vide notification dated 5.7.2018 (page103) which was issued in compliance with the judgment dated 18.3.2016 passed by the learned Sindh Service Tribunal (`SST`) in Service Appeal No. 1274 of 2015; and, after rendering more than 24 years' service in the Irrigation Department Government of Sindh, he stood retired upon attaining the age of superannuation. An excerpt of the notification dated 05.07.2018 about the repatriation of the petitioners to WAPDA is reproduced as under: -

“NOTIFICATION

No.A-1/2-3(61)/2007: In pursuance to the S&GAD's Notification dated 03.07.2018, the following officers of Irrigation Department are hereby relieved with immediate effect, with the direction to report to their parent Department i.e. Water & Power Development Authority (WAPDA):

1. Mr. Muhammad Nawaz Soomro
Superintending Engineer (Civil) (BS-19),
Saifullah Magsi Branch Circle Larkana.
2. Mr. Aijaz Ahmed Qureshi
Executive Engineer (Civil) (BS-18),
awaiting posting.
3. Syed Noor Hussain Shah
Executive Engineer (Civil) (BS-18),
Northern Dadu Division Larkana.

JAMAL MUSTAFA SYED
SECRETARY TO GOVERNMENT OF SINDH”

3. At this juncture, we asked the learned counsel for the petitioners in both the petitions bearing No. D-1661 of 2019 and No. D-1662 of 2019 that as to how these petitions are maintainable before this Court under Article 199 of the Constitution on the premise that there are findings against the petitioners by the learned SST in Service Appeal No. 1274 of 2015 vide judgment dated 18.3.2016, whereby direction was given to the Secretary Irrigation and Power Department, Government of Sindh, to repatriate them to their parent Department i.e. WAPDA. An excerpt of paragraph 35 (iii) of the judgment dated 18.3.2016 is reproduced below:

- “35. We, therefore, hold as under: -
- (i&ii).....
- (iii) The appeal against respondents No.6 to 10 is maintainable on the point of absorption being not in accordance with Rule 9-A of APT, Rules, 1974. Respondent No.3, Secretary Irrigation & Power Department, Government of Sindh is directed to repatriate the respondents No.6 to 10 to their parent department within (60) days from receiving the copy of this judgment and thereafter, delete names of respondents No.6 to 10 from the impugned final seniority list and recast/modify the same. Respondent NO.3 is further directed to place the names of respondent No.11 in his appropriate place of seniority in the modified seniority list and to prepare the seniority list of 2015 as directed above.
- (iv) Appeal is partly allowed to the extent as stated above.
Announced in open Court.
I agree with the conclusion.”

Secondly, the aforesaid decision of the learned SST was assailed by the petitioners before the Honorable Supreme Court in Civil Petition No. 266-K and 1074 of 2016 and the Honorable Supreme Court maintained the judgment of learned SST vide order dated 26.3.2018 (Page 101). An excerpt of the order dated 26.3.2018 is reproduced as under:

“Having heard the learned counsel for the parties, we do not find that any substantial question of law of public importance has been made out qualifying the test under the provisions of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973. Both the petitions are accordingly dismissed.”

Thirdly, there is a bar of jurisdiction of this Court to exercise powers under Article 199 of the Constitution on the premise that this Court is not the appellate Court of the decision of the learned SST under Article 212(3) of the Constitution.

4. Mr. Babar Hussain Shah, learned counsel for the petitioners, in both the petitions bearing No. D-1661 of 2019 and No. D-1662 of 2019 while replying to the query argued that repatriation of the petitioners to the Water and Power Development Authority vide impugned notifications of Irrigation and Power Department, Government of Sindh, are illegal. He has averred that one of the colleagues of the petitioners filed Appeal No.1274/2015 before the learned SST on the issue of seniority, which was partly allowed vide judgment dated 18.3.2016. The aforesaid judgment was assailed by the petitioners before the Hon'ble Supreme Court, in Civil Petition No.266-K and 1074 of 2016 which was dismissed vide order dated 26.3.2019. He further pointed out that the petitioner namely Aijaz Ahmed Qureshi also filed another Civil Petition No.3815 of 2019 before the Hon'ble Supreme Court against the judgment dated 05.8.2019 passed in Execution Application No.152/2019, arising out of the judgment dated 18.3.2016 passed in Appeal No.1274/2015, which was also dismissed vide order dated 09.12.2019 with the observation that such act of WAPDA would be challenged by him before an appropriate forum provided by law (Page 131). He further pointed out that in the meanwhile, the WAPDA filed CMA No.851-K/2019 in C.P. No. Nil -K of 2019 against the order dated 18.3.2016 passed by the learned SST in Appeal No.1274/2016, subsequently the same was dismissed vide order dated 12.01.2021 (Page 197). An excerpt of the order dated 12.1.2021 is reproduced as under:

“As the counsel for the appellant has appeared and addressed the Court, thus, the application for adjournment is dismissed.

2. The appeal is barred by 1204 days. An application for condonation of delay (CMA No.12581 of 2019) has been filed. The learned counsel for the appellant contends that the appellant was not a party in the Service appeal before the Sindh Service Tribunal (the Tribunal) in which the impugned judgment has been passed and when he came to know about such impugned judgment, he filed a petition before this Court. We have noted that the appellant the Director (Legal) WAPDA, Lahore was not a party in the Service Tribunal in which the impugned judgment has been passed. The application does not show any reason much-less sufficient cause for condoning the delay and is also not supported by the affidavit of the appellant. The appellant does

not disclose the date on which he came to know about passing of the impugned judgment by the Tribunal. Further, each day's delay has not been explained. It seems that while granting leave to appeal vide order dated 27.12.2019, the court was not informed that the very petition filed by the appellant was time barred. In any case, there being no sufficient cause available on the record to condone the delay, we, therefore, find the application to be altogether not sustainable, the same is, therefore, dismissed.

3. We may note that this appeal has been filed in the name of the Director (Legal)WAPDA, Lahore. We have asked the learned counsel to show how the Director (Legal) WAPDA is competent to file the appeal, learned counsel stated that she may be allowed to file document. Such request of the learned counsel apparently, is not tenable. Learned counsel for the appellant has not been able to show us that the Director (Legal) WAPDA could have himself filed the appeal in his own name and not the WAPDA itself. Thus, the appeal is dismissed.”

He further averred that in the meanwhile the other colleagues of the petitioners namely Muhammad Shamil Hingorio and others filed Criminal Original Petition No.121/2013 against non-repatriation of five Engineers from WAPDA which was disposed of vide order dated 04.3.2015, however, aggrieved engineers filed Criminal. Review Petition No.96/2015 in Criminal Original Petition No.121/2013 in Criminal Original Petition No.89/2011 against the order dated 04.3.2015 passed by the Hon'ble Supreme Court in Criminal Original Petition No.121/2013 in Criminal. Org. Petition No.89/2011 and other connected petitions, which were disposed of by the Hon'ble Supreme Court vide common order dated 13.02.2019 with direction to the Courts before whom the matters were/are instituted by the affected employees, to decide the same expeditiously preferably within six months (Page 167). He asserted that in the case of his colleague (Jam Mitha Khan), this Court vide judgment dated 23.9.2019 passed, in CP No.D-1511/2019 directed the Sindh Government to pay him all the perks and privileges to which he was entitled to on the date of issuance of notification of his repatriation to WAPDA, inclusive of his entire pensionary benefits within two months; and the case of petitioner namely Syed Noor Hussain Shah is akin to the case of Jam Mitha Khan as during pendency of the aforesaid proceedings, he attained the age of superannuation i.e. 60 years without pensionary benefits (Page 173).

5. On merit, he attempted to persuade us that the case of petitioners falls within the scope of Rule 9-A of Sindh Civil Servants (Appointment Promotion and Transfer) Rules, 1974, which provides that when a person, who has been rendered surplus on account of abolition of a post of the Government or any autonomous body or on account of permanently taking over the administration of such autonomous body wholly or partially by the Government, may be appointed to any post in any Department of the Government with the conditions enumerated therein, as the Government of Sindh took over the administrative control of 739 completed tube wells of South Rohri Project WAPDA Hyderabad in Hala Division SCARP. He emphasized that they fulfill all the criteria as enumerated in the aforesaid Rule and they were permanently absorbed in the

Sindh Government vide Notifications dated 10.08.1992 and 28.4.1994, their lien was terminated with WAPDA, and their pensionary benefits were transferred to Sindh Government, and thereafter they were treated as Civil Servants and their seniority was fixed accordingly. In support of his contention, he relied upon section 16 of the WAPDA Act, 1958, and argued that the Federal Government was empowered to direct the WAPDA to handover any scheme to the Provincial Government for carrying out the purpose of the project. He next argued that based on the misinterpretation of the Judgment reported as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and Contempt Proceedings against Chief Secretary Sindh and others (2013 SCMR 1752), their services were affected by the Notifications of their repatriation by the judgment of learned Tribunal, although neither they were deputationist nor they were absorbed from such position rather they were employed through Notifications duly issued by the Sindh Government with the status of Civil Servant. He lastly prayed for directions to the Respondent-Sindh Government to issue Notification of his retirement from service of Sindh Government as he has rendered more than qualifying pensionable service in Irrigation Department of Government of Sindh. He next submitted that the Respondents have already issued such Notification of retirement of his colleague (Jam Mitha Khan); therefore, he is entitled to the similar treatment being a retired employee of the Irrigation Department, Government of Sindh. In the alternative, he prayed for allowing both the petitions as prayed.

6. Syed Ali Ahmed Zaidi learned counsel for the petitioner in C.P. No. D-3590 of 2020, reiterated the facts as discussed in both the petitions bearing No. D-1661 of 2019 and No. D-1662 of 2019 (supra). However, at the outset, he states that the petitioner is ready and willing to join the WAPDA as per the direction of the learned SST, however, WAPDA is reluctant to accept his joining even though their Civil Appeal No.138-K of 2019 arising out of the judgment dated 18.3.2016 passed by the learned SST in Appeal No.1274/2015 was dismissed by the Hon'ble Supreme Court vide order dated 12.1.2021. Lastly, he seeks implementation of the judgment passed by the Hon'ble Supreme Court in Ali Azhar Khan Baloch's case reported as 2015 SCMR 456.

7. Dr. Rana Khan, learned counsel representing WAPDA, has opposed the assertion of the petitioners and has raised the question of maintainability of these petitions and referred to the para-wise comments filed on behalf of WAPDA and argued that Sindh Government vide notifications dated 25.9.1980 and 03.07.1988 took over the charge of the Scheme along with employees including the petitioners as such they are now permanent employees of Sindh Government and WAPDA has nothing to do with them. She further argued that their lien was terminated with WAPDA and all of their pensionary benefits were

transferred to Sindh Government. In support of her contention, she relied upon Section 16 of the WAPDA Act, 1958, and argued that the Federal Government was empowered to direct the WAPDA to handover any scheme to the Provincial Government for carrying out the purpose of the project. She further relied upon the Rule 9-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 (APT Rules) and argued that the petitioners' permanent en-block transfer from WAPDA to Irrigation and Power Department, Government of Sindh, was/is a policy decision, thus they were relieved from WAPDA, consequently, their lien in WAPDA was also terminated and all pension contribution and benefits were transferred to Sindh Government and it is for the Sindh Government to take care of their employees and not WAPDA. She further relied upon judgment dated 23.09.2019 passed by this court in C.P. No. D-1511 of 2019 as discussed supra and argued that the case of petitioners may be decided in ratio thereof.

8. Mr. Muhammad Nishat Warsi, learned DAG has supported the stance of learned counsel representing the WAPDA.

9. Mr. Ali Safdar Depar learned AAG has raised a similar question of the maintainability of these petitions. However, in principle, he agreed that the case of petitioner Sayed Noor Ahmed Shah, however, is akin as decided by this Court in C.P. No. D-1511 of 2019 vide judgment dated 23.09.2019 on the premise the petitioner has already attained the age of superannuation, however, he further states that the rest of the petitions i.e. are required to be decided on its merit.

10. We have heard the learned Counsel for the parties and perused the entire material available on record.

11. Prima-facie, the petitioners were transferred from WAPDA along with staff en-block, assets including machinery and equipment, residential colonies, tube wells, etc., long ago. The only exception which has been put forward is that the colleague of the Petitioner filed Criminal Original Petition No.121/2013 before the Hon'ble Supreme Court of Pakistan against non-repatriation of the Petitioner to his parent department i.e. WAPDA; that the matter was taken up by the Hon'ble Supreme Court and the Respondent-Irrigation Department, Government of Sindh supported the stance of the colleagues of the Petitioners with the assertion that they were absorbed in Irrigation and Power Department, Government of Sindh permanently along with tube wells, etc. with the terms and conditions mentioned in the Notifications dated 30.7.1988 and 25.9.1980. However, the Hon'ble Supreme Court during hearings of the Review Petitions filed against the Judgment dated 12.6.2013 passed in Criminal Original Petition No.89/2011 directed for repatriation of their one colleague namely Jam Mitha

Khan. Resultantly he was repatriated to WAPDA vide Services General Administration and Coordination Department's Notification dated 2.3.2015, such compliance report was submitted before the Hon'ble Supreme Court, during the hearing on 4.3.2015 which order was passed with directions to the Secretary Establishment Division to take steps to comply with the directions contained in the Judgment in Review Petition No.193/2013 dated 5.1.2015. He being aggrieved by and dissatisfied with the aforesaid order filed Review Petition No.98/2015. Respondent-department had filed Concise Statement in the above-referred Petition vide CMA No.170/2016, in the said Statement they took the same stance as discussed supra. The Hon'ble Supreme Court vide its order dated 13.2.2019 disposed of the Review Petitions filed by him and others with directions, to the Courts before whom the matters are instituted by the affected employees, to decide expeditiously preferably within six months. Finally, upon approach, this Court vide judgment dated 23.9.2019 passed, in CP No. D-1511/2019 directed the Sindh Government to pay him all the perks and privileges to which he was entitled on the date of issuance of notification of his repatriation to WAPDA, inclusive of his entire pensionary benefits within two months.

12. We are cognizant of the fact that there are conclusive findings of the Honorable Supreme Court in the related matters; and, the subject matters could be looked into that perspective. For convenience sake, an excerpt of the order dated 13.02.2019 passed by the Honorable Supreme Court is as under: -

“We have heard the learned counsel for the petitioners in these cases and are of the view that the petitioners are, in fact, seeking implementation of the judgments of this Court reported as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752). Some of the petitioners are saying that on the basis of misinterpretation of the said judgments their services have been affected in that orders for repatriation have been issued, despite the fact that neither they were deputationists nor were they absorbed from such positions rather they were employed through notifications duly issued by the Sindh Government with the status of Civil Servants. Whether such a status could be enjoyed by the petitioners or not, the same has to be looked into individually in each and every case and also the policy of the Sindh Government and the relevant law governing the matter of employment and induction in the Civil Service of Government of Sindh and obviously this Court in the present circumstances cannot take such exercise. More appropriate mode by which all these disputes can be resolved is that the employees alleged to have been effected by the judgments of this Court referred to above should avail the remedy under the law, particularly, under Article 187(2) of the Constitution of Islamic Republic of Sindh, 1973 which gives powers to the High Court to examine the judgment of this Court and also to enforce it in accordance with law.

2. Having said this, the learned counsel for the parties agree to this mode of disposal of the above cases in that the affected employees will be free to agitate their matters in the manner as noted above. Accordingly, all the listed petitions along with CMAs are disposed of. The Courts before whom the matters are instituted by the affected

employees may deal and decide the same expeditiously preferably within a period of six months.”

13. The crux of the legal submissions of the learned counsel for the petitioners in both the petitions bearing No. D-1661 of 2019 and No. D-1662 of 2019 is that their case does explicitly falls within the basic concept of Rule 9-A of APT Rules, 1974, on the premise that they were originally appointed by WAPDA from where they were permanently taken over by the Government of Sindh along with its staff and machinery and thereafter they were permanently absorbed in Sindh Government by treating them as civil servants. In principle, we do not agree with the aforesaid assertion. In our view, Rule 9-A does not envisage such eventuality as WAPDA is still functional, though it has transferred the project with the employees. The basic concept of Rule 9-A of APT Rules, 1974, is that a person who has been rendered surplus on account of abolition of a post of the Government or any autonomous body or on account of permanently taking over the administration of such autonomous body wholly or partially by the Government of Sindh may be appointed to any post in any Department of the Government with the following conditions:

“(i) Such persons possesses each qualification as are laid down under rule 3(2), for appointment to such post;

(ii) Such person shall be appointed to a post of equivalent or comparable Basic Scale and if such post is not available, then to a post of lower Basic Scale;

(iii) Seniority of such person in the new cadre shall be reckoned from the date of appointment in that cadre; and

(iv) Previous service, if not pensionable, shall not count for pension and gratuity unless Government directs otherwise.”

14. Next we take up the question as to whether the post of the Petitioners was abolished before their absorption in Sindh Government, in the light of Rule 9-A. The term ‘abolition of post’ is not defined in the Sindh Civil Servant Act 1973, however, this expression is used in Rule 9- A of APT Rules 1974. On this question the Hon’ble Supreme Court has held in paragraph No.139 in the case of Ali Azhar Khan Baloch (supra) that:

“A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case if the department requires restructuring, reform, or to meet the exigency of services in the public interest. The department can abolish a post for justiciable reason. Therefore, in the future, if a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition”. (Emphasis Added)

15. The Petitioners namely Syed Noor Hussain Shah and Muhammad Nawaz Soomro claim that on account of abolition of their posts they were absorbed in the Irrigation Department, Government of Sindh, through Notifications dated 10.08.1992 and 28.4.1994. For convenience the said Notifications are reproduced as under:

“NOTIFICATION

No.A-I/2-3/91(BS). With the approval of the competent authority, on transfer of the administrative control of 397 completed Tubewells viz Tubewell Division Pano Akil at Ghotki, M/s Mohammad Nawaz Soomro and Muhammad Soomar Chanio, Junior Engineers of WAPDA are hereby absorbed as Assistant Executive Engineer in BPS-17, in this department from the dates they assume charge of the newly created Tubewell Sub-Division of Pano Akil Tubewell Division at Ghotki.

2. Their terms and conditions regarding seniority will be settled separately.

MUHAMMAD IDRIS RAJPUT
SECRETARY TO GOVERNMENT OF SINDH

NOTIFICATION

No.A-I/10-27/94-II. With the approval of the Competent Authority on transfer of the Administrative Control of Completed parts of North Dadu Drainage Project (Phase-I) with effect from 1-1-1994, from Project Director, North Dadu Drainage WAPDA, Sukkur to Irrigation and Power Department M/s Jalal Uddin Jyo and Syed Noor Hussain Shah, Junior Engineers (Civil) in BPS-17, WAPDA, are hereby absorbed as Assistant Executive Engineer (Civil) in Irrigation and Power Department from the date they assume the charge.

2. Their seniority in the cadre of Assistant Executive Engineer (Civil) BPS-17 in Irrigation and Power Department will be reckoned from the date of assumption.

3. Their further posting orders are being issued separately.

SYED ALI GOHAR SHAH
SECRETARY TO GOVERNMENT OF SINDH”

16. On perusal of the Notifications (supra), we find that Rule 9-A of APT Rules, 1974 was not resorted to when the posts of the Petitioners were purportedly abolished. We are of the view that this Rule can only be attracted when a person has been rendered surplus on account of abolition of a post he was holding in any office or department of the Government or any autonomous body or on account of permanently taking over the Administration of such autonomous body wholly or partially by the Government. Whereas, prima facie, only certain schemes i.e. (i) SCARP North Rohri Project (ii) Right Bank Tubewell Division Ratodero (iii) Larkana/Shikarpur Reclamation Project (iv) Tile Drainage Division Khairpur (v) SCARP South Rohri Project (vi) Ghotki Fresh Ground Water Project (vii) LBOD (Core Programme) Spinal Drain Division and (viii) North Dadu Drainage Division Larkana, LBOD Stage-I Project, were transferred to the irrigation department Government of Sindh along with staff members. The Hon’ble Supreme Court in Criminal Original Petition 89 /2011(supra) has already dilated upon the scope of Rule 9-A of APT Rules 1974.

17. It would be seen that under what circumstances, the person can be declared surplus employee and may be absorbed in another department of the Government of Sindh. This aspect of the case has already been addressed and settled in the judgment of the Hon’ble Supreme Court (supra) that without the concurrence of S&GAD the posts cannot be abolished.

18. We are of the view that in absence of such Notification of Government of Sindh declaring the Petitioners to be surplus employees, the Petitioners cannot be said to be surplus employees, as the Administration of WPDA was not taken over by the Government of Sindh. Further, there is no such Notification on record which may show that the Petitioners' posts were abolished in WAPDA and they were declared surplus employees, before their absorption in the irrigation department Government of Sindh. The Petitioners failed to demonstrate that they meet the criteria and test laid down by the Hon'ble Supreme Court in Criminal Original Petition No.89/2011 in Paragraph 126 (Supra).

19. In our view, once the Hon'ble Supreme Court has passed the order dated 01.08.2016 in the terms that any official working on deputation or otherwise absorbed shall immediately report back to his parent department, this Court cannot take a contrary view of the same. In this context the Hon'ble Supreme Court in the order dated 27.09.2016 passed in Criminal Original Petition No.106 to 111 of 2016 has held as follows: -

“Once the employees were de-notified in compliance with the judgments of this Court, the employees aggrieved have to approach this Court in review instead of obtaining interim orders from the Sindh High Court.” (Emphasis Added).

20. The similar view was also taken earlier in the order dated 02.02.2016 passed by the Hon'ble Supreme Court, in CMA No.243/2016, in the aforesaid case as follows:

“It has been observed in the Judgment reported as Ali Azhar Khan Bloch (supra) that once the officer is de-notified by the Sindh Government pursuant to the Judgment and /or orders of this Court no Court including the High Court can pass an order suspending such notification. If an officer who was de-notified has any grievance he has to approach this Court by filing review, therefore, any order of the High Court either interim or otherwise will not come in the way of said Government.” (Emphasis Added)

21. We have seen the Notifications/Office Orders whereby a lien of the Petitioners was terminated with WAPDA with effect from the date of the permanent transfer to the Irrigation and Power Department, Government of Sindh, which stood revived since the learned SST ordered their repatriation to their parent department. Besides above, the scope of Article 199 of the Constitution has become limited, in presence of the findings of learned SST, endorsed by the Hon'ble Supreme Court of Pakistan vide order dated 26.03.2018 as discussed supra as well as the order dated 09.12.2019 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.3815/2019; and, other orders on the subject issue; and, the aforesaid judgment/order of the Hon'ble Supreme Court of Pakistan can be enforced under Article 187(2) of the Constitution.

22. In the given circumstances, instead of traveling into the merits of the case of petitioner namely Syed Noor Hussain Shah; since, he has been reported to have retired from service, during litigation; and, he has not joined WAPDA. Besides the notification of his repatriation has not been given effect. We may also notice that judgment of the Honorable Supreme Court does not apply to the retired employees as on retirement; as they do not affect the seniority, promotion, or any other benefit of the serving employees. We, in the circumstances of the present case and with the consent of learned AAG, are constrained to direct Sindh Government to pay all his perks and privileges to which he was entitled on the issuance of notification of his repatriation, inclusive of his entire pensionary benefits within [02] months, and report compliance through MIT-II of this court. The instant Petition C.P. No. D-1661 of 2019 stands disposed of in the above terms.

23. The Petitions C.P. No. D-1662 of 2019 and C.P. No. D-3590 of 2020 are disposed of in the terms of paragraph 35(iii) of the judgment dated 18.03.2016 passed by learned Sindh Service Tribunal maintained by the Honorable Supreme Court vide order dated 26.03.2018 passed in Civil Petition No.266-K and 1074 of 2016, resultantly the competent authority of respondent-WAPDA is directed to comply with the ratio of the aforesaid judgments in its letter and spirit and allow them joining from the date of their repatriation by the Sindh Government vide notification dated 5.7.2018 and the issue of their salary, for the intervening period, shall be decided by the competent authority of respondent-WAPDA accordingly within one month. In the meanwhile, the respondent Sindh Government is directed to return all pensionary benefits of the petitioners to WAPDA forthwith so that in case of their retirement in the future, the same be disbursed to them under the law.

24. All the Petitions stand disposed of in the above terms.

JUDGE

JUDGE

Nadir