

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-2423 of 2015

Abdul Shakoor
Petitioner through : Mr. Rafiq Kalwar, advocate

Respondent
through: : Mr. Yawar Faruqi, advocate &
Mr. Muhammad Nishat Warsi, DAG

Date of hearing
& order : **07.02.2022**

ORDER

Through this petition, the petitioner seeks reinstatement of his service under Sacked Employees (Reinstatement) Act, 2010.

2. We asked the learned counsel as to how this petition is maintainable in the light of the ratio of the order dated 17.12.2021 passed by the Hon'ble Supreme Court of Pakistan in Civil Review Petitions Nos.292 to 302 of 2021 and other connected civil review petitions along with CMAs and Civil Misc. Appeals, whereby review petitions of the aggrieved parties were dismissed with the following observation:

- i. Employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) did not require any aptitude or scholastic or sill test, for appointment thereon, shall be restored from the date of the judgment under review to the posts they were holding on the same terms and conditions of service applicable on the date of their termination pursuant to the judgment under review.
- ii. Such other employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) required the passing of any aptitude or scholastic or sill test, for appointment thereon shall from the date of the judgment under review be restored to their said posts on the same terms and conditions of service applicable on the date of their initial termination.
- iii. Any improvement in the terms and conditions of service of all the restored employees shall be granted strictly in accordance with the laws and in the absence thereof by regulations laid down for this purpose by their respective employers.
- iv. The relief granted in sub-paragraphs (i) and (ii) above shall not be granted to employees whose initial termination of service (from 01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a Court of law."

3. Mr. Rafiq Kalwar, learned counsel for the petitioner, mainly contended that the petitioner was appointed during the period of 01.11.1993 and 30.11.1996 and was sacked during the period of 01.11.1996 to 12.10.1999, hence, his case falls within the ambit of the scheme provided by the Ordinance 2009 and Sacked Employees (Reinstatement) Act, 2010; that the case of the petitioner squarely falls within the ambit of paragraph 2(ii) of the order dated 07.12.2021 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matters. Per learned counsel, the petitioner was holding the post of Messenger in respondent-NBP at the relevant point in time and the Hon'ble Supreme Court of Pakistan has ordered for restoration of the service of such employees, thus the respondent-NBP is required to enforce paragraph 2(ii) of the order passed by the Hon'ble

Supreme Court of Pakistan in its letter and spirit; that the Hon'ble Supreme Court of Pakistan has also granted relief, therefore, in terms of Article 25 of the Constitution, the petitioner is also entitled to the same relief; and, the delay in reinstatement of service of the petitioner after the order passed by the Hon'ble Supreme Court of Pakistan violates Article 9 of the Constitution, depriving the petitioner of his right to reinstatement. He prayed for allowing the instant petition.

4. Mr. Yawar Faruqi, learned counsel for the respondent-NBP, has argued that on 14.2.2009, an Ordinance was promulgated for reinstatement of Sacked Employees i.e. Sacked Employees (Re-instatement) Ordinance 2009, thereafter same was again extended in 2010 and ultimately such legislation attained its finality through the Sacked Employees Act, 2010, thereafter the said Act has been declared by the Hon'ble Supreme Court of Pakistan to be violative of inter alia Articles 25,18,9 and 4 of the Constitution of the Islamic Republic of Pakistan, therefore, voids under the provisions of Article 8 of the Constitution, hence judgment of the Apex Court is in the field, hence employer is bound to obey that judgment; petitioner, if aggrieved, can approach the Hon'ble Apex Court by filing review application or to avail appropriate remedy under the law. Learned DAG also adopted those arguments.

5. Without prejudice to the above, it may safely be added that since the Hon'ble Supreme Court of Pakistan has already declared the legislation namely the Sacked Employees (Reinstatement) Act, 2010 to be violative of inter alia Articles 25,18,9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, no further order on the subject legislation is required. However, we are only concerned with the enforcement of the order dated 17.12.2021 passed by the Hon'ble Supreme Court of Pakistan in Review Petitions as discussed supra, whereby the Hon'ble Supreme Court of Pakistan in paragraph 2(ii) has held that such other employees who were holding posts on the date of their initial termination of service required the passing of any aptitude or scholastic or skill test, for appointment thereon, shall from the date of the judgment under review be restored to their said posts on the same terms and conditions of service applicable on the date of their initial termination. Prima facie, the case of the petitioner falls within paragraph 2(ii) of the order of the Hon'ble Supreme Court of Pakistan as discussed supra, therefore, this matter is remitted to the competent authority of respondent-NBP to look into the matter of the petitioner and apply the ratio of the order dated 17.12.2021 passed by the Hon'ble Supreme Court of Pakistan in his case and pass a speaking order on the subject issue if he disagrees with the ratio of paragraph 2(ii) of the order of the Hon'ble Supreme Court of Pakistan, within a reasonable time. Let a copy of this order be transmitted to the President, National Bank of Pakistan, for compliance.

This petition stands disposed of in the above terms.

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