

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-2422 of 2015

Date

Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

Petitioner:

Abdul Sami,
Through Mr. Rafiq Ahmed Kalwar,
Advocate.

Respondent No.1:

Federation of Pakistan
Through Syed Yasir Ahmed Shah,
Assistant Attorney General.

Respondent Nos. 2:

Pakistan Civil Aviation Authority
Through Mr. Khalid Mehmood
Siddiqui, Advocate.

For order as to maintainability of petition.

Date of hearing:

20.09.2022.

Date of Order:

20.09.2022.

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner seeks Re-instatement in terms of the Sacked Employees (Re-instatement) Act, 2010) and while confronted that the said Act has been declared as *ultra vires* by the Honourable Supreme Court in its Judgment dated 17.08.2021 passed in Civil Appeal 491 of 2012 and other connected matters, learned Counsel for the Petitioner has relied upon Order dated 07.02.2022 passed by a Division Bench of this Court in C.P No. D-2423 of 2015 and submits that the case of the Petitioner is identical as above and is fully covered pursuant to para-2(ii) of the Review Order passed on 17.12.2021 in Civil Review Petitions Nos. 292 to 302 of 2021 and others, and therefore, the same benefit may be granted to the petitioner.

2. After perusal of the record and the orders as referred to above, we are of the view that the Petitioner's case does not fall in the category so specified by the Honourable Supreme in its Review Petitions vide Order dated 17.12.2021. Para-2(ii) of the said order reads as under:-

*“2. However, in exercise of the Court's jurisdiction under Article 184(3) of the Constitution read with Article 187, we have taken into consideration the services rendered by the **re-instated employees** of the “employers” [as defined in Section 2(d) of the Act] and hereby order that:*

- i.*
- 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 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.”

3. From perusal of the above order, it appears that after dismissal of the Review Petitions, the Honourable Supreme Court while exercising its jurisdiction under Article 184(3) read with Article 187 of the Constitution observed that taking into consideration the services rendered by the re-instated employees of the employer who were holding posts on the date of their initial termination of service from 01.11.1996 to 12.10.1999 which required passing of any aptitude or scholastic or skill test, for appointment from the date of judgment under review be restored on the same terms and conditions of service. Admittedly, the Petitioner, as of today, still stands terminated and in fact approached this Court after lapse of five years from promulgation of the 2010 Act, whereas, petition remained pending for one reason or the other, and no serious efforts were made on behalf of the Petitioner to seek any relief from the Court, whereas, in the interregnum, the Act has been declared ultra vires. Since the Petitioner was not an employee, who was re-instated pursuant to the 2010 Act, which Act, as of today, is *non-est*; hence we under this Constitutional jurisdiction cannot re-instate the Petitioner, whereas, the benefit as above, granted by the Hon'ble supreme Court only applies to person(s), who stood re-instated pursuant to the 2010 Act. Insofar as the order dated 07.02.2022 passed by a Division Bench of this Court in C.P No. D-2423 of 2015 is concerned, it appears that no proper assistance was provided to the Court in that case as apparently the order appears to be in violation of the order of the Hon'ble Supreme Court; hence, is per-incuriam.

4. In view of hereinabove facts and circumstances of this case, Petition does not merit consideration and is hereby dismissed.

J U D G E

J U D G E

Ayaz