HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-2002 of 2018
[Hyderabad Electronic Supply Company vs. The Government of Pakistan and others]

C.P. No.D-1583 of 2019
[Muhammad Ilyas vs. Federation of Pakistan and others]

Before:
JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner/Respondent: HESCO in C.P No.D-2002/2018 & 1583/2019	Through Mr. Muhammad Arshad Pathan, Advocate
Respondent/Petitioner: M. Ilyas in C.P No.D-1583/2019 &-2002/2018	Through Mr. Bisharat Ali Memon, Advocate
Federation of Pakistan:	Through Mr. Ghulam Abbas Sangi, Assistant Attorney General
Date of hearing	03.11.2026
Date of Decision	03.11.2026

O R D E R

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ADNAN-UL-KARIM MEMON J The petitioner, Hyderabad Electric Supply Company (HESCO), has challenged the order dated 16.11.2016 passed by the Sacked Employees Review Board, whereby private respondent Muhammad Ilyas, formerly appointed as Driver (BPS-06) on temporary contingent basis vide order dated 10.08.1993, was directed to be reinstated in service without back benefits, with the intervening period to count towards continuity of service and pensionary benefits.

2. Learned counsel for HESCO contends that his temporary engagement was extended only up to 1995 and that his services were discontinued due to non-requirement, without any further extension. It maintains that he was neither a regular employee nor a sacked employee within the meaning of Sacked Employees (Reinstatement) Act, 2010, and that the Review Board lacked jurisdiction to entertain his belated claim after a lapse of more than 17 years. Accordingly, HESCO seeks setting aside of the impugned order.

3. Learned counsel for private respondent No.3 contends that respondent No.3 was appointed as Vehicle Driver (BPS-06) on 10.08.1993 and served for about three years and eleven months before being relieved without notice or assigning any reason vide letter dated 25.07.1997. He approached the Sacked Employees Review Board, which allowed his claim vide order dated 16.11.2016 and directed

his reinstatement; that despite subsequent directions issued by the Establishment Division, HESCO failed to implement the order. He therefore seeks enforcement of the Review Board's decision and restoration of his service.

4. Learned AAG submitted that the Review Board had approved Muhammad Ilyas's reinstatement vide order dated 16.11.2016 and subsequently reiterated the direction through its letter dated 08.11.2018. However, the Supreme Court, through judgments dated 17.08.2021 and 17.12.2021, declared the Sacked Employees (Reinstatement) Act, 2010 unconstitutional, while granting conditional relief to certain beneficiary employees. The respondent's case was accordingly forwarded to the Power Division for further necessary action.

5. Petitioner in CP No. D-1583/2019 submits that he was appointed as Vehicle Driver (BPS-06) on temporary basis vide order dated 10.08.1993 and served for approximately three years and eleven months before being relieved from service without assigning any reason or issuing a show-cause notice vide letter dated 25.07.1997. Being aggrieved, he approached the Sacked Employees Review Board, which allowed his claim vide order dated 16.11.2016 and directed his reinstatement within 30 days. Despite subsequent directions issued by the Establishment Division vide letters dated 27.12.2016 and 08.11.2018, HESCO failed to implement the order. The petitioner claims that he reported for duty on 26.11.2018 but was not allowed to join. He has, therefore, filed the instant petition seeking implementation of the Review Board's order, permission to resume duty and payment of salary.

6. Learned counsel for HESCO contends that his temporary engagement was extended only up to 1995 and that his services were discontinued due to non-requirement, without any further extension. It maintains that he was neither a regular employee nor a sacked employee within the meaning of the Sacked Employees (Reinstatement) Act, 2010, and that the Review Board lacked jurisdiction to entertain his belated claim after a lapse of more than 17 years. Accordingly, HESCO seeks setting aside of the impugned order.

7. We have heard learned counsel for the parties and examined the available record in the light of judgments rendered by the Supreme Court of Pakistan in Muhammad Afzal v. Secretary Establishment Division (2021 SCMR 1569) and Hadayat Ullah and others v. Federation of Pakistan and others (PLD 2022 SC 64).

8. It is an admitted position that the private respondent was initially appointed as Vehicle Driver (BPS-06) vide order dated 10.08.1993 and was subsequently relieved from service vide letter dated 25.07.1997. His claim for reinstatement was accepted by the Sacked Employees Review Board vide order dated 16.11.2016 under the Sacked Employees (Reinstatement) Act, 2010. However, the constitutional validity of the said Act was subsequently examined by the Supreme

Court, which, vide judgment dated 17.08.2021, declared the Act unconstitutional. The said determination was maintained by the majority judgment dated 17.12.2021, whereby the review petitions were dismissed and the Act was again declared violative of Articles 4, 9, 18 and 25 of the Constitution and void under Article 8 thereof.

9. The directions issued by the Supreme Court on 17.12.2021 for restoration of certain employees were confined to the categories specified therein, subject to the nature of posts, prescribed aptitude or skill tests and the grounds of their initial termination. Such directions cannot be construed as granting an unconditional right of reinstatement to every person whose claim had earlier been accepted by the Review Board.

10. In the present case, the private respondent's initial appointment dated 10.08.1993, prima facie, falls outside the prescribed period of 01.11.1993 to 30.11.1996 contemplated under the Sacked Employees (Reinstatement) Act, 2010. Moreover, he was not actually reinstated pursuant to Review Board's order before declaration of the Act as unconstitutional. Consequently, he cannot claim automatic reinstatement merely on the basis of the impugned order dated 16.11.2016.

11 In view of the foregoing, the impugned order passed by the Sacked Employees Review Board, having been founded upon legislation subsequently declared unconstitutional by the Supreme Court, cannot be enforced independently. We, therefore, find that the petitioner HESCO has made out a case for interference. Accordingly, C.P. No.D-2002/2018 is allowed and the impugned order dated 16.11.2016 passed by the Sacked Employees Review Board is set aside, whereas CP No. D- 1583/2019 filed by petitioner Muhammad Ilyas, seeking implementation of the said order, is dismissed. However, this order shall not preclude the private respondent from pursuing any independent remedy available to him under the relevant service or labour laws, if otherwise maintainable.

JUDGE

JUDGE

Karar_Hussain/PS*