

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-214 of 2011

Javed Hussain Langha & others

Versus

Government of Pakistan & others

BEFORE:

Mr. Justice Faisal Arab

Mr. Justice Mohammad Shafi Siddiqui

Date of Hearing: 24.10.2012

Petitioner: Through Ms. Beenish Qureshi Advocate

Respondent No.1 Through Mr. Munir-ur-Rahman DAG

Respondents No.2 to 4: Through Mr. Yasir Ahmed Shah Advocate

Interveners: through Mr. M.M. Aqil Awan Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- By short order dated 24.10.2012 this petition was allowed and following are the detailed reasons for the same .

2. The petitioners in this petition have prayed as follows:

- “(a) Declare that the provisions of Section 4(A) & (B) of Act XXII of 2010 provide for different, distinct and independent classification whereby the petitioners path of promotion cannot in any manner be blocked by employees being on contract basis are reinstated over and above the petitioner.
- (ii) Restrain the respondents their servants, agents and all persons acting through or under them from enforcing, implementing and or executing the provisions of Section 4(A) & 4(B) of Act XXII of 2010 different to what the legislative intent is and blocking the way of the petitioners on their path of promotion.
- (iii) Direct the respondent to promote the employees, whose promotions are due, against the seats created under Re-organization/Re-structuring firstly then absorb the sacked employees on the leftover seats if any, if the authority so desires.
- (iv) Declare that the contractual employees appointed against PC-I posts have no vested right to be regularized.
- (v) Grant any other relief/reliefs which this Honourable Court deems fit and proper in the circumstances of the case.

(vi) Grant cost of the petition.”

3. The brief facts leading to filing of the present petition are that the petitioner who were working in BS-17 and BS-18 with National Highway Authority have joined service between 11.3.2004 to 1.11.2006. On 14.2.2009 Ordinance of 2009 was promulgated which was aimed to cater the sacked employees of corporation services, autonomous or semi autonomous bodies or the government service. The said Ordinance hereinafter referred to as the SERO 2009. Section 6 of the said Ordinance deals with the procedure of reinstatement of the dismissed, removed and terminated employees. Subsequently on 08.12.2010, Act No. XXIIInd of 2010 was passed and published in Gazette of Pakistan which too was aimed to cater the sacked persons in corporation service, autonomous or semis autonomous bodies or in government service. Period of appointment of employees which is covered by the Act was from 1.11.993 to 30.11.1996 and also covered the period when they were removed from service i.e. from 01.11.1996 to 12.10.1999. The said Act by virtue of Section 4 deals with all categories of sacked employees be it permanent, temporary, regular, adhoc or on contract basis.

4. It is contended by the petitioner’s Counsel that pursuant to the promulgation of said Act, the office order dated 15.1.2011 issued by Administration Wing of National Highway Authority under section 4(a) of the Act and with the approval of Chairman

and through this office order reinstatement under Ordinance 2009 held at the strength of National Highway Authority were directed to be appointed on regular strength of National Highway Authority on one scale above to the substantive scale with three years back benefits w.e.f the date of reinstatement. In terms of para-4 of the said letter dated 15.1.2011 No.21(5)-Admn(P)/NHA/2004/605 the earlier office Order No. 21(5)adm. (P)/NHA/2011/601 dated 12.1.2011 under section 4(b) under Sacked Employees Reinstatement Act, 2010 stood cancelled/withdrawn. It is contended that there was another office order dated 15.1.2011 pursuant to Section 4(a) bearing Admn No. 21(5)adm. (P)/NHA/2011/606, was made effective.

5. Per learned Counsel for the petitioner keeping in view the concept of PC-I in the National Highway Authority which comes into play as and when there is new project which is to be executed, enforced and implemented and the costing of the said project envelopes the costing of personnel hired for the said project in PC-1 along with whom are certain personnel sent in working be it on regular cadre and/or on contract basis from the NHA

6. Keeping in view the Ordinance and the Act and service rules of NHA and for maintaining transparency an office order was issued whereby the implementation of Sacked Employees Reinstatement Act, 2010 was to provide transparency and consequently the Member Administration of NHA appointed Committee to scrutinize cases of all sacked employees in the light of the record and Sacked

Employees Reinstatement Act, 2010 which was complied vide office Order dated 12.1.2011. In terms of the said recommendations all employees appointed in NHA during period from 1.11.1993 to 30.11.1996 (both dates inclusive) and were dismissed, removed or terminated from service during the period from 1.11.1996 to 12.10.1999 (both dates inclusive) falls in section 4(b). A sacked employee appointed on contract basis against a regular or a temporary post and dismissed, removed or terminated from service before or after expiry of the contract period and whether or not he was again appointed and allowed to complete the period of contract irrespective of the fact that whether a letter or notification for dismissal removal or termination of the sacked employee's service or expiry of the contract was issued or not shall be reinstated and regularized against a regular post of the same scale, grade, cadre, group, post or designation whatever the case may be in regular service of the employer.— Apart from the above recommendation on 12.1.2011 regarding reinstatement of sacked employees various other aspects were digested in the said recommendation for reinstatement of sacked employees, recommendation of Committee followed by the procedure to be undertaken.

7. Learned Counsel submits that earlier the matter was taken up by the NHA in their XXIIInd meeting held on 19.5.2009 for the creation/establishment of Regional General Managers on Sukkur and Khuzdar with four maintenance units each and certain posts were created which stood merged with existing posts. Learned Counsel

submits that pursuant to directives of Federal Minister Communication/ President NHC dated 18.4.2012 all sacked employees who were initially appointed on contract in NHA and reinstated under SERA in national highway authority in one scale up to their substantive pay scale were awarded designation of their post according to their pay-scale as provided in Schedule IV of the NHA appointment & Promotion Rules. Such designation was said to be construed from the date of their reinstatement in NHA under SERA 2010. Learned Counsel submits that the action of the respondent enforcing and implementing the provision of 4(a) & 4(b) of the Act XXIIInd of 2010 to reinstate contract employees to become regular one scale higher to their substantive scale and blocked the promotion of the petitioners and that the recommendations of the Cabinet Division is against the spirit of Act XXIIInd of 2010.

8. Mr. Aqil Awan learned Counsel for the Interveners whose interest is involved and who were claimed to be appointed on contract basis argued that in no way the petitioners' seniority or promotion is effected by reinstating them in terms of 4(a) of the SERA 2010 as they have been kept as junior most to Grade-17 which in no way has affected the rights of promotion of the petitioner. Learned Counsel contended that the petitioners are not aggrieved from the reinstatement but they are aggrieved of their treatment under section 4(a) of the above Act.

9. Mr. Aqil Awan submits that though they are beneficiaries of section 4(a) of the Act *supra* but their reinstatement has not caused any prejudice to the petitioners. He

concedes that they are the contract employees, however, they are still covered by section 4(a) in terms of the word “or otherwise”, as mentioned therein. He claimed that the case of contract employees is also covered by section 4(a) and hence the petitioners are not aggrieved nor the Interveners are dealt with wrongly/ unlawfully in terms of section 4(a).

10. Learned Counsel submits that in a meeting of the Cabinet Sub Committee headed by the Minister of Labour & Man Power held on 13.1.2011, directions were given to the authority to reinstate all sacked employees under section 4(a) of the SERA 2010. The matter was then placed before the Chairman, NHA who directed such reinstatement as per such instructions. Learned Counsel submits that since the petitioners have not challenged the vires of 2010 either as whole or in part, therefore, the petitioners being employees of Grade-17, the scope of this petition would be confined to employees of BPS-17 who were reinstated in pursuance to the section 4(a) of the Act. Learned Counsel further submits that interpretation of section 4(a) to the extent of applicability of the same on the employees who were at the time of their removal from service were in BPS-17 and had been reinstated cannot be undertaken as having not impleaded all of them as party. He submits that although the Interveners who were appointed on contract basis and were treated in terms of section 4(a) of the Act at the time of their reinstatement and allowed one scale above viz BPS-18 but have not been posted to the post of Deputy Director which falls in

Grade-18 and they reserved right to raise this issue in separate legal remedy before NHA for posting them in BPS-18 and till such time they are posted as such, the petitioner are not aggrieved persons. Learned Counsel lastly submits that the prayers have become infructuous because of the parawise comments filed by the NHA and also on account that they have not been assigned any designation or post and that they are just drawing monetary benefits.

11. I have heard the learned Counsel and have gone through the record. In order to understand crucial points involved in the instant petition and in order to understand the application of said Act and Ordinance the same is reproduced as under:

Section 4 of the SERA 2010

“4. Re-instatement of employees in service and regularization of employees’ service.-----Notwithstanding any thing contained in any law for the time being in force, or any judgment of any tribunal or any Court including the Supreme Court and a High Court or any terms and conditions of appointment on contract basis or otherwise, all sacked employees shall be re-instated in service and their service shall be regularized with effect from the date of enactment of this Act in the manner provided as under namely:

(a) A sacked employee appointed on permanent or temporary basis or regular or adhoc basis or otherwise in any corporation or Government service against a regular or temporary post shall be re-instated and regularized in

regular service of the employer on one scale higher to his substantive scale, grade, cadre, group, post or designation , whatever the case may be, held by the sacked employee at the time of his dismissal, removal or termination from service or at the time forced golden handshake was given in the sacked employees.

(b) A sacked employee appointed on contract basis against a regular or a temporary post and dismissed, removed or terminated from service before or after expiry of the contract period and whether or not he was again appointed and allowed to complete the period contract irrespective of the fact ahta whether a letter or notification for dismissal, removal or termination of the sacked employee's service or expiry of the contract was issued or not, shall be re-instated and regularized against a regular psot of the same scale, grade, cadre, group, post or designation, whatever the case may be in regular service of the employer;----“

Section 6 of the Ordinance 2009

6. Reinstatement of contract employees. (1) A person in corporation or Government service who held the post on contract against a regular post and his contract was extended at least once and he was subsequently dismissed removed or terminated from service shall be reinstated immediately and adjusted against regular post.

(2) A person incorporation or Government service appointed on contract against a temporary post and who was dismissed, removed or terminated before the completion of his contract period shall be reinstated immediately for the remaining portion of his contract.”

12. It is an admitted fact that the Interveners were the contract employees and were reinstated pursuant to Ordinance of 2009 and Act XXIIInd of 2010. The Ordinance as well as the Act has categorized the reinstatements in two heads i.e. in terms of Ordinance a person in corporation or government service held post on contract against a regular post and his contract was extended at least once and he was subsequently dismissed from the service, shall be reinstated immediately and adjust against the regular post. The other limb of this section deals the person in corporation or government service appointed on contract basis against a temporary post who was dismissed, removed or terminated before completion of his contract period shall be reinstated immediately for the remaining portion of his contract. Thus it is clear from the above that a contract employee against a temporary post was to be reinstated for the remaining portion of his contract and he could not be considered at par with all those contract employee who were employed against a regular post. This was the position until the Ordinance was in force.

13. This was further elaborately explained when the Act was promulgated. In terms of section 4(a) of the said Act, a sacked employee appointed on permanent or

temporary post or regular or adhoc post or otherwise in any corporation or government service against a regular or temporary post shall be reinstated and regularized in regular service of the employees on one scale higher of his substantive scale, grade, cadre, group or post of designation, whatever the case may be, held by the said employee at the time of his dismissal from service or at the time forced golden handshake was given to the sacked employee.

14. Thus the language of the above section 4(a) needs no clarification that it is not meant for an employee who was appointed purely on contract basis. The word “temporary” used in subsection (a) of Section 4 or the word “otherwise” cannot be kept at par with the word “contract basis”.

15. Section 4(b) exclusively deals with the employees appointed on contract basis against a regular or a temporary post and dismissed, removed and terminated from service before or after expiry of the contract period and whether or not he was again appointed and was allowed to complete period of contract irrespective of the fact that whether letter or notification for dismissal, removal or termination of the sacked employees of service was issued or not, shall be reinstated and regularized on regular post on the same scale, grade, cadre, post or designation whatever the case may be for the regular employees. Thus it is clear that in terms of section 4(b) a contract employee has to be reinstated against a regular post on the same scale which was not the case in section 6(b) of the Ordinance 2009 when the said contract employee was

to be appointed only to the completion of the project. This, however, may not be relevant for the purpose of deciding issue between parties. The other significant part between sections 4(a) and 4(b) is that 4(a) deals with the reinstatement of the sacked employees appointed on permanent or temporary basis or regular or adhoc basis or otherwise to be reinstated in the regular service of the employer on one scale higher to his substantive scale, grade, cadre, post or designation which is not the case in section 4(b) of the Act where the sacked employee appointed on contract basis was to be reinstated on the same scale, grade, cadre, post or designation.

16. While phrasing two subsections of Section 4 the legislature kept in mind that two subsections i.e. 4(a) & 4(b) are meant for two different categories of employees. If the argument of the learned Counsel for the Intervener is considered to be correct then 4(b) becomes redundant and there seems no logic and wisdom in phrasing Section 4(b) in SERA Act 2010. Case of the contract employees thus is purely covered by section 4(b) and while interpreting Sections 4(a) and 4(b) and the words thereunder this has to be kept in mind that the legislature has enacted Section 4(b) especially for the contract employees. Had it been in the mind of the legislature that the contract employees will also be covered by Section 4(a) then there is no need for enacting subsection (b) of Section 4 and while applying principle of interpretation of statutes it makes sense that section 4(b) is different and distinct from Section 4(a) and went for two different categories of employees.

17. The arguments of the learned Counsel for the Interveners that the reinstatement of the contract employees in terms of section 4(a) does not prejudice the rights of the petitioner has no force and the arguments are misconceived. In the Counter affidavit/reply to the petition the Interveners themselves claimed that they have reserved their right of promotion in terms of section 4(a) then how they can be considered to be lawfully reinstated in terms of section 4(a) depriving the rights of all those employees who were appointed on permanent basis and who were required to be reinstated on one scale higher of his substantive scale, grade, cadre, group, post or designation. Even if the submission of the learned Counsel for the Interveners that they have not been posted or designated to a post higher than a grade-17, is taken into consideration even then the Court is required to see whether the petitioners and the Interveners are dealt with strictly in accordance with law and that the law has been enforced as required and that law has been properly implemented and interpreted. The recommendations of the Cabinet Division appears to be without application of mind when in terms of directives of the Federal Minister for Communication dated 08.4.2012 and 26.4.2012 respectively all sacked employees who were initially appointed on contract basis in NHA who were reinstated in SERA 2010 by NHA in one scale up to their substantive pay scale were awarded designation of their post according to their pay scale as provided in schedule IV of National Highway Authority's Appointment & Promotion Rules and that such designation would be construed from the date of their reinstatement in NHA under SERA 2010. Thus such

reinstatement would lead to difficult situation when they would be considered to be reinstated in terms of Section 4(a) of the Act but would not claim benefit in terms Section 4(a). The example is the one referred above when the Cabinet Division approve their designation as per their pay scale in compliance of the rules.

18. The arguments of Intervener's counsel also failed in presence of this advice from Cabinet Division. The arguments of the learned Counsel for the Intervener, that since a large number of employees would be affected in case the petition is allowed and as such all those employees ought to have been joined as party in this petition, has no force. Firstly a large number of such alleged affectees have already been represented by him who has placed the arguments and more importantly covering the defence of all possible employees and secondly and more importantly the issue that has been canvased before us in fact is the grievance of the petitioner against respondents No.1 & 2 who on account of wrong interpretation of the statute mislead the employees. It is a pure question of interpretation of Sections 4(a) and 4(b) for which the compliance is to be made by respondents No.1&2 in the terms referred above. After such compliance in terms of the interpretation referred above, the persons and employees if at all aggrieved may have a cause to approach the Court if permissible under law. The question of impleading all those thousands of employees is of no relevance and in fact the arguments are misleading. These recommendations by the Cabinet division also nullifies the arguments of the learned

Counsel for the Intervener that their reinstatement has not caused prejudice to the rights of the petitioners and the Interveners who were admittedly appointed on contract basis and are required to be dealt with in terms of section 4(b) rather than 4(a) of SERA 2010.

19. Above are the reasons on the basis of which the instant petition was allowed.

JUDGE

JUDGE