Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A No. 386 of 2021

Sabahat Ahmad Chaudhary
Vs
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.

20-09-2021. Mr. Nisar A. Mujahid, ASC for the appellant.

***Babar Sattar, J*:-** This appeal emanates from the judgment dated 07.09.2021 passed by the learned Judge-in-Chambers in W.P No.3118/2021. The said writ petition was filed against the order dated 02.09.2021, pursuant to which National Highway Authority (**"NHA"**) terminated the services of individuals who were reinstated under The Sacked Employees (Re-instatement) Act, 2010 **("Sacked Employees Act")** in compliance with the decision of the august Supreme Court dated 17.08.2021 passed in Civil Appeal No.491/2012, etc.

2. Learned counsel for the appellant contended that the appellant had been dismissed in a summary fashion with immediate effect without affording them an opportunity of hearing in breach of Article 10-A of the Constitution. He further submitted that the impugned office order of NHA was in breach of Article 2-A of the Constitution read together with Article 9, which guaranteed the right of a citizen to security, including the financial

security and social welfare. He further contended that under Article 264 of the Constitution the repeal of a law did not affect any right or privilege that had accrued during such period that the law was in force, and to the extent that appellant had acquired a right to service with the NHA during such period when the Sacked Employees Act was in force, such that right could not be snatched away summarily once the Sacked Employees Act was set aside. He further contended that the learned Judge-in-Chambers did not appreciate that review petitions were being filed by those who were not party to the proceedings before the august Supreme Court but were affected by the decision in Civil Appeal No.491/2012 and by acting with undue haste in dismissing the appellant and other employees reinstated under the Sacked Employees Act, NHA has manifested its *mala fide*. He contended that the appellant was seeking the indulgence of this Court in its Constitutional jurisdiction on humanitarian basis, as after having served in NHA post reinstatement for a decade he had suddenly been rendered unemployed.

3. The august Supreme Court in its judgment dated 17.08.2021 passed in Civil Appeal No.491/2012 declared that the Sacked Employees Act was *ultra vires* Articles 4, 9 and 25 of the Constitution as (i) it attempted to extend undue benefit to a limited class of employees in breach of law laid down in ***"Contempt proceedings against Chief Secretary Sindh and others (2013 SCMR 1752)*** and ***Baz Mohammad Kakar Vs. Federation of Pakistan***

(PLD 2012 SC 870), (ii) reinstated Sacked employees in breach of Article 4 as such employees had not challenged their termination in accordance with law when they were terminated in the 1990's and their termination had acquired finality, and (iii) granted undue advantage to a certain class of citizen, including contract employees, who could not be reinstated into public service by deeming them civil servants. The august Supreme Court consequently declared the Sacked Employees Act void and non-est under Article 8 of the Constitution. It further clarified the effect of its declaration by providing that no right or obligation could accrue under a law that had been declared unconstitutional reiterating the law laid down in ***Ali Azhar Khan Baloch Vs. Provence of Sindh (2015 SCMR 456)***. The august Supreme Court held in unequivocal terms that no benefit could accrue under the Sacked Employees Act, such statute being non-est legislation. And further that as no benefit could be created under a void legislation, none could be protected under the doctrine of past and closed transaction. In Para 59 of the said judgment the august Supreme Court provided that all benefits accrued to the beneficiaries under the Sacked Employees Act shall cease with immediate effect. And further in Para 61 that employees still in service having been reinstated under the Sacked Employees Act would be reversed to the position that they held on the date when the Sacked Employees Act took effect.

4. There is no ambiguity in the judgment rendered by the august Supreme Court. A decision of the august Supreme Court is binding on all Courts and all other authorities of Pakistan in terms of Article 189 of the Constitution which states the following:

> ***"189. Decisions of Supreme Court binding on other Courts.***
>
> *Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan."*

5. The scope of Article 189 of the Constitution came before the august Supreme Court in ***Justice Khurshid Anwar Bhindar Vs. Federation of Pakistan (PLD 2010 SC 483)*** and the following was held:

> ***"Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of this Article and is binding on all Courts in Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to the high place which the Court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of a law."***

6. The crux of the matter is that the appellant is aggrieved by the judgment rendered by the august Supreme Court in Civil Appeal No.491/2012 and not the action taken by the NHA. The argument of the learned counsel for the appellant that NHA ought to have given the appellant a right to hearing before passing the impugned

termination order is without force in view of the law laid down by the august Supreme Court in ***Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan*** ***(PLD 2010 SC 483)*** wherein it has been held that:

> ***"Principle of audi alteram partem, at the same time, could not be treated to be of universal nature because before invoking/applying the said principle one had to specify that the person against whom action was contemplated to be taken prima facie had a vested right to defend the action and in those cases where the claimant had no basis or entitlement in his favour he would not be entitled to protection of the principles of natural justice."***

and further that:

> ***"It is noteworthy that the courts have refused to intervene and the judicial consensus is that 'where the grant of relief would amount to retention of ill-gotten gains or would lead to injustice or aiding the injustice,' as such the question of the applicability of natural justice does not arise."***

7. In the instant matter it cannot be inferred that the NHA has acted unfairly and deprived the petitioner of a valuable constitutional right. The NHA has merely given effect to a binding decision of the august Supreme Court. Even if an opportunity of hearing were granted to the appellant, such proceedings would be an exercise in futility as the NHA can obviously not sit in judgment over a decision rendered by the august Supreme Court.

8. It is not the appellant's case that the appellant did not fall within the domain of the Sacked Employees Act or

that he was not restored in accordance with provisions of the Sacked Employees Act after the said law was promulgated. It is also not the appellant's case that NHA has misapplied the decision of the august Supreme Court. The argument furnished at a bar was that the NHA has acted with all due dispatch and there was no reason to act with such alacrity when those affected by the decision of the august Supreme Court are in the process of filing review petitions before the apex Court. Such argument is misconceived. A judgment of the Supreme Court has binding effect once rendered and need not be reaffirmed by the apex Court in its review jurisdiction to be clothed with finality and binding force. There is also no provision within the Supreme Court Rules, 1980, stating that the mere filing of a review suspends the operation of the judgment of the apex Court. The judgment rendered by the august Supreme Court is therefore a final decision binding on the NHA as well as on this Court and no exception can be taken from such decision, unless of course the august Supreme Court itself exercises its review jurisdiction to alter or amend the decision in any manner. The reliance of the learned counsel for the appellant on Article 264 of the Constitution is also misconceived, as the said provision explains the effect of repeal of a legislative instrument and not that of a judicial verdict declaring a statute void ab initio and non-est for being *ultra vires* the Constitution, as has happened in the instant case.

9. In view of the above, the appellant has failed to point out any infirmity in the impugned judgment rendered by the learned Judge-in-Chambers. This appeal being without merit is consequently ***dismissed in limine***.

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE

M.A. Raza