

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.1614/2010.**

**Ghalib Baryalai etc.**                      **Vs.**                      **Director General, Intelligence  
Bureau, Islamabad.**

Petitioners by:                                      Hafiz Muhammad Mazhar Maikan,  
Advocate.

Respondent by:                                      Mr. Muhammad Azam Hussain,  
Advocate.

**Date of Hearing:**                                      **22.11.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the  
petitioners have prayed for following relief:-

*“In view of above mentioned facts and circumstances, it is respectfully prayed that the writ may kindly be issued by directing the respondent to extend benefits of the Sacked Employees (Reinstatement) Ordinance, 2009 to the petitioners and they may kindly be granted one step promotion i.e. BS-18 and benefits of said scale may also kindly be granted to them from the date of their re-employment in the interest of justice.  
Any other relief, which this Hon'ble Court deems fit and appropriate, may also be awarded.”*

2.     Learned counsel for the petitioners contends that the petitioners were appointed in Intelligence Bureau, Government of Pakistan as Assistant Directors on 25.08.1996 and their services were terminated alongwith others on 16.02.1997, where-after they have been re-instated in terms of Sacked Employees (Reinstatement) Ordinance, 2009 vide notifications dated 23.07.2009 and 14.11.2009 but the petitioners have not been granted benefit of section 3 of the said Ordinance, whereby every sacked employee has to be re-instated one scale higher than the substantive scale held by the employee at the time of termination as such the petitioners are entitled to be re-instated in BPS-18; that the petitioners filed representation to the respondent department, which was turned down mainly on the ground that the petitioners are only entitled to get pay of higher scale and their status cannot be changed or raised one scale higher than the substantive scale; that re-instatement orders of the petitioners are misinterpretation of the law and are illegal.

2. Conversely, learned counsel for the respondent contends that the petitioners have filed instant writ petition despite the fact that their case falls within parameters of terms and conditions of service and the same is barred under Article 112 of the Constitution of Islamic Republic of Pakistan, 1973 to be agitated before this Court; that the petitioners are only entitled for financial benefits after their re-instatement on one category above, which have already been paid to the petitioners; that even the petitioners have been promoted to BPS-18 in 2018 as such their grievance has been redressed and the instant writ petition has become infructuous.

3. I have heard learned counsel for the parties and gone through the record.

4. Before discussing merits of the case, it is necessary to first settle the objection raised by learned counsel for the respondent on the maintainability of instant writ petition. The petitioners through instant writ petition are seeking relief on the basis of interpretation of section 3 Sacked Employees (Reinstatement) Ordinance, 2009 as such the relief sought by the petitioners does not fall within ambit of terms and conditions of service, hence, the instant writ petition is maintainable as this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is well equipped to interpret the law.

5. Perusal of the record reveals that the petitioners were initially appointed in Intelligence Bureau, Government of Pakistan as Assistant Directors on 25.08.1996 and their services were terminated alongwith others on 16.02.1997. The President of Pakistan promulgated Sacked Employees (Reinstatement) Ordinance, 2009 on 14.02.2009 to provide relief to the employees, who were dismissed, removed or terminated from service w.e.f. 1.11.1996 to 31.12.1998 and as a result of the same, the petitioners were re-instated in Intelligence Bureau as Assistant Director BPS-17 vide notifications dated 23.07.2009 and 14.11.2009, however, the petitioners filed appeal/representation seeking benefit of section 3 of the Ordinance *ibid*, whereby they claimed that they are entitled to be re-instated in service one scale higher to their substantive scale of the post at the time of termination of service. The respondent department has taken specific stance in para-wise comments that re-

instated employees are placed in one scale higher to their substantive scale and the same does not change/raise their status rather the same is for pay purpose.

6. In view of cross-claims, it is appropriate to reproduce section 3 of Sacked Employees (Reinstatement) Ordinance, 2009, which is as follow:-

*“3. Reinstatement of employees.--- Notwithstanding anything contained in any law for the time being in force, judgment of any Tribunal or a Court including the Supreme Court and the high Court, contract or terms and conditions of service, all persons appointed in corporation or Government Service, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and dismissed, removed or terminated or given forced golden hand shake during the period from the 1st day of November, 1996 to the 31st day of December, 1998 (both days inclusive) shall be reinstated in service on one scale higher to their substantive scale of the post at the time of termination of service and report for duty to their respective departments or organizations.*

*Provided that in case of change in scale or structure of any post or cadre by the competent authority after the 31st day of December, 1998, the persons in corporation or Government service on reinstatement shall be placed on, one scale higher than the revised or existing scale of the post.*

*Provided further that any person in corporation or Government service who was dismissed, removed or terminated from service on account of closure of organization or absence from duty, misappropriation of Government money of stock or medical unfitness may prefer petition to the Review Board as provided in section 5.”*

***(emphasizing and underlining is mine)***

7. The above referred provision clearly spells out that those employees, who have been terminated shall be re-instated in service one scale higher to their substantive scale of the post at the time of termination of service. Interpretation of section 3 of the Ordinance *ibid* submitted by the respondent side is not reflected from the wording of the said section as such the respondent department has not extended benefit of section of Sacked Employees (Reinstatement) Ordinance, 2009 at the time of their re-instatement, whereas such question was dealt by Lahore High Court in case reported as 2017 P L C (C.S.) 685 (Nazar Muhammad Waraich and 7 others vs. Zonal Head, State Life Insurance Corporation of Pakistan, Sialkot nad another), wherein it has been held that:-

*“Section 3 of the Ordinance is a non-obstante clause which provides that notwithstanding anything contained in any law or judgment of any Tribunal or Court, contract or terms and conditions of service, all persons appointed in Corporation and Government service between 01.11.1993 to 30.11.1996 and dismissed, removed, terminated or forcibly given golden hand shake between 01.11.1996 to 31.12.1998 shall be reinstated immediately in service one scale higher to their substantive scale of post at time of termination.”*

8. In view of the above reasons, the instant writ petition is **allowed**. The respondent department is directed to extend benefit of section 3 of the Sacked Employees (Reinstatement) Ordinance, 2009 to the petitioners from the date of reinstatement of the petitioners i.e. 23.07.2009.

**(MOHSIN AKHTAR KAY/ANI)**  
**JUDGE**

Announced in open Court on 29.11.2019.

**JUDGE**

R Anjam