

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P No. 2663/2018
Federation of Pakistan
versus
Muhammad Taj etc.

Petitioner by: Barrister Muhammad Mumtaz Ali, AAG.
Respondent No.1 by: Raja Naveed Hussain, Advocate
Respondent No.2. Mr. Amir Abdullah Abbasi, Advocate
Date of Decision: 17.01.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the order dated 24.10.2017, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby application U/s 12(2) CPC against the order dated 24.10.2014 has been dismissed and the order dated 26.03.2018, passed by learned Additional District & Sessions Judge-V (West), Islamabad, whereby civil revision against the said order was also dismissed. The petitioner has also assailed the judgment and decree dated 24.10.2014, passed by learned Civil Judge, 1st Class (West), Islamabad.

2. Brief facts referred in the captioned petition are that Mohammad Taj/respondent No.1 has filed suit for declaration, permanent and mandatory injunction against the present petitioner as well as National Council for Homeopathy (NCH)/respondent No.2 with the contention that he was employed as Naib Qasid BPS-01 in National Council for Homeopathy (NCH) on 20.02.1993 and he was terminated on 15.08.1996, despite the fact that he was not served with any Show Cause Notice nor any opportunity of defence was given and the termination was purely based on political basis. As per respondent No.1's version, his termination is covered under Sacked Employees (Re-instatement) Act, 2010, which is applicable to him alongwith others, who have been appointed w.e.f 1993 to 1996 and terminated between 1996 to 1999 and as such he was entitled for his reinstatement. Respondent No.1 has approached

the office of Ministry of National Health Services, Regulations and Coordination, Islamabad, who have acknowledged the services of respondent No.1 and directed National Council for Homeopathy for his reinstatement and appointment vide letter dated 06.02.2013. However, the suit filed by the respondent No.1 was contested by the present petitioner as well as respondent No.2/NCH qua its maintainability and other legal issues, however, the judgment and decree was passed on 24.10.2014 by the learned Civil Judge, 1st Class (West), Islamabad in favour of respondent No.1, which has not been assailed by the present petitioner as well as respondent No.2. When notice was issued in the execution proceedings coupled with warrant of arrest of Secretary, Ministry of National Health Services, Regulations and Coordination, Islamabad, an application U/s 12(2) CPC was filed before the learned Trial Court on the ground that the judgment and decree was obtained under misrepresentation and fraud and the petitioner be allowed to contest the case on merit. The said application was dismissed vide order dated 24.10.2017, passed by learned Trial Court and the same was maintained in civil revision by the learned Additional District & Sessions Judge-V (West), Islamabad vide order dated 26.03.2018, hence this writ petition.

3. Learned counsel for the petitioner contends that Federation of Pakistan has not been given due hearing at the time of passing of judgment and decree dated 24.10.2014, passed by learned Civil Judge, 1st Class (West), Islamabad and respondent No.1 misled the Court while placing the letter dated 06.02.2013, issued by Muhammad Akbar Rai, Section Officer (Admn), Ministry of National Regulations & Services, Islamabad, which was not even exhibited by the learned Trial Court in accordance with Qanun-e-Shahadat Order, 1984 rather the same was marked by the learned Trial Court and made the basis of judgment and decree against the petitioner. It has further been contended that the respondent No.1 never falls under the criteria laid down in the Sacked Employees (Reinstatement) Act, 2010 nor law permits any of the ground referred in the letter dated 06.02.2013, mark as P/2, wherein the "humanitarian grounds" was

referred for reinstatement in service, although the case of respondent No.1 was never placed before Sacked Employees Board. It has lastly been contended that the question of misrepresentation and fraud was not discussed by the learned Trial Court as well as revisional Court in the impugned orders and judgment and the legal requirements for recognition of service of respondent No.1 has to be considered in terms of Sacked Employees (Re-instatement) Act, 2010, which is lacking in this case, even respondent No.1 was temporary employee of National Council for Homeopathy/respondent No.2 for a short assignment and he was relieved from his job vide letter dated 15.08.1996, due to his irregular attendance and disobedient conduct.

4. Learned counsel for respondent No.2 /National Council for Homeopathy has supported the arguments advanced by the learned counsel for petitioner and adopted the said arguments and placed heavy reliance upon the record of the appointment and termination of respondent No.1.

5. Conversely, learned counsel for the respondent No.1 contends that he was appointed by National Council for Homeopathy and his appointment and termination has been recognized by the National Council for Homeopathy, which covers within the period notified in the Sacked Employees (Re-instatement) Act, 2010. It has lastly been contended that the Federation of Pakistan has not participated in the civil proceedings before the learned Trial Court in a proper manner, rather their right to defence was struck off and as such the grounds agitated through an application U/s 12(2) CPC are not justified in a proper manner and the same was rightly dismissed.

6. Arguments heard, record perused.

7. From the perusal of record, it has been observed that the petitioner/Federation of Pakistan is mainly aggrieved with the judgment and decree dated 24.10.2014, passed by learned Civil Judge, 1st Class (West), Islamabad, wherein the suit for declaration, permanent and mandatory injunction filed by the Mohammad Taj/respondent No.1 has been decreed in his favour, wherein a direction was issued to the petitioner as well as National

Council for Homeopathy/respondent No.2 to take the action upon the letter i.e. F.No.121-I/2012-SO (A), dated 06.02.2013 (mark P/2) in accordance with their rules and regulations and relevant laws. The said judgment and decree was not challenged by the present petitioner as well as National Council for Homeopathy, however, during the course of execution of the said judgment, when warrant of arrest was issued in the name of Secretary, Ministry of National Health Services, Regulations and Coordination, Islamabad, it came to limelight that respondent No.1 has obtained the judgment and decree in his favour on the basis of letter dated 06.02.2013, as Mark-P/2, which itself is illegal, issued without authority and against the law. The petitioner has filed application U/s 12(2) CPC before the learned Trial Court, which was dismissed vide order dated 24.10.2017, same is hereby reproduced as under:-

"Appraisal of the record shows that respondent has filed a suit for declaration, permanent and mandatory injunction which was decreed vide judgment and decree dated 24.0.2014. Pertinent to mention here that after institution of the suit summons/notices issued for the appearance of adverse side. Consequent whereof, the representative of applicant marked his appearance before the court who was accordingly directed to file written statement for the next date fixed. Needful to say that inspite of availing ample opportunities the applicant remained fail to file written statement hence, right of filing written statement of applicant was closed on 18-02-2014 and in view of divergent pleadings of respondent and defendant No.2 issues were framed on 28-02-2014 and matter was fixed for evidence of respondent. In spite of the fact that the right of filing of written statement of applicant was struck off but according to the prescribed procedure the applicant having an opportunity to cross-examine the witnesses but the credibility of testimony of respondent remained unchallenged from the applicant's side. It is worth mentioning that after comprehensive trial suit was completely adjudicated upon vide judgment and decree dated 24-10-2014. Since there is an active participation on the part of applicant during the proceedings of the suit therefore, by stretch of no imagination it is to be realized that proceedings of the suit has been conducted at the back of applicant. Suffice to mention here that after closing the right of written statement the applicant had an opportunity to avail the appropriate remedy in this regard however, the available course has not been adopted by the applicant. In view of this discussion it is ascertained that due service of summons was effected upon the applicant in result of which the applicant was properly represented in the court however, due to non submission of written statement the right of filing of written statement of applicant was closed even then there is an active participation on the applicant till conclusion of the trial therefore, the contentions raised through the application are not justified under the circumstances. The grounds raised by the applicant in the instant

application are neither tenable nor convincing hence, the instant application being devoid of merits is hereby dismissed. File be consigned to record room after its due completion."

8. The above referred order was further assailed in civil revision, which met with the same fate and civil revision was also dismissed vide order dated 26.03.2018, passed by learned Additional District & Sessions Judge (West), Islamabad.

9. I have gone through the legality of the letter dated 06.02.2013, whereby the rights of respondent No.1, Ex-Naib Qasid, National Council for Homeopathy were recognized. In order to understand the proposition, it is necessary to reproduce the contents of the said letter, which is as under:-

F.No. 121-1/2012-SO(A)
Government of Pakistan
 Ministry of National Regulations & Services
 Islamabad

Islamabad, the 06th February, 2013

Subject:- REINSTATEMENT/REGULARIZATION OF THE SERVICES OF MR. MUHAMMAD TAJ EX.NAB QASID, NATIONAL COUNCIL FOR HOMEOPATHY, ISLAMABAD.

The undersigned is directed to refer to the subject cited above and to say that, the Honorable Federal Minister for Religious Affairs/Chairman High Powered Cabinet Sub Committee on regularization of contract basis /daily wages employees, Syed Khursheed Ahmed Shah has strongly recommended and desired to re-enstate/regularize the services of Mr. Muhammad Taj Ex.Naib Qasid National Council for Homeopathy, Islamabad under act 2010.

2. NCH may accommodate Mr. Muhammad Taj Ex. Naib Qasid, National Council for Homeopathy against the available vacant post of Naib Qasid on humanitarian grounds otherwise to accommodate the subject official on temporary basis and status of his case should be conveyed to this Ministry as asked by the Establishment Division vide their letter No. 3/5/2011-Admn-I, (Copy enclosed) for onward transmission of Establishment Division please.

3. This issues with the approval of competent authority.

(Muhammad Akbar Rai)
Section Officer (Admn)

*Registrar,
 National Council for Homeopathy (NCH),
 Fazal Town Phase-I, Airport Link Road,
Rawalpindi.*

10. The mere wording of the above mentioned letter confirms that some foul play was managed, wherein the first portion of the letter expresses regularization of services of Mohammad Taj under Sacked Employees (Re-instatement) Act, 2010, therefore, it is necessary to go through the requirement of said law, which is as under:-

***WHEREAS** it is expedient for the purpose of providing relief to persons who were appointed in a corporation service or autonomous or semi-autonomous bodies or in Government service during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed or terminated from service during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);*

2. **Definition.**---In this Act, unless there is anything repugnant in the subject or context,--

- (a) "Chairman" means Chairman of the Sacked Employees' Review Board;
- (b) "competent authority" means any officer or body authorized to exercise any power to do any act, thing or work mentioned in or covered under the subject of this Act;
- (c) "defunct organization" means the employer, office, organization of institution which was closed, abandoned or woundup or any employer organization which ceased to exist on or before the 13th day of February, 2009;
- (d) "**employer**" means the Federal Government or any Ministry or Division or department of the Federal Government or a corporation or organization or autonomous or semi-autonomous body established by or under a Federal law or owned or controlled by the Federal Government";
- (e) "Review Board" or Sacked Employees' Review Board" means the Sacked Employees Review Board established under section 12;
- (f) "**sacked employees**" means.—
 - (i) a person who was appointed as a regular or ad hoc employee or on contract basis or otherwise in service of employer, during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed or terminated from service or whose contract period was expired or who was given forced golden hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);
 - (ii) a person who was appointed as a regular or ad hoc employee or on contract basis or otherwise or who was a member of the civil service of the Federation or who held a civil post in connection with affairs of the Federation, in a Ministry, Division or department during the period from the

1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed removed or terminated from service or whose contract period was expired or who was given forced golden hand shake during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive);

- (iii) *a person who was appointed or re-instated in service of employer during the period from the 1st day of November; 1993 to the 30th day of November, 1996 (both days inclusive) and who was subsequently dismissed or removed or terminated from service during the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive) or who was intermittently dismissed, removed or terminated from service from time to time and re-instated through statuesque order or judgment of any tribunal or any Court including the Supreme Court or a High Court or through any administrative order or through withdrawal of any order conveying dismissal, removal or termination or by any other way on any date after the 1st day of November, 1996;*
- (iv) *a persons who was appointed 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 from Government or corporation service on any charges of allegations during or after the period from the 1st day of November, 1996 to the 12th day of October, 1999 (both days inclusive), whether re-instated or taken back into service or not on orders of any tribunal or Court including the Supreme Court or a High Court or any other authority;*
- (v) *a person who was appointed or re-instated in service of employer during the period from the 1st day of November, 1993 to the 30th day of November, 1996 (both days inclusive) and dismissed or removed or terminated or dissociated or was discontinued from service on account of closure of his or her employer or office or organization, irrespective of the fact that whether a letter or notification or anything in writing for sacked employee's dismissal or removal or termination or dissociation or discontinuation of service was issued or not or the status of sacked employee's service was turned inactive or otherwise; and*
- (vi) *a person who was appointed or re-instated in service of employer 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 from service of employer on account of absence from duty, misconduct, mis-appropriation of Government money or stock, or unfitness on medical grounds;*

11. The above referred provision of law clearly spells out that it deals with the status of those employees, who were in service w.e.f 1st November, 1993 to 30th November, 1996 and they have been terminated within the period starting from 1st November, 1996 to 12th October, 1999. The respondent No.1/Mohammad Taj was appointed on 20.02.1993 on temporary basis as Naib Qasid (BPS-01) for election work at National Council for Homeopathy with the specific condition 2(a), i.e. *his appointment shall be purely on temporary basis and will be liable to be terminated at anytime without assigning any reason.*

12. The respondent No.2/National Council for Homeopathy vide letter dated 15.08.1996 dismissed the services of respondent No.1 on the ground of previous written warnings on the allegation of irregularity in attendance, disappearance from official duty without any approval and disobedience, and as such the above reasons were not considered in the learned Trial Court judgment. It is trite law that cases of sacked employees have to be processed in a manner provided in the said Act if the employee falls within the definition of sacked employees referred in Section 2 of the Act and matter be placed before the Review Board as held in 2019 PLC (CS) 208 (Trading Corporation of Pakistan (Pvt.) Ltd. vs. Sacked Employees Review Board), however the procedure provided in the said law has not been followed which is the exclusive procedure under special enactment for such kind of proposition.

13. It has also been observed from the record as well as law that National Council for Homeopathy was established under Unani, Ayurvedic and Homoeopathic practitioners Act, 1965 and the terms and conditions of services of employees are called as National Council for Homeopathy (Staff) Service Regulations, 1987, wherein the services of respondent No. 1 could not be called as service of Pakistan nor he could be termed under any of the meaning laid down in the Sacked Employees (Re-instatement) Act, 2010, which only provides the protection to the employees, who are in civil service of the Federation or who hold a civil post in connection with affairs of Federation in Ministry, Division or Department, even National Council for Homeopathy does not fall within the

definition of employer in terms of Section 2-D of the Act, 2010, which is only meant for Federal Government or any Ministry or Division or Department of the Federal Government or a corporation or organization or Autonomous or semi Autonomous bodies, especially under the control of Federal Government, whereas status of National Council for Homeopathy is of a Regulator, which is independent and it could not be termed as controlled by the Federal Government in any manner.

14. The second portion of Mark- P/2 dated 06.02.2013 only refers the direction to National Council for Homeopathy /respondent No.2 "to accommodate Mohammad Taj, Naib Qasid, National Council for Homeopathy against available vacant post of Naib Qasid on "humanitarian grounds" and as such this portion of the letter removed all the rights, if any, accrued to the respondent No.1 under Sacked Employees (Re-instatement) Act, 2010 as there was no decision of Re-instatement Board, in which the services of respondent No.1 have been considered by the competent authority and a direction was issued to National Council for Homeopathy for his reinstatement, therefore, the letter dated 06.02.2013 mark-P/2, issued by Muhammad Akbar, Section Officer (Admn), is based upon the illegal consideration and the said Officer was not authorized under the law to issue such letter even the approval of the Cabinet Sub Committee on Regularization has not been placed on record nor even before this Court in any manner. Respondent No.1 has tried to establish his right on the basis of illegal document. It is also trite law that any proceedings, orders, or judgments/decrees based upon illegal consideration orders, or document is nullity in the eye of law having no effect qua the rights of the claimant.

15. Besides the above referred position, I have also gone through the relief awarded by the learned Civil Court in the judgment dated 24.10.2014, the same is hereby reproduced hereunder:-

"In view of my findings on above issues the suit of the plaintiff is hereby partially decreed to the effect that the defendants are directed to take action upon letter F.No.121-1/2012-SO(A) dated 06.02.2013 (Mark-P/2) in accordance with their rules, regulations and relevant laws."

16. The above referred operative part of the judgment/decreed also imposes further qualification "in accordance with their rules, regulations and relevant laws" proves that the law has to prevail and this Court is of the view that no law, regulations, or rules extend any benefit to respondent No.1 for his appointment in National Council for Homeopathy nor he could demonstrate such law and others course, therefore, the answer in shape of letter given by the National Council for Homeopathy dated 03.02.2015 is clear in all respect, whereby they have regretted the appointment of respondent No.1 under existing rules and regulations.

17. The other question raised in the instant writ petition is regarding order dated 24.10.2017, passed by learned Civil Judge, 1st Class (West), Islamabad on the application U/s 12(2) CPC, whereby the entire findings is based upon the mode of service and the conduct of present petitioner as well as National Council for Homeopathy while defending the civil suit, although the question of relief granted on the application U/s 12(2) CPC, the learned Trial Court is bound to consider the law in a proper manner, which is not visible in the impugned order. The question of fraud if based upon a disputed question of fact, requires recording of evidence, but it is not necessary that every case has to be proceeded through the same manner, the misrepresentation and fraud based upon Mark-P/2 is visible on record, which has not been taken care of by the learned Trial Court in a proper manner while passing the impugned judgment and decree dated 24.10.2014. It is trite law that Section 12(2) CPC will be available only in respect of cases where the ground of attack is based on fraud, misrepresentation or want of jurisdiction. Reliance is placed upon PLD 1982 SC 204 (Messrs Arokey Ltd. and another Vs. Munir Ahmad Mughal and 3 others), similarly, the other important question which was not attended by the learned Trial Court at the time of passing of impugned judgment and decree dated 24.10.2014 is as to whether the learned Civil Court has any jurisdiction to deal with the question relating to terms and conditions of service of employees, which

has to be considered in the light of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, although the case referred in the plaint is based upon the Sacked Employees (Re-instatement) Act, 2010, which is a different issue, even in the special law, the jurisdiction could not be assumed by learned Civil Court and it is a fundamental rule, that where an enactment creates a new jurisdiction and prescribes the manner in which that jurisdiction is to be exercised and further specifies the remedy, such remedy is exclusive and the party aggrieved of an order made in exercise of that jurisdiction must seek only such remedy and not others. Reliance is placed upon PLD 1993 SC 109 (Pakistan Fisheries Ltd., Karachi and others Vs. United Bank Ltd.).

18. The entire issue revolves around the status of mark-P/2, letter dated 06.02.2013, which could not be considered as valid piece of document, especially when the requirement of Qanun-e-Shahadat Order, 1984 were not considered by the learned Trial Court and the burden lies upon the respondent No.1/plaintiff in terms of Article 117 of Qanun-e-Shahadat Order, 1984 to prove his case in accordance with law and the status of mark-P/2 has to be considered in terms of Article 72 of the Qanun-e-Shahadat Order, 1984, which imposes a duty upon respondent No.1/plaintiff to prove the contents of document either by primary or by secondary evidence, wherein Article 73 deals with the primary evidence which means "document itself produced for the inspection of the Court", this aspect is missing from the judgment and decree dated 24.10.2014, passed by learned Civil Judge, 1st Class (West), Islamabad, therefore, the very basis of the document mark-P/2, which prevails the learned Trial Court to pass the decree in favour of respondent No.1 by way of illegal exercise of jurisdiction, as such the revisional Court while dealing with the question of Section 12(2) CPC vide order dated 26.03.2018 has not applied the law in proper manner nor considered the legality of mark-P/2 and as such the Federation of Pakistan has been deprived of their legal authority by way of judgment and decree as well as orders of the

Courts below without recognition of legal right of the Federation of Pakistan, which is the custodian and guardian of the citizen of Pakistan as well as authority delegated to Federation under the Constitution of Islamic Republic of Pakistan, 1973.

19. For what has been discussed above, it is duty of the constitutional court to recognize all those acts which are covered under the law, while the illegalities committed by the Courts below in shape of passing of orders or judgment and decree without jurisdiction have to be settled in judicial review. The import, object and scope of judicial review available to the High Court in terms of Article 199 of the Constitution, whereby it is required to see whether both the Courts below have acted in accordance with law and as such, this Court is equipped with the powers and concept of check and balance, which is integral part of concept of separation of power enriched in the Constitution, therefore, the orders as well as judgment and decree passed by both the Courts below also fall within the affairs covered in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as if they have been done not in accordance with law or without due course of law, wherein all orders passed by Civil Court as well as by the first Appellate Court in the proceedings conducted in the lower Courts are against the procedure and substantial law, even both the Courts below have no jurisdiction to enter into the affairs of Sacked Employees (Re-instatement) Act, 2010.

20. In view of above, the instant writ petition is ALLOWED, judgment and decree dated 24.10.2014 passed by Civil Judge 1st Class (West), Islamabad, order dated 24.10.2017, passed by learned Civil Judge, 1st Class (West), Islamabad in terms of Section 12(2) CPC and judgment dated 26.03.2018, passed by learned Additional District & Sessions Judge-V (West), Islamabad in Civil Revision Petition are hereby SET-ASIDE for being illegal. Application under Section 12(2) CPC filed by the petitioner/Federation of Pakistan is ALLOWED and the rights,

if any, accrued in favour of Muhammad Taj/respondent qua his reinstatement on the basis of letter dated 06.02.2013, issued by Ministry of National Regulations & Services, Islamabad is illegal and he is not entitled for reinstatement under the law and he could not claim any benefit in this regard.

(MOHSIN AKHTAR KAYĀNI)
JUDGE

RAMZAN