JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2678 of 2017
National Bank of Pakistan
Versus.
The Sacked Employees Review Board Establishment Division and another

Date of Hearing:	16.04.2018
Petitioner by:	Mr. Sohail Nawaz, Advocate.
Respondents by:	M/s Muhammad Umair Baloch, Fazal-ul-Mabood Chughtai, and Sheraz Ahmed Barri, Advocates, Mr. Rashid Hafeez, learned Deputy Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.2678/2017, 2679/2017, 2680/2017, 2681/2017, 2682/2017 and 2683/2017, since they entail common questions of law and fact. The impugned orders challenged in the said writ petitions are almost identical.

2. Through the said writ petitions, the petitioner, National Bank of Pakistan, impugns orders dated 19.12.2016 and 09.01.2017, passed by respondent No.1 (The Sacked Employees Review Board), whereby the termination of the private respondents from service were set-aside and they were reinstated in service with effect from the dates when they were terminated. Furthermore, it was ordered that the period during which the private respondents were out of service, shall be treated to be continuous service as regular employees of the petitioner/bank for all legal purposes and consequences including retirement/pensionary benefits.

3. The facts essential for the disposal of these petitions are that all the private respondents filed writ petitions bearing Nos.1889/2012 titled (Rab Nawaz Vs. Regional Chief Officer, National Bank of Pakistan and others), 4602/2012 (Nasir Ali Vs. National Bank of Pakistan through its President and others), 9812/2016 (Muhammad Aslam Vs. National Bank of Pakistan through its President and others), 8149/2014 (Muhammad Afzal

Vs. Regional Head National Bank of Pakistan and others), 4109/2015 (Bashir Ahmed Vs. The President, National Bank of Pakistan and others), and 9787/2016 (Hafeezullah Khan Vs. Government of Pakistan through Secretary, Law, Justice & Parliamentary Affairs, Islamabad and others) before the Hon'ble Lahore High Court, Bahawalpur Bench, praying for the termination of their services by the petitioner/bank, to be set-aside. Furthermore, in the said writ petitions, it was prayed that the private respondents herein be reinstated in service.

4. The said writ petitions were disposed of through different orders, whereby the private respondents' cases for reinstatement were referred to the Sacked Employees Review Board/respondent No.1. For the purposes of clarity, one such order (i.e. order dated 01.11.2016, passed in writ petition No.8149/2014) is reproduced herein below:-

> *" Learned counsel for the petitioner submits that he will be satisfied and will not press this petition if a copy of this petition alongwith all its annexures be transmitted to Cabinet Secretariat, Establishment Division, Govt. of Pakistan (Sacked Employees Review Board) to treat it as an appeal/representation and decide the same in accordance with order dated 20.07.2016 passed by this Board, as early as possible. When confronted to learned counsel for respondents he has not replied satisfactorily.*
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> *2. Be that as it may, let a copy of this petition alongwith all its annexures be transmitted to Cabinet Secretariat, Establishment Division, Govt. of Pakistan (Sacked Employees Review Board) at the expense of the petitioner, to treat it as an appeal/representation and shall decide the same, in accordance with order dated 20.07.2016 passed by this Board after giving an opportunity of hearing to the petitioner and all other concerned; strictly in accordance with law, and, through a well-reasoned speaking order as expeditiously as possible preferably within a period of 60-days from the date of receipt of certified copy of this order under intimation to the Deputy Registrar (Judicial) of this Court and if the same is decided then copy shall be provided to the petitioner.* ***Disposed of,*** *accordingly."*

5. As mentioned above, vide orders dated 19.12.2016 and 09.01.2017, respondent No.1 reinstated the private respondents in service with effect from the date when their services were terminated. The period during which the private respondents were out of service was treated as continuous service as regular employees of the petitioner/bank for the

purposes of retirement/pensionary benefits. The said orders dated 19.12.2016 and 09.01.2017 have been impugned by the petitioner/bank in the writ petitions mentioned in the first paragraph of this judgment.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petitions, submitted that respondent No.1 could only decide applications for reinstatement in service in accordance with the provisions of the Sacked Employees (Reinstatement) Act, 2010 ("the 2010 Act"); that a sacked employee could be reinstated under the 2010 Act only if such an employee was appointed between 01.11.1993 to 30.11.1996 and dismissed, removed or terminated from service or whose contract period expired or was given a golden hand shake between 01.11.1996 to 12.10.1999; that perusal of the impugned orders would show that respondent No.1 did not determine as to whether any of the private respondents came in the category of employees who could be reinstated under the provisions of the 2010 Act; that under Section 3(1) of the 2010 Act, a sacked employee could file an application, within ninety days of the enactment of the 2010 Act, to an officer of his employer for reinstatement in service; that under Section 13 of the 2010 Act, a sacked employee could file a petition before respondent No.1 within ninety days of the enactment of the 2010 Act for the review of an order of the sacked employee's dismissal or removal or termination from service on account of absence from duty or misconduct or misappropriation of government money or stock or unfitness on medical grounds; that none of the private respondents filed a petition before respondent No.1 within the time limit prescribed in Section 13 of the 2010 Act; that it was obligatory upon respondent No.1 to have determined, in the first instance, whether the private respondents' applications for reinstatement in service were filed within the time limit prescribed in Section 13 of the 2010 Act; that the mere fact that the Hon'ble Lahore High Court, Bahawalpur Bench, had referred the private respondents' cases to respondent No.1

could not have been treated as a condonation of the delay in filing the petitions for reinstatement before respondent No.1; and that it was obligatory upon respondent No.1 to have determined whether it had the jurisdiction to decide the private respondents' cases under the 2010 Act, which is a special law catering for a specific category of employees. Learned counsel for the petitioner prayed for the writ petitions to be allowed and for the impugned orders dated 19.12.2016 and 09.01.2017, to be set-aside.

7. On the other hand, learned counsel for the private respondents submitted that the private respondents, in their writ petitions, before the Hon'ble Lahore High Court, Bahawalpur Bench, had not prayed for their cases to be referred to respondent No.1; that the orders passed by the Hon'ble Lahore High Court, Bahawalpur Bench, whereby the private respondents' cases were referred to respondent No.1 had not been challenged by the petitioner/bank; that even in the proceedings before respondent No.1, the petitioner/bank did not object to the jurisdiction of respondent No.1 to adjudicate upon the matter; that although the cases of the private respondents did not fall within the four corners of the 2010 Act, the impugned orders passed by respondent No.1 are just and equitable; that similar orders passed by respondent No.1 in other cases have been implemented by the petitioner/bank; that in this way, the private respondents have been discriminated against; and that the private respondents were low paid employees and have been in litigation against the petitioner/bank since the past several years. Learned counsel for the private respondents prayed for the writ petitions to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

9. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs No.3 to 5 above and need not be recapitulated.

10. The vital question that needs to be determined is whether respondent No.1 (which was created under the provisions of the 2010 Act, which has circumscribed its jurisdiction) could have allowed the private respondents' applications for reinstatement in service without first determining whether it had the jurisdiction under the provisions of the 2010 Act to entertain or decide the said applications. A sacked employee could be reinstated under the provisions of the 2010 Act only if such an employee was appointed between 01.11.1993 to 30.11.1996 and dismissed, removed or terminated from service or whose contract period expired or was given a golden hand shake between 01.11.1996 to 12.10.1999. The learned counsel for the private respondents have candidly admitted that the services of the said respondents were discontinued by the petitioner/bank after 12.10.1999 and therefore they do not fall in the category of employees who could be reinstated under the provisions of the 2010 Act. The dates on which the private respondents were employed by the petitioner/bank, and the dates on which their services were discontinued are set out in **"Schedule-I"** hereto.

11. Under Section 3(1) of the 2010 Act, a sacked employee could file an application, within ninety days of the enactment of the 2010 Act, to an officer of his employer for reinstatement in service. Under Section 13(1) of the 2010 Act, a sacked employee could file a petition before respondent No.1 within ninety days of the enactment of the 2010 Act for the review of an order of the sacked employee's dismissal or removal or termination form service on account of absence from duty or misconduct or misappropriation of government money or stock or unfitness on medical grounds. It is also an admitted position that none of the private respondents filed a petition before respondent No.1 within the time limit prescribed in Section 13(1) of the 2010 Act.

12. Section 4 of the 2010 Act *inter-alia* provides that *"[n]otwithstanding anything 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 [the 2010 Act]." The definition of a "sacked employee" provided in Section 2(f) of the 2010 Act, includes an employee who was appointed or reinstated in service between 01.11.1993 and 30.11.1996 and was dismissed, removed or terminated from service or whose contract period was expired or who was given forced golden hand shake between 01.11.1996 and 12.10.1999. Section 3 of the 2010 Act provides *inter-alia* that a sacked employee, (as defined in Section 2(f) of the 2010 Act), can file an application, within ninety days of the enactment of this Act, to his employer for reinstatement of his service. Section 4(g) of the 2010 Act provides *inter-alia* that in cases where employer fails to reinstate a sacked employee within fifteen days of the date of his application for reinstatement, such an employee shall stand reinstated with effect from the date of enactment of the 2010 Act. Various other Sections of the 2010 Act, provide wide-ranging and most magnanimous benefits of reinstatement, regularization, seniority, monetary and service benefits to *"sacked employees"* as defined in Section 2(f) of the 2010 Act. However, a petition by a sacked employee can be preferred before respondent No.1 only under Section 13(1) of the 2010 Act.

13. Now, the petitioner in the writ petitions under disposal is seeking the issuance of a writ of *certiorari* to quash the orders dated 19.12.2016 and 09.01.2017, passed by respondent No.1. In order to succeed, the petitioner has to *inter-alia* establish that the impugned orders are without jurisdiction. A petition by a sacked employee, as provided in Section 11 of the 2010 Act, can be preferred before the Review Board under Section13(1) of the 2010 Act. Sections 11 and 13(1) of the 2010 Act read as follows:-

> *"11. A sacked employee, who was dismissed or removed or terminated from service on account of absence from duty or misconduct or any form of mis-appropriation of Government*

money or stock or his unfitness on medical grounds, may prefer a petition to the Sacked Employees' Review Board as provided in Section 13."

"13(1) A sacked employee, as provided in Section 11, may within ninety days of the enactment of this Act, prefer a petition to the Sacked Employees' Review Board for review of such order of sacked employee's dismissal or removal or termination from service on account of absence from duty or misconduct or mis-appropriation of Government money or stock or unfitness on medical grounds."
(Emphasis added)

14. A petition before respondent No.1/Sacked Employees Review Board has to be filed within ninety days of the enactment of the 2010 Act. Admittedly, the private respondents did not file petitions for reinstatement before respondent No.1 within a period of ninety days of the enactment of the 2010 Act. The private respondents' writ petitions filed before the Hon'ble Lahore High Court, Bahawalpur Bench were transmitted, vide orders dated 01.11.2016 (W.P.No.4936/2015), 01.11.2016 (W.P. No.4797/2015), 22.12.2016 (W.P.No.9787/2016), 16.03.2016 (W.P.No.4109/2015) and 10.04.2012 (W.P.No.1889/2012), to respondent No.1, who was directed to treat the same as a representation filed by the private respondents and decide the same strictly in accordance with the law. Simply because the Hon'ble Lahore High Court, Bahawalpur Bench, had transmitted the private respondents' writ petitions to respondent No.1 did not imply that respondent No.1 was not to determine whether it had the jurisdiction to entertain the matters. The passing of such orders by the Hon'ble High Court, Bahawalpur Bench, did not absolve the private respondents from crossing the hurdle of limitation provided in Section13(1) of the 2010 Act for preferring a petition before respondent No.1.

15. There is no document on record showing that private respondents had applied for their reinstatement in service to respondent No.1 within the limitation period provided by law. Even the private respondents' writ petitions before the Hon'ble Lahore High Court, Bahawalpur Bench (which were to be treated as petitions for reinstatement before respondent No.1 under Section 13(1) of the 2010 Act) were also not filed within

the time limit prescribed in the 2010 Act. Needless to state that the orders of the Hon'ble Lahore High Court, Bahawalpur Bench, directing respondent No.1 to decide the private respondents' petitions in accordance with the *"law"* included the law of limitation.

16. True, the petitioner/bank did not challenge the orders, passed by the Hon'ble Lahore High Court, Bahawalpur Bench, whereby the private respondents' cases were referred to respondent No.1. Even if it is assumed that the plea of limitation is not taken by the petitioner/bank before respondent No.1, it was obligatory upon respondent No.1 to have dismissed the private respondents' applications for reinstatement if they were filed or referred beyond the limitation period provided by law. In the case at hand, the limitation period of 90 days from the date of the enactment of the 2010 Act for filing a petition before the Sacked Employees Review Board is provided in Section 13(1) of the 2010 Act, which is a special statute. The provisions of the Limitation Act, 1908, have not been made applicable by the 2010 Act to any proceedings under the said Act. Respondent No.1 was not vested with the power to enlarge the limitation period within which a petition could be preferred under Section 13(1) of the 2010 Act. It is well settled that where limitation period for filing a certain petition is provided in special law, delay in filing the petition cannot be condoned under Section 5 of the Limitation Act, 1908. Reference in this regard may be made to the law laid down in the cases of Ali Muhammad Vs. Fazal Hussain (1983 SCMR 1239), Allah Dino Vs. Muhammad Shah (2001 SCMR 286), Muhammad Nazir Vs. Saeed Subhani (2002 SCMR 1540), Rahim Jan Vs. Securities and Exchange Commission of Pakistan (2002 SCMR 1303), and Government of Balochistan through Secretary, Revenue Board Vs. Abdul Rashid Langove (2007 SCMR 510).Therefore, I am of the view that the private respondents' petitions for reinstatement before respondent No.1 under Section 13(1) of the 2010 Act were not maintainable. Respondent No.1, with utmost respect, erred by not adverting to this aspect of the case which was germane to

the maintainability of the private respondents' petitions before respondent No.1.

17. Recently, the Hon'ble Supreme Court, in the case of Khushi Muhammad Vs. Mst. Fazal Bibi (PLD 2016 SC 872), has set out the salient features of the law of limitation as follows:-

> *"(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them.Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;*
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> *(ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;*
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> *(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;*
>
> *(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-a-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;*
>
> *(v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;*
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> *(vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.*

(vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;

(viii) Construing the Preamble and Section 5 of the Act, it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced."
(Emphasis added)

18. Respondent No.1 while allowing the private respondents' petitions for reinstatement in service did not determine as to whether the essential prerequisites prescribed in the 2010 Act for the assumption of jurisdiction had been satisfied. Since none of the private respondents were dismissed, removed or terminated from service or whose contract period was expired or who was given forced golden hand shake between 01.11.1996 to 12.10.1999, they could not have been reinstated by respondent No.1 under the provisions of the 2010 Act. Furthermore, respondent No.1 also did not advert to the fact that private respondents' petitions for reinstatement were filed or referred beyond the time limit prescribed in Section 13(1) of the 2010 Act. These jurisdictional infirmities in the impugned orders make out a case for the issuance of a writ of *certiorari*. In holding so, I derive guidance from the law laid down in the following cases:-

(i) **In the case of Province of Punjab Vs. Muhammad Bakhsh (2012 SCMR 664), it has been held *inter-alia* that where a Court or a tribunal makes an error of law on which the decision of the case depends, it goes outside its jurisdiction.**

(ii) **In the case of Mansab Ali Vs. Amir (PLD 1971 SC 124), it has been held that *"if a mandatory condition for the exercise of jurisdiction by a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction".***

(iii) In the case of Shabbir Ahmad Vs. Kabir-un-Nisa (PLD 1975 SC 58), it has been held that assumption of jurisdiction upon a clear misunderstanding of the provisions of law is an error apparent on the face of the record and such an error does furnish a ground for interference in the writ jurisdiction.

(iv) In the case of National Bank of Pakistan Vs. Khalid Javed Qureshi (2014 PLC (C.S.) 737), the Division Bench of the Hon'ble Lahore High Court has held as follows:-

> *"10. ... Perusal of contents of Sacked Employees (Reinstatement) Act, 2010 clearly indicate that its applicability was not retrospective rather time specific. In any case, respondents' case being a past and closed transaction did not fall within the domain of Act, 2010 which was exclusively promulgated for providing relief to persons appointed in a corporation service or autonomous or semi autonomous bodies or in Government service during the period from the first 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).*
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> *11. It is admitted on record that respondents' dates of appointment and relinquishment of their charge are much prior to the dates conspicuously specified in the Act ibid itself. Therefore, for all intents and purposes, provisions of Sacked Employees (Re-instatement) Act, 2010 were totally alien and inapplicable to the case of the respondents."*

19. The said judgment was unsuccessfully challenged before the Hon'ble Supreme Court. In the judgment dated 10.11.2015, passed by the Hon'ble Supreme Court in Civil Appeal No.1420/2013, titled "Khalid Javed Qureshi, etc. Vs. National Bank of Pakistan, etc" it was held as follows:-

> *"6. Admittedly the appellants had been inducted into service on 21.07.1964, which is not disputed by the learned counsel for the appellants, as such their appointment as well as they being in service was much prior to the period from 01.11.1993 to 30.11.1996, therefore, taking into consideration the above facts and circumstances of the case the definition of sacked employees given in the Act is the main point which requires determination and in order to arrive at a proper conclusion the relevant portion of definition of sacked employees as given in Section 2(f)(i) of the Act is reproduced herein below:-*

> *"(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)."*

A bare perusal of the above mentioned definition of sacked employees shows that there are certain conditions laid down therein which are sine qua non for the application of the said Act wherein a sacked employee has categorically been defined as a regular employee or ad-hoc employee or contract employee or otherwise in service of the employer appointed during the period from 01.11.1993 to 30.11.1996. By taking the same into consideration when admittedly the appellants were not appointed during the said period, rather they had joined the service much prior to the said period i.e., on 21.07.1964, therefore, in any circumstance they did not fell within the ambit of definition provided in the Act as such they were not entitled to the benefits granted under the Act."

20. In view of the above, I am of the view that the private respondents' petitions before respondent No.1 were not maintainable. Consequently, these petitions are allowed, and the impugned orders dated 19.12.2016 and 09.01.2017, passed by respondent No.1, being without jurisdiction and without lawful authority, are set aside. The private respondents shall be at liberty to agitate their cases for reinstatement in service before the appropriate forum, subject to law. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 27/04/**2018.**

(JUDGE)

*Qamar Khan**

Approved for reporting