

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

- (1) WRIT PETITION NO.1206 OF 2011
- WAQAR ALAM AND 32 OTHERS
VERSUS
SECRETARY, ESTABLISHMENT DIVISION AND 2 OTHERS.
- (2) WRIT PETITION NO.1433 OF 2011
- RAFAQUAT ALI GORAYA AND 8 OTHERS
VERSUS
DIRECTOR GENERAL, INTELLIGENCE BUREAU, AND 3 OTHERS.
- (3) WRIT PETITION NO.1604 OF 2011
- ABDULLAH KHAN AND 36 OTHERS
VERSUS
DIRECTOR GENERAL, INTELLIGENCE BUREAU, AND 2 OTHERS.
- (4) WRIT PETITION NO.1981 OF 2011
- MUHAMMAD AKRAM AND 13 OTHERS
VERSUS
DIRECTOR GENERAL, INTELLIGENCE BUREAU, AND 3 OTHERS.

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DATE OF HEARING: **29.03.2012.**

PETITIONER BY: **M/S S. A. Mahmood Khan Saddozai,
Ishtiaque Ahmed Cheema, and Muhammad
Aftab Alam Rana, Advocates.**

RESPONDENTS BY: **Mr. Nazir Abbasi, Learned Standing
Counsel.
Ibrar-ul-Haq, Assistant Director I.B. and
Amjad Saeed Awan, S.O. Establishment
Division.**

NOOR-UL-HAQ N. QURESHI J.- By this single
order, all above mentioned petitions are disposed of in view of
similar facts and law point involved with slight difference.

- 2 -

2. The main legal issue involved in all the above mentioned petitions are same, as such, decided together.

3 Generally, the petitioners have submitted their respective prayers as under:-

a) The respondents may be directed to act strictly in accordance with law by placing the petitioners in one grade higher as per requirements of law.

b) The petitioner though reinstated be required to be reinstated one grade higher on regular/permanent basis in the light of Section 3 of the Ordinance 2009 and Section 4(a)(f) of Act, 2010 instead of Grade-16.

c) The respondents may be directed to pay the petitioners emoluments in terms of Section 16 of the Act, 2010, which may be protected in the higher grade BPS-17 while counting the previous service.

4. As per facts narrated in the petition, the petitioners were inducted in service with respondent No.2 in 1996-97 in the capacity of Inspectors (BS-16) and due to their misfortune, respondent No.2 got rid of the petitioners so inducted in the services w.e.f. 17.02.1997 by single stroke vide notification No.2/C/97-(12)/Estab.III, dated 17.02.1997. The petitioners had been running between the pillar and the post for redressal of their grievances, when at no door step justice provided as petitioners were thrown out from the service under the pretext that their services are no more required.

- 3 -

5. Despite efforts made, no result yield for the purpose to retain them in services into Bureau. The carrier of service remained in Bureau as spotless and tremendous without any adverse view.

6. Not only the petitioners so many other employees of Government Departments and Corporation were rendering the service were terminated and huge numbers of employees were deprived of their bread and butter because of their fault having no influence inside the respective departments. As a result of pressure from the society, Federation constrained to promulgate Ordinance known as "Sacked Employees (Reinstatement) Ordinance, 2009 has came into existence dated 14.02.2009. According to its spirit, any body, who rendered the services in Government i.e. Ministries/Division and Department from 01.11.1993 to 30.11.1996 were required to be reinstated into services in their respective departments as defined in the said Ordinance. Beside their services reinstated, it is also conveyed in clear terms that they will be placed on one scale higher to the substantive scale, grade, cadre, group post or designation.

7. All the petitioners were initially employed by respondent No.2 in the capacity of Inspector (BS-16), upon their reinstatement on promulgation of the Ordinance, which ultimately received the assent of the Parliament and same introduced being Sacked Employee (Reinstatement) Act, 2010, therefore, the petitioners through letters issued were required to join duty.

- 4 -

8. On joining, the petitioners were handed down a memorandum conveying their appointment under the Ordinance with certain terms and conditions, which were quiet alien in letter and spirit of Ordinance, 2009, by placing them in BS-16, imposing condition that individual will also submit affidavit/undertaking to undergo five years of service as compulsion, an individual will undergo one year of probation, which is extendable for one year also.

9. Coupled with such illegality behind the very wisdom of law, under which they were reinstated, it was also covered that their services will be on contract/temporary/ad-hoc basis, whereas the very Ordinance and Act specifies the contract/temporary/ad-hoc appointee shall be regularized in their respective department upon promulgation of the Ordinance. The notification issued to various petitioners also part of writ petition being annexed with another notification/circular among individuals laying therein that employees reinstated/appointed as such shall be eligible to draw their emoluments at one scale higher to the substantive post where he was initially appointed.

10. Besides above facts, there is slight difference in between cases of some of the petitioners, who at the time of ouster from service were demoted one scale lower, therefore, it was one of the issue became hurdle in their way as to whether they should be taken back in service in grade-16 one step ahead or in grade-17 by considering them in their substantive scale-16, in which earlier they were inducted into service.

11. The respondent No.3 submitted comments, thereby they tried to emphasize by creating anomaly through referring Section 4(a) of the Act, 2010. However, it is contended that respondent No.2 be directed to strictly act in accordance with law by placing the petitioners in BS-17 in the capacity of Assistant Director.

12. Respondent No.2 through parawise comments, some contents denied and some admitted. Finally requested for dismissal of the petition by contended that services of the petitioner with their batch mate were terminated being irregular appointments in application of Section 11(1)(i) of Civil Servants Act, 1973. On promulgation of Sacked employees (Reinstatement) Ordinance, 2009 in pursuance of the Cabinet decision conveyed vide Establishment Division OM dated 18.2.2009, all the petitioners were re-instated with others as Inspectors BS-16 with 20% special pay, drawing one scale higher to the substantive scale of this post in the light of Section 3 of Sacked Employees (Reinstatement) Ordinance, 2009. It is contended that according to clarification of Anomaly Committee held on 03.06.2010 and Establishment Division OM dated 08.06.2010, the reinstated employees are not entitled to claim service benefits under Section 10 of the ordinance, 2009. On reinstatement, requirements of Ordinance in its letter and spirit have been complied with and the services of the petitioners under Sacked Employees (Reinstatement) Ordinance, 2009, have also been regularized w.e.f. 08.12.2010 in pursuance of Section 4 of Sacked

Employees (Reinstatement) Act, 2010 vide notification dated 31.01.2011.

13. Learned counsel for the petitioners while arguing referred two office orders issued by Pakistan Bait-ul-Mal through its Director (Administration), whereby two sacked employees have been reinstated into service namely Malik Muhammad Arshad and Tariq Khurshid Malik in one scale higher to that of their substantive scale at the time of termination in view of Section 3 of the Ordinance. Also referred similar re-instatement order issued by State Life Insurance Corporation of Pakistan, which too confirm such fact of re-instatement of their employees in grade one step ahead as a Assistant manager under Section 3 of the Ordinance.

14. Notification dated 20.4.2010 is also referred by learned counsel for the petitioners, whereby Ministry of Interior, Government of Pakistan has issued the same order reinstating Mr. Alam Zeb Khan in service as Assistant Director (BS-17) in FIA in terms of Section 3 of Sacked employees Ordinance.

15. Learned counsel for the petitioner has also referred office memorandum dated 04.10.2011, whereby in meeting of Cabinet Sub Committee regarding regularization of Employees, it was decided under Re-instatement of Sacked Employees as under:-

“The Cabinet Sub-Committee again reiterated that the employees reinstated under the Sacked employees Act, 2010 have been reinstated into their services not reemployed,

- 7 -

therefore, directed that no discrimination should be made in the salaries/scales or non-sacked and reinstated employees of the same period and of the same status and of the same organization.

The Cabinet Sub Committed directed that all the Ministries/ Divisions/ Departments / Organizations should award one step higher or one grade higher to all the reinstated sacked employees including employees of defunct People Works Programme immediately as per provision of Sacked Employees Reinstated Act, 2010. Similarly the Cabinet Sub Committee directed that the pay fixation of the reinstated sacked employees is required to be calculated on point to point basis with all annual increments between the termination period from 1997 to 2011.”

16. In this regard, circular dated 13.10.2011 issued by Intelligence Bureau, Islamabad, whereby only one scale higher for pay purpose was allowed for sacked employees reinstated under Act, 2010.

17. But again Cabinet Division vide their decision initiated on 21.10.2011, has categorically issued guidelines, which is reproduced hereunder:-

“The Cabinet Sub-Committee again reiterated that the employees reinstated under the Sacked Employees Act, 2010 have been reinstated into their services not re-employed,, therefore, that no discrimination should be made in the salaries/scales of non-sacked and reinstated employees of the

same period and of the same status and of the same organization.

The Cabinet Sub Committee directed that all the Ministries/ Divisions/ Departments/ Organizations should award one step higher or one grade higher to all the reinstated sacked employees as per provisions of Sacked Employees (Re-instatement) Act, 2010. Similarly the Cabinet Sub Committee directed that the pay fixation of the reinstated sacked employees is required to be calculated on point to point basis with all annual increments between the termination period from 1997 to 2011. Because as earlier informed, they have been reinstated on their posts they were holding at the time of their termination or dismissal and are not re-employed a fresh. However, report for implementation of the above directives also required within 30 days.”

18. Learned counsel for the petitioners has also referred decision of Islamabad High Court, whereby Mr. Justice Muhammad Munir Paracha, the then judge of the Islamabad High Court, through elaborate judgment has delivered verdict in this regard while interpreting Sacked employees Ordinance, 2009 in **writ petition No.389 of 2009 titled (Lt. Col. ® Muhammad Siddique Vs. Federation of Pakistan and another)**. The operative part thereof is submitted herein below:-

“I am therefore, of the considered opinion that despite the fact that the petitioner when terminated was on probation, his case is covered by Section 3 of the Sacked

employees (Reinstatement) Ordinance, 2009. The petitioner is therefore, entitled to be reinstated into service in terms of Section 3 of the Ordinance and is entitled to be placed one scale higher to the scale of the post he was holding at the time of termination of the service. This writ petition is therefore, allowed and it is declared that the petitioner stood reinstated into service and shall be deemed in BS-20."

19. Likewise another decision of Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi, whereby Mr. Justice Ejaz Ahmad while deciding Writ Petition No.1313/2010, in case of Inspector FIA has directed respondents No.1 & 2 to reinstate the petitioner in accordance with the said Order.

20. Learned counsel for the petitioners also referred a decision of Division Bench of this Court, wherein I being one of the member of the Division bench, delivered such judgment in ICA No.263/2011, whereby Hon'ble Chief Justice Mr. Justice Iqbal Hameed-ur-Rehman, with which I fully concur with an elaborate sifting finally by setting aside impugned order accepting the writ petition with the direction to the respondents to consider regularization of the services of the appellants in view of prevailing policy of the Government and Minutes of the Cabinet Committee regarding Regularization of the contract of the daily wages employees, therefore, learned counsel for the petitioner emphasized that in the same manner, it is obligatory upon the respondents to comply with the directive issued by the Cabinet Committee as referred above.

21. It is argued on behalf of the respondents that in view of undertaking submitted by the petitioners at the time of their re-induction in service in compliance with the provision of law introduced through the Ordinance, 2009 or Act, 2010 for the sacked employees, they themselves undertake not to claim any more besides their induction, pay, for one scale higher with 20% special pay and shall not claim seniority or even not agitate beyond the relief provided them. It is argued that Section-10 of the Ordinance, 2009 provide submission of such surety bond, which in compliance with the requirements of Ordinance was furnished under the instructions of Department. The said Section 10 of Ordinance No.XI of 2009 is reproduced herein below:-

“10. Re-instated employees not to claim other service benefits. – Any person in corporation or Government service who is reinstated under this Ordinance shall not be entitled to claim seniority or arrears of pay or other service benefits save as provided in this Ordinance and shall be required on reinstatement to submit a surety bond in the form specified for the purpose.”

22. It is also argued that since the very initial appointments were terminated being irregular in application of Section 11(1)(i) of Civil Servants Act, 1973, therefore, they are not entitled for the similar relief, which was given to other employees under Sacked Employees Ordinance or Act. It is also argued that Anomaly Committee in its decision held on 03.6.2010 clarified that reinstated employees

are not entitled to claim service benefits under Section 10 of the Ordinance, 2009. On reinstatement, therefore, requirements of Ordinance in its letter and spirit have been complied with. Their services have been regularized in pursuance of Section-4 of Sacked Employees (Re-instatement) Act, 2010 vide notification dated 31.01.2011, therefore, their claim is totally unjustified. Hence, all the above petitions are liable to be dismissed.

23. Arguments have been heard at length as well as precious assistance of both the sides, record submitted by them is carefully perused.

24. It is quite unambiguous that provisions regarding reinstatement in service quite clear and in clear words, it is mentioned that said employees shall be reinstated in service with the benefit of one scale higher in his respective service when he was terminated. Section 3 of the Sacked Employees (Reinstatement) Ordinance, 2009, is reproduced hereunder:-

“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 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 organization:

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 incorporation 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 or stock or medical unfitness may prefer petition to the Review Board as provided in section 5."

25. Almost similar view rather more beneficial to sacked employees has also been defined by Section 4 of the Sacked Employees (Reinstatement) Act, 2010, which too is submitted herein below:-

"Reinstatement of employees in service and regularization of employees' service.—

Notwithstanding anything contained in any law, for the time being in force, or judgment of any tribunal or a Court including the Supreme Court and a High Court, or any t terms and conditions of appointment on contract basis or otherwise, all sacked employees shall be reinstated 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 ad-hoc basis or otherwise in any corporation or Government service against a regular or temporary post shall be reinstated and regularized in regular service of the employer on once 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 hand shake was given to the sacked employee;*
- (b) a sacked employee appointed on contract 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 re-instated 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;*
- c) a sacked employee who was dismissed, removed or terminated from service of Government or any autonomous or semi-autonomous organization on any charges or allegations levelled against him and during or in the result of any enquiry held by the employer or otherwise on directions of any administrative authority or any tribunal or*

court including the Supreme Court or a High Court, or any other authority, the sacked employee is provided not guilty of those charges or allegations, he shall be re-instated and regularized in service of the employer in same scale, cadre, group, post or designation, whatever the case may be, in following manner, namely:-

- (i) sacked employee, who has not been re-instated or taken back in service until the day of enactment of this Act, shall immediately be re-instated or taken back into service and regularized with effect from the day of enactment of this Act, alongwith all monetary and other service benefits payable and admissible to the sacked employee under provisions of this Act;*
- (ii) sacked employee, who has already been re-instated or taken back in service under the directions of any tribunal or court including the Supreme Court or a High Court or otherwise, shall immediately be regularized in service of the employer with effect from the day of the enactment of this Act, alongwith all monetary and other service benefits payable and admissible to the sacked employee under provisions of this Act; and*
- (iii) sacked employees as provided under sub-clauses (i) and (ii) shall be placed at the bottom of seniority list of employer for the scale, cadre, group, post or designation, whatever the case may be, and such sacked employee shall be entitled to promotion, retirement and all other service benefits admissible to the sacked employees under provisions of this Act, and at par with other regular employees of the employer;*

Provided that charges or allegations levelled afresh, after judgment, order or directions of the court, under which the sacked employee has been re-instated and the said enquiry was held or charges or allegations levelled at the time of enquiry held under such order or directions of the court or charges or allegation other than levelled at the time of dismissal, removal or termination of sacked employee on basis of which the sacked employee was dismissed, removed or terminated or charges of allegations merely included in the enquiry report and any punishment awarded to the sacked employee on basis of such charges or allegations taken a fresh shall stand nullified and shall have no effect;

- (d) a sacked employee appointed as any type of trainee in service of employer shall be re-instated and regularized on the post, he would have occupied after completion of his term or period as trainee, in regular service of the employer, notwithstanding any condition, under provisions of contract or terms and conditions of appointment regarding availability or vacancy of the post at the time of expiration of period for which he was appointed as trainee;*
- (e) (i) a sacked employee who was given forced golden hand shake shall be reinstated and regularized subject to in lump sum refund of all monetary benefits received by such sacked employee in connection with his or her forced hand shake; and*
 - (ii) statement of a sacked employee to the fact that he was forcibly given the golden hand shake in his application,*

filed under section 3, shall stand enough evidence for purpose of this Act and the sacked employee shall not be asked for any further evidence to establish the fact that he was given forced golden hand shake by the employer;

- (f) a sacked employee re-instated under this Act shall be regularized in the service of the employment in post, scale, grade, cadre, group or designation, whatever the case may be, on which he is re-instated under this Act, as a permanent and a regular employee, with effect from the day of enactment of this Act, at par with other regular employees of the employer concerned and shall be placed at bottom of the seniority list, effective as on the date of enactment of this Act, for scale, grade, cadre, post, group or designation, whatever the case may be, in which the sacked employee is re-instated in accordance with the provisions of this Act;*
- (g) in cases where employer fails to re-instate such sacked employee within fifteen days of the date of application, filed by the employee under Section 3, such sacked employee shall stand re-instated with effect from the date of enactment of this Act, on first working day after fifteen days of the application filed under section 3; and*
- (h) in cases where employer fails to regularize such sacked employee within fifteen days of the date of application filed by the sacked employee under section 3, such sacked employee shall stand regularized with effect from the date of enactment of this Act, on first*

working day after fifteen days of the date of the application filed under section 3."

26. Bare perusal of above provisions of law clearly transpires that it is not a scale alone, rather the designation coupled with scale definitely matters. In line with the state to each individual has to be offered one scale higher i.e. previous scale wherefrom his services were dispensed with alongwith re-designation. Keeping in view such legal scheme, it will not be difficult to understand that the petitioners were placed in BS-16. Soon after their return to job, it was incumbent upon respondent No.2 to offer the post of Assistant Director BS-17 not as a matter of mercy, rather, in view of clear cut provision of law. The petitioners though appraised genuine demand, which all were turned deaf ear by respondent No.2, therefore, finding no other adequate or efficacious remedy available, they constrained to invoke extra ordinary jurisdiction of this Court.

27. So far the concern of decision of the Anomaly Committee, as referred above, referencing Section-10, which from its perusal only specifies entitlement, which shall not be claimed by reinstated sacked employees confining only seniority or arrears of pay and other service benefits as provided in the Ordinance.

28. Section-10 by itself provides other arrears of pay shall not be claimed as well as the seniority, which too subsequently elaborated further in Section 4(c)(iii) of Sacked Employees (Reinstatement) Act, 2010 that sacked employees shall be placed at the bottom of the seniority list of the

employer for the scale, cadre, group, post or designation except entitlement provided by the Act. For the convenience, said provision of law is reproduced hereunder:-

“(iii) sacked employees as provided under sub-clauses (i) and (ii) shall be placed at the bottom of seniority list of employer for the scale, cadre, group, post or designation, whatever the case may be, and such sacked employee shall be entitled to promotion, retirement and all other service benefits admissible to the sacked employees under provisions of this Act, and at par with other regular employees of the employer;

29. It is explicitly clear from the provision of law referred above by either side as well as the decision of both the Committees and Anomaly Committee, which leaving no ambiguity except to reach to the conclusion that the respondents while reinstating the petitioners into service totally misinterpreted the law, or they deliberately violated the law.

30. It is very clear from the above preceding paras that the petitioners as they prayed to the extent of arrears of their pay, since their ouster is out of bond of the Sacked Employees (Reinstatement) Ordinance as well as Act, but they are entitled for their claim of salaries and other service benefits in view of methodology provided by Section 16 of the Sacked Employees (Reinstatement), Act, 2010.

31. So far the concern of their next request with regard to seniority, which too unjustified because when they are moving one step ahead in grade-17, they shall be

reckoned junior to all those, who were performing their services in grade-17 as Assistant Director prior to their date of induction in service and they will be placed in bottom of the seniority list, however, question of their inter-se seniority will have to be determined in between them according to seniority rules.

32. So far the concern of their reversion, though such aspect was not argued by respondents' side, but while scrutinizing the record of writ petition No.1433/2011, a document at page-29 is available, which clarifying the clouds regarding such anomaly as it has already been discussed and finalized, therefore, no ambiguity remained in this regard. The Senior Joint Secretary (V), Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan, Dr. Riaz Mahmood while submitting opinion with reference to the Establishment Division defined it misnomer for them. However, said para is reproduced hereunder:-

"The word "reverted" was a misnomer for them. They had not been reverted due to indiscipline or lack of posts. They had virtually been shown the door. They were put upon erstwhile posts against which they were holding subsisting lien.

As such they can very much avail themselves of the Ordinance issued from time to time since 2009 onward. It is for the Establishment Division to look into the aspect of their dates of appointment and removal minutely."

- 20 -

33. It become clear from such opinion of the law department that their reversion was misnomer and they were not reverting due to clear cut lack of posts. Hence, at this verge while re-induction they shall be considered in their substantive grade 16, in which, they were initially appointed.

34. In view of what ever discussed above, **all the instant petitions are hereby allowed.** Respondents are directed to comply with the provisions of law referred above, which they violated either intentionally or on account of their ignorance. In case, if the grievances of the petitioners are not redressed within a period of one month, the superior authorities are hereby required to take action against any of the official, who is found involved in violating the law, the action to be initiated against him under Section 18 of the Sacked Employees (Reinstatement) Act, 2010.

(NOOR-UL-HAQ~~N~~. QURESHI)
JUDGE

*AR.ANSARI/

Approved for reporting.

JUDGE