

HCJD/C-121  
**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W-P. No. 3268 of 2015.**

**Oil and Gas Development Company Ltd.**

*VERSUS*

**The Sacked Employees Review Board, etc.**

Petitioners by : Mr Nasim Sikandar, ASC and Barrister  
Qadir Bskhsh, ASC.

Respondents by : Ms Mobeen Khan, advocate for the  
respondent no.2 in the instant petition.

Ch. Muhammad Asad Raan, advocate  
for the respondent no.2 in W.P. No. 798  
of 2016.

Rana Liaqat Hayat, advocate for the  
respondent no.2 in W.P. No. 800 of  
2016.

Malik Zahoor Awan, Standing Counsel.

Date of Hearing : 18-05-2016.

**ATHAR MINALLAH, J:-**

Through this consolidated judgment I shall  
decide the instant writ petition along with the petitions listed  
in Annexure-A hereto.

2. The facts, in brief, are that the petitioner is a  
listed joint stock company incorporated as a public limited  
company under the Companies Ordinance, 1984. The

Government of Pakistan has majority of shares and a substantial control of the petitioner / Company is vested in the Federal Government. The petitioner / Company has assailed orders passed by the Sacked Employees Review Board (hereinafter referred to as the "Review Board") constituted under section 12 of the Sacked Employees (Re-instatement) Act, 2010 (hereinafter referred to as the "**Sacked Employees Act**").

3. The learned counsel for the petitioner / Company has contended that; the impugned orders passed by the Review Board are without jurisdiction; none of the four respondents were dismissed, removed or terminated from service; section 2(f) of the Sacked Employees Act envisages a person, who was dismissed, removed or terminated from service or whose contract period had expired or who was given forced golden shake hand shake during the period specified therein; none of the four respondents falls under any of the categories envisaged under section 2(f); the jurisdiction of the Review Board is to the extent of employees as described under section 11; the Review Board was not competent to entertain the petitions in the light of the provisions of sub-section (1) of section 13; the Review Board is a Tribunal of limited jurisdiction and ought to have placed the onus on the respondents to prove / establish their case within section 13 of the Sacked Employees Act; none of the respondents could produce any

order which is a pre-requisite for a Review Board to assume jurisdiction; the four respondents, therefore, were not sacked employees in the context of the definition given in section 2(f) read with section 11; the respondent no.2 in W.P. No. 800 of 2016 had earlier filed a petition before the petitioner / Company and the same was rejected; instead of assailing the said order, the respondent no.2 invoked the jurisdiction of the Review Board; the petition filed by the respondent no.2 in W.P. No. 800 of 2016 was barred by time and as also not maintainable, same was the case of the respondent no.2 in W.P. No. 798 of 2016; the respondent no.2 in the instant petition had never joined as an employee and, therefore, could not have been treated as a sacked employee; earlier this Court in W.P. No. 283 of 2011 titled "Samiullah Khan and others versus Federation of Pakistan, etc", had observed that since only appointment letters were issued and no termination order could be produced, therefore, the Review Board was not competent to consider the cases; the said order of this Court was upheld by the august Supreme Court vide order dated 16.02.2012, passed in C.P. No. 2152 of 2011; no record was required to be maintained in case of the respondents in W.P. No. 4141 of 2015, since he was appointed on 'work charge basis'; the respondent no.2 in W.P. No. 800 of 2016 absented himself without intimation or permission; the respondent no.2 did not approach the Review Board within the prescribed time; the petitioner / Company cannot be treated as an employer

under section 2(d) of the Sacked Employees Act; under section 11 read with section 13(5), the Review Board is vested with jurisdiction to confirm, set aside, vary or modify an order; none of the respondents have produced any order in writing.

4. On other hand, the learned counsels for the respondents in the respective petitions have contended that; the Review Board is vested with jurisdiction; the case of the respondents was covered under section 11 read with section 13; there is no condition under the Sacked Employees Act of that a written order of termination, removal etc is mandatory in order to invoke the jurisdiction of the Review Board; the Review Board was competent and no illegality, misreading or non-reading has been pointed out so as to require interference.

5. Ms Mobeen Khan, Advocate appearing on behalf of the respondent no.2 in the instant petition has adopted the arguments of the other counsels and in addition has argued that; the jurisdiction of this Court is ousted in the light of sub-section (8) of section 13 of the Sacked Employees Act.

6. The learned counsels have been heard and the record perused with their able assistance.

7. The petitioner / Company has assailed orders passed by the Review Board constituted / established under section 12 of the Sacked Employees Act. The questions emerging out of the arguments advanced by the learned counsels for consideration of this Court are; (a) the scope of interference in respect of orders passed by the Review Board in the light of sub-section (8) of section 13, (b) whether the Review Board was vested with jurisdiction to consider and decide the petitions filed by the respondents, (c) whether in the absence of a written order the Review Board could have assumed jurisdiction and lastly (d) whether the Review Board was vested with power and jurisdiction to decide the cases of the respective respondents.

8. In order to answer the above questions it would be beneficial to examine the scheme of the Sacked Employees Act followed by the precedent law. The Sacked Employees Act was promulgated and notified in the official gazette on 08.12.2010. The preamble thereof describes the objects and purposes of enactment as providing relief to persons who were appointed in a corporation service or autonomous or semi-autonomous bodies or in Government service during the period specified therein. The expression 'employer' is defined in section 2(d) as meaning 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; the Review Board is defined in section 2(e) as meaning the Board established under section 12. Section 2(f) defines the expression 'sacked employee'. Section 3 provides for the procedure for filing an application before an employer for reinstatement of his/her service. Section 4 starts with a non-obstante clause in the context of anything contained in any other law 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 to be reinstated in service; Section 5 envisages the eventuality of a sacked employee having already reached the age of superannuation while section 6 defines the removal of a sacked employee from service on account of closure of employer organization. Section 11 provides for preferring a petition to the Review Board established under section 12 and further specifies the categories of sacked employees entitled to file a petition.

9. The categories of employees, who have been vested with the statutory right to file a petition before the Review Board are those who were dismissed, removed or terminated from service on account of (i) absence from duty (ii) misconduct (iii) any form of misappropriation of Government money and lastly unfitness on medical grounds. The right to invoke the jurisdiction of the Review Board,

therefore, vests in persons who fall within the definition of a 'sacked employee' and within one of the categories specified in section 11. As a corollary the jurisdiction of the Review Board is circumscribed to the extent of categories specifically mentioned in section 11. Section 12 describes the composition of the Review Board.

10. The Review Board established under sub section (1) of section 12 consists of five members and four must either be a Joint Secretary or any other officer equivalent to a Joint Secretary or a BPS-20 officer from (a) Establishment Division, (b) Ministry of Law and Justice, (c) Ministry of Finance and (d) the Ministry under which the sacked employee or his employer was working on the day of enactment of this Act. It is further provided that the Review Board is to be headed by a Chairman, who shall be a retired Judge of the Supreme Court or of a High Court. The latter is appointed by the Federal Government. It is obvious from the constitution of the Review Board that out of five, four Members are not only direct nominees and senior officers of the Federal Government but one of the Members is from the Ministry having the administrative control of the entity or authority where the sacked employee was employed. This composition is of significance for the purposes of interpreting the ouster clause of section 13(8) as will be discussed later.

11. Section 13 describes the procedure, powers and the functions of the Review Board. Sub-section (1) of section 13 specifies the time for the purposes of filing a petition. Sub-section (3) of section 13 provides that the Review Board shall not redirect or divert the sacked employee to his employer for any purpose including verification of his service data or record or any other reason for the purposes of registering the petition. The latter provision shows the legislative intent for the purposes of assuming jurisdiction by the Review Board. The powers vested in the Review Board are described in sub-section (5) while sub-section (6) enumerates the circumstances and the nature of orders which the Review Board is empowered to pass. Sub-section (8) of section 13 expressly and in clear language declares the orders of the Review Board passed on the review petition under sub-sections (5), (6) and (7) to be 'final' and that such orders cannot be called in question in any Court, Authority or Tribunal. Section 18 provides for penalty in case of disobedience or willfully creating hurdles in the implementation of the provision of the Act or disobedience of the provision thereof. Section 20 gives overriding effect to the provisions of the Sacked Employees Act notwithstanding anything to the contrary, contained in any other law or in any judgment of any Tribunal or Court including the Supreme Court and a High Court.



12. It is obvious from the above survey of the provision of the Sacked Employees Act that it is a special law enacted as a beneficial legislation for reinstatement of employees defined under section 2(f). The Review Board established under section 12 has been constituted so as to virtually give a veto power to the Members who are senior officers of the Federal Government. It also includes the representative of the Ministry having the administrative control over the employer of the Sacked Employee. The ultimate decision making power therefore lies with the representatives of the Federal Government. It is also pertinent to point out that the Sacked Employees Act is enacted only to the extent of entities established or controlled by the Federal Government as defined in section. The composition of the Review Board definitely becomes crucial in interpreting the ouster clause contemplated in sub-section (8) of section 13. The combined reading of the provisions of the Sacked Employees Act clearly highlights the legislative intent. As already noted above, the Sacked Employees Act has been enacted for the benefit of and to provide relief of reinstatement in service to the employees of who were employed with the employers. Employer as defined in section 2(d) essentially is confined to such entities which are Ministries or Division of the Federal Government or are established or controlled by the latter. The composition of the Review Board is such that virtually the decision making power vests in the Federal Government. It

is for this reason that at the time of filing a petition section 13(3) expressly restrains the Review Board from redirecting or diverting the sacked employee to his employer for any purpose 'including verification of his service data or record or any other reason' for the purposes of registering the petition. Section 18 is further indicative of the intent of giving effect to the provisions of the Sacked Employees Act by providing penalty for disobeying or willfully creating hurdles. Section 20 gives the statute an overriding effect. It is in this context that the legislature in its wisdom has declared the orders and decisions of the Review Board to be 'final under Section 13(8) and that it cannot be called in question in any 'court, authority or tribunal'.

13. Before further examining the scope of interference in the decisions and orders of the Review Board in exercise of jurisdiction vested in this Court under Article 199 of the Constitution it is essential to reproduce section 13(8) of the Sacked Employees Act and then to interpret it in the light of the precedent law relating to ouster clauses in a statute. Section 13(8) is as follows;

*"The order of the Sacked Employees' Review Board passed on the review petition under sub-section (5) or (6) or the sacked employee stood re-instated and regularized under sub-*

*section (7), shall be final and shall not be called in question in any court, authority or tribunal."*

14. The principles and law elucidate in the context of ouster clauses is, therefore, examined in the following paragraphs.

15. The earliest judgment wherein the principles of an ouster clause were considered is titled "Yousaf Ali versus Muhammad Aslam Zia and 02 others" [PLD 1958 S.C. 104] wherein it has been observed as follows:-

*"Where the Legislature clothes an order with finality, it always assumes that the order which it declares to be final is within the powers of the authority making it, and no party can plead as final an order made in excess of the powers of the authority making it, in the eye of the law such order being void and non-existent."*

16. In the case titled "Zafar-ul-Ahsan versus The Republic of Pakistan through Cabinet Secretary, Government of Pakistan" [PLD 1960 Supreme Court 113], the Hon'ble

Chief Justice and four Hon'ble Judges of the august Supreme Court laid down the conditions to be satisfied for a ouster clause to operate and the relevant portion is as follows;-

*"If a statute provides that an order made by an authority acting under it shall not be called in question in any Court, all that is necessary to oust the jurisdiction of the Courts is that the authority should have been constituted as required by the statute, the person proceeded against should be subject to the jurisdiction of the authority, the ground on which action is taken should be within the grounds stated by the statute, and the order made should be such as could have been made under the statute. These conditions being satisfied, the ouster is complete even though in following the statutory procedure some omission or irregularity might have been committed by the authority. If an appellate authority is provided by the statute the omissions or irregularity alleged will be a matter for that authority, and not, as rightly observed by the High Court, for a Court*

*of law. Of course where the proceedings are taken malafide and the statute is used merely as a cloak to cover an act which infact is not taken though it purports to have been taken under the statute, the order will not, in accordance with a long line of decisions in England and in this sub-continent, be treated as an order under the statute."*

17. The august Supreme Court in the case titled "Keramat Ali and another versus Muhammad Yunus Haji and others" [PLD 1963 S.C. 191] has quoted with approval the principles enunciated by the Judicial Committee of the Privy Council in the case of the "Collector of South Arcot v. Mask and Company (1) 67 I A 222" and the same are as follows;-

*"The exclusion of the jurisdiction of Civil Courts must either be explicitly expressed or clearly implied and is not to be readily inferred. Even if jurisdiction be so excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the act have not been complied with or the statutory Tribunal has not acted in conformity with the*

*fundamental principles of judicial procedure."*

18. The august Supreme Court in the case of "Muhammad Ismail and others versus The State" [PLD 1969 S.C. 241], has considered and enunciated the principles of interpretation of statutes in the context when a legislation has used language having the effect of taking away the jurisdiction of the Courts and in this regard the apex Court referred to the treatises of Maxwell and Craies, the relevant portion whereof is as follows;-

*"It is no doubt true that in constructing a statute the Courts are normally reluctant to attribute to the Legislature an intention of introducing a radical or sudden change of policy unless they are compelled to do so by the express and unequivocal manifestation of the intention of the Legislature, but at the same time it has to be pointed out that there is always a strong presumption that the Legislature does not make mistakes. 'If blunders are found in legislation, they must be corrected by the Legislature, and it is not the foundation of the Court to*

*repair them.’ (Vide Halsbury’s Laws of England, 3<sup>d</sup> Edition, Volume 36 page 390). ‘As a general rule a Court of law is not authorized to supply a cassus omissus, or to alter the language of a statute for the purpose of supplying a meaning, if the language used in the statute is incapable of one, even though they may be of opinion that a mistake has been made in drawing the Act’ (Vide Caries on Statute Law, 6<sup>th</sup> Edition, page 520).”*

*“The purpose of construction or interpretation of a statutory provision is no doubt to ascertain the true intention of the Legislature, yet that intention has, of necessity, to be gathered from the words used by the Legislature itself. If those words are so clear and unmistakable that they cannot be given any meaning other than that which they carry in their ordinary grammatical sense, then the Courts are not concerned with the consequences of the interpretation however drastic or inconvenient the result, for, the*

*function of the Court is interpretation,  
not legislation."*

19. The judgment in the case of "Federation of Pakistan and another versus Malik Ghulam Mustafa Khar" [PLD 1989 S.C. 26], was rendered by the Full Court of the august Supreme Court which included the Hon'ble Chief Justice and nine Hon'ble Judges. The august Supreme Court reaffirmed the principles and law laid down in an earlier judgment titled "The State versus Zia ur Rehman and others" [PLD 1973 S.C. 49]. The relevant portion as reproduced by the august Supreme Court is as follows;-

*"There is a presumption against  
the ouster of jurisdiction of the  
Superior Courts and any law which has  
the effect of denying access to them  
has to be narrowly construed for the  
reason that these are the forum  
created by the people for obtaining  
relief from oppression and redress for  
the infringement of their rights. But  
then where the ouster clause is clear  
and unequivocal, admitting of no other  
interpretation, the Courts unhesitatedly  
give effect of it."*



20. The august Supreme Court after examining the judgments rendered earlier held as follows:-

*"These decisions do indicate that where the jurisdiction of the Courts to judicially review any executive act has been competently taken away, then the Court will not be able to assert its jurisdiction to do so under any circumstances but this must, in my opinion, depend upon the nature of the jurisdiction sought to be ousted and the nature and extent of the ouster itself. If the language used is such that it leaves no room for doubt as to the intention of the Legislature to oust the jurisdiction of the Courts in all circumstances, then that will have to be given effect and even acts performed without jurisdiction or malafides will not be open to judicial scrutiny. But the Courts having the right to interpret the law will in each given case decide the precise nature of the ouster clause and the extent to which the jurisdiction of the Courts has been ousted, keeping in*

*mind the principle consistently affirmed by all Courts that provisions seeking to oust the jurisdiction of superior Courts are to be construed strictly with a pronounced leaning against ouster."*

21. In the case of "Allied Bank of Pakistan Ltd. versus Khalid Farooq" [1991 SCMR 599], the august Supreme Court with reference to ouster of jurisdiction has observed and held as follows:-

*"With regard to the question of ouster of power, it is a recognized principle of law that a claim in respect of the ouster of power of the High Court in respect of any matter or subject available to it under the Codes of Civil or Criminal Procedure cannot be lightly accepted, unless there is a clear, definite and positive provision ousting the jurisdiction. Express words or clear intendment or necessary implication are required to take away the jurisdiction of a High Court or any superior Court. In Zahoor Elahi v. The State (PLD 1977 S.C. 273), this Court has held that it is a well settled*

*principle relating to the construction of statutes that the exclusion of jurisdiction of superior Courts is not to be readily inferred, that there is a strong leaning against any such exclusion, that this rule is deep seated and if it is to be overturned, it must ordinarily be done by a clear, definite or positive provision, not left to mere implication."*

22. It was observed and held by the august Supreme Court in case "Abbasia Cooperative Bank (now Punjab Provincial Cooperative Bank Ltd.) through Manager and another versus Hakeem Hafiz Muhammad Ghaus and 05 others" [PLD 1997 S.C. 3] as follows;-

*"It is a well settled principle of interpretation that the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to. It is also well settled law that where the jurisdiction of the Civil Court to*

*examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not malafide; (c) that the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or malafide or passed in violation of the principles of natural justice, such an order could be*

*challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court."*

23. The principles of interpretation relating to ouster of jurisdiction of a Court under a statute was yet again affirmed by the august Supreme Court in the case titled "Evacuee Trust Property Board and others versus Ahmed and others" [2004 SCMR 440], the relevant portion is as follows;-

*"It is now well settled that ouster of jurisdiction under the statute has to be interpreted strictly and it can only operate, if it is shown and proved on the record that certain proceedings are without jurisdiction or coram non judice or the action was tainted with malafide."*

24. In the judgment titled "Munir Hussain Bhatti, Advocate and others versus Federation of Pakistan and another" [PLD 2011 S.C. 407], the august Supreme Court interpreted Article 175-A of the Constitution. After examining the precedent law and the various provisions of the Constitution the apex Court observed;

*"There is a vast body of precedent in our legal corpus which has consistently held that the Court's jurisdiction may only be ousted through express words in a legal text. This principle of law is by now well settled. Even Mr. Agha did not give any valid reason to question this legal principle or to show that it does not apply to the circumstances of this case. On the other hand, any number of cases can be cited in support of the argument advanced by learned counsel for the petitioners that while interpreting a legal text, ouster of jurisdiction should not be inferred."*

25. In the case of "Pir Sabir Shah versus Federation of Pakistan and others" [PLD 1994 S.C. 738], the august Supreme Court, in the context of the constitutional provisions whereby the jurisdiction of the Courts is ousted expressly and by using clear language, held and observed that even where such a protection has been given the superior Courts still have the jurisdiction to interfere with three categories of cases namely without jurisdiction, coram-non-judice and malafide. Reference may also be made to judgment [PLD 2006 S.C. 1422].

26. It would also be relevant to refer to the Halsbury's Laws of England, Fourth Edition, in the context of ouster of jurisdiction by statute and the same is as follows;-

*"The subject's right of access to the courts may be taken away or restricted by statute, but the language of any such statute will be jealously watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. Moreover, a statutory provision ousting the jurisdiction of the courts must now be interpreted, as far as possible, so as to be compatible with the right to a fair and public hearing under the European Convention on Human Rights as incorporated into domestic law."*

27. In a judgment delivered by the House of Lords titled "Anisminic, Ltd. v. The Foreign Compensation Commission and another" [1969] 1 All E.R. 2008 Lord Reid, while referring to the principles relating to provisions ousting the jurisdiction of the Courts observed;-

*"It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly—meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.*

*Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity."*



28. In a judgment rendered by the Court of Appeal in the case "Re Gilmore's Application" [1957] 1 All E.R. 796, Denning L.J., in the context of a statutory provision, which provided that any decision or claim or question shall be final has observed as follows;-

*"It does arise here, and on looking again into the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not enough. That only means 'without appeal'. It does not mean 'without recourse to certiorari'. It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a statute made 'final', certiorari can still issue for excess of jurisdiction or for error of law on the face of the record."*

29. The above principles and law regarding construing statutory provision couched in language ousting the jurisdiction of the Courts may be summarized as follows;-

(i) The legislature is competent to oust or exclude the jurisdiction of courts.

(ii) There is a presumption against the ouster of jurisdiction. Any law or statutory provision which denies access to the courts is to be construed very strictly and narrowly.

(iii) Ouster or exclusion of jurisdiction must be expressly and clearly implied and not readily inferred. The language used by the legislature ought to show express and unequivocal manifestation of the legislative intent to exclude the jurisdiction of the courts.

(iv) If the language is so clear and unmistakable that leaves no room for doubt as to the intention of the legislature ousting jurisdiction in all circumstances then that will be given effect to even in cases of malafides and without jurisdiction would not be open to judicial review and the courts would not be concerned with the consequences.

(v) Ordinarily, unless the intention of the legislature is so clear that no other

meanings can be given to the language used, the jurisdiction of the courts will not be ousted in three categories of decisions/orders i.e. a) without jurisdiction, b) coram non judice and c) tainted with malafide.

(vi) Ordinarily, when the legislature declares an order or decision to be final, it has reference to such orders/decisions which is within the powers of the authority making it, the authority should have constituted in accordance with the statute, the person proceeded against should be subject to jurisdiction, the order passed or action taken should be such as could have been made under a statute and if these conditions are fulfilled then an omission or irregularity committed in following the statutory procedure will not be a sufficient ground to avoid giving effect to the exclusion of jurisdiction.

30. The provisions of sub-section (8) of section 13 of the Sacked Employees Act when examined in the light of the above principles and law and the scheme of the statute clearly shows that the legislature has clearly and manifestly

declared the orders and decisions of the Review Board to be 'final' and that they cannot be called in question in any court, authority or tribunal. However, the language of the said provision does not exclude the jurisdiction of a court in all circumstances. It does not extend to orders and decisions which are without jurisdiction, coram non judice or tainted with malafide. Moreover, it clearly makes the decision 'final' on facts but not the law. It would be pertinent to emphasize that provisions of section 13(8) would be enforced and construed in favour of the sacked employee when the grievance has been raised by the 'employer' against the order or decision of the Review Board. As already discussed in detail, an 'employer' through its controlling Ministry or Division is represented as a Member of the Review Board while rest of the Members are senior officials of the Federal Government. It is only the Chairman who has a neutral status. The scheme of the Sacked Employees Act in the context of the 'finality' of the orders or decisions under section 13(8) manifestly shows the legislative intent that the provisions are to be given effect, particularly against the 'employer' and in 'favour' of the 'sacked employee'. This becomes more pronounced and essential when the decision of the Review Board is unanimous, as in the present petitions. The enactment of the Sacked Employees Act undoubtedly being a beneficial legislation its provisions are to be interpreted and construed liberally and beneficially in favour of the sacked employees. Reliance is placed on the cases

"Agriculture Workers' Union Baluchistan versus The Registrar of Trade Unions, Baluchistan Quetta, and another" [1997 SCMR 66], "Lahore Development Authority through D.G. Lahore and another versus Abdul Shafique and others" [PLD 2000 SC 207], "Syed Match Company Ltd. versus Authority under Payment of Wages Act" [2003 SCMR 1493], "M/S Ashraf Sugar Mills Ltd. through General Manager versus Manzoor Ahmed" [2006 SCMR 1751], "M/S Bolan Mining Enterprises versus Board of Trustees, EOBI and others" [2010 SCMR 1573], and "Karachi Chambers of Commerce and Industry, Karachi versus Sindh Labour Court No.V Karachi and others" [2011 SCMR 1709].

31. I shall now advert to the facts and circumstances in case of the respective petitions separately and shall examine the same in the light of the above discussion.

**W.P. No. 3268 of 2015.**

32. The respondent / employee had been issued an appointment letter dated 16.10.1996. It is the case of the petitioner that it was not a mere offer but a concluded contract, which had culminated in his appointment. However, he was terminated merely on the ground that the Government had changed thus suggesting that he had been appointed illegally and thus imputing misconduct on his part.

The question whether letter dated 16.10.1996 was an appointment or an offer for appointment is essentially a question of fact which has been decided by the Review Board. I am afraid that there is no force in the he argument of the learned counsel for the petitioner / Company that the respondent / employee was not able to produce an order which would meet the requirements of section 11 of the Sacked Employees Act. In the light of section 13(8) of the Sacked Employees Act the impugned order has become 'final' on facts. Moreover, whether or not the removal or termination was on the basis of the grounds specified in section 11 is also question of fact. Likewise the argument regarding limitation also involves factual controversy. All these aspects which are factual in nature are not open to judicial review in the light of section 13(8). The order therefore of the Review Board is final. No case is made out for declaring the impugned order as without jurisdiction, coram-non-judice or tainted with malafide.

**W.P. No. 4141 of 2015.**

33. The respondent / employee was appointed vide letter dated 16.08.995. This is admitted by the petitioner / Company. The impugned order passed by the Review Board reflects that the respondent / employee had not only joined his office but had served for more than one month. However, the question whether the latter was

removed, terminated, dismissed or had left the service out of his own will is a question of fact which has already been decided by the Review Board. According to the statement made by the representative of the petitioner / Company, the respondent / employee had absented himself from his duty. The case of the respondent / employee, therefore, was covered under section 11 of the sacked Employees Act and nothing has been pointed out in order to show that the impugned order passed by the Review Board is without jurisdiction, coram-non-judice or based on malafide.

**W.P. No. 798 of 2016.**

34. The respondent / employee was admittedly appointed as dispatcher on 03.10.1994 and remained in service till 24.05.1997. He was removed / terminated from his service. The factual aspects have been determined by the Review Board. There is nothing on record to show that the impugned order is without jurisdiction, coram-non-judice or tainted with malafide.

**W.P. No. 800 of 2016.**

35. The respondent / employee was admittedly appointed as a driver and his services were terminated on 01.07.1999. The factual aspects have been considered and decided by the Review Board and, therefore, the same are

not amenable to the jurisdiction of this Court under Article 199 of the Constitution in the light of section 13(8) of the Sacked Employees Act.

36. I am not impressed with the argument advanced by the learned counsel for the petitioner/Company that in the absence of a written order the Review Board would not be competent to assume jurisdiction under section 13. This argument if accepted would have the effect of reading into the statute something not intended by the legislature. An order can be oral, in writing or at times manifest though the conduct of the maker. If the legislature had intended to exclude all other orders except the written orders from the ambit of the Review Boards jurisdiction then it would have been declared expressly.

37. For what has been discussed above, the instant petitions are without merit and, therefore, accordingly ***dismissed***.

(ATHAR MINALLAH)  
JUDGE

Announced in the open Court on 30.06.2016.

JUDGE

Approved for reporting.