

2023 P L C (C.S.) 1214

[Lahore High Court (Bahawalpur Bench)]

Before Muhammad Sajid Mehmood Sethi and Ch. Abdul Aziz, JJ

RASHID MEHMOOD GULL

Versus

FEDERATION OF PAKISTAN through Secretariat Establishment Division (Sacked Employees Review Board), Islamabad and others

I.C.A. No.156 of 2017, heard on 30th March, 2021.

Sacked Employees (Re-instatement) Act (XXII of 2010)---

----Ss. 4(a) & 16 ---Re-instatement of sacked employee into service---Seniority, back benefits and compensation, entitlement to---Scope---Sacked Employees Review Board reinstated the bank employee but refused his claims of seniority and back benefits---Bank employee invoked constitutional jurisdiction of the High Court, however, the Single Bench declined his prayer for grant of seniority and back benefits---Held, that the appellant (bank employee) was reinstated under the provisions of the Sacked Employees(Re-instatement) Act, 2010 ('the Act, 2010'), after almost seventeen years from his discontinuance from services of respondent/bank and as per S. 4(a) of the Act, 2010, he was also entitled to be regularized in regular service of respondent/bank on one scale higher to the substantive scale/grade held by him at the time of his termination from service, and, thus, the same was not a matter of mercy---Section 16(1) of the Act, 2010 stipulated that a sacked employee was entitled to be paid compensation by the employer equal to gross monthly emolument of three years, at the rate of monthly pay and allowances payable at the time of disbursement of installment for the relevant post/grade in which the sacked employee was being re-instated or regularized, if already taken back in service---Appellant was also entitled to compensation in view of methodology stipulated in S. 16 of the Act, 2010---Impugned order passed by the Single Judge was set-aside---Intra-Court Appeal was allowed, in circumstances.

Waqar Alam and others v. Secretary, Establishment Division and others 2013 PLC (C.S.) 12 and Hidayatullah v. Federation of Pakistan through Secretary Ministry of Information Technology and Telecommunications and 2 others 2011 PLC (C.S.) 1299 ref.

Muhammad Farooq Warind for Appellant.

Syed Zulfiqar Haider Shah Bukhari, Assistant Attorney General for Respondents.

Muhammad Yasin for Respondent-Bank.

Date of hearing: 30th March, 2021.

JUDGMENT

MUHAMMAD SAJID MEHMOOD SETHI, J.---Through instant appeal, appellant has challenged the vires of order dated 26.10.2017, passed by learned Single Judge, whereby constitutional petition, filed by appellant, was dismissed.

2. Brief facts of the case are that appellant was appointed as Assistant in Small Business Corporation (now SME Bank) on daily wages on 08.05.1995. Later on his services were discontinued vide order dated 15.01.1999 due to his involvement in corrupt practices particularly on finding him guilty in tampering the recovery voucher deliberately. After introduction of the Sacked Employees' (Reinstatement) Act, 2010 ("the Act of 2010"),

appellant filed petition before the Sacked Employees Review Board and vide order dated 19.08.2015, appellant was reinstated into service, however, his claims of seniority and back benefits were refused. Appellant filed constitutional petition for grant of seniority and back benefits but the same was dismissed vide order dated 26.10.2017.

Feeling aggrieved of the aforesaid order, appellant preferred appeal before this Court, which was allowed vide judgment dated 29.01.2018. Respondent-bank challenged said judgment before Hon'ble Supreme Court by way of filing Civil Petition No.624 of 2018 and with consent of both the parties, judgment dated 29.01.2018 was set aside and matter was remanded to this Court vide order dated 16.04.2019, in the following manner:-

"By consent of the parties, the impugned judgment dated 29.01.2018 of the learned High Court is set aside and the matter is remanded to the learned Division Bench for fresh determination after issuing notice to the parties in relation to the financial benefits accruing to the respondent under his reinstatement order dated 19.08.2015.

2. Consequently, this petition is converted into appeal and the same is allowed in the terms noted above."

3. Learned counsel for appellant submits that as per Section 4(a) of the Act of 2010, appellant, on reinstatement, was entitled to be placed in regular service of respondent-bank on one scale higher than the scale / grade possessed by him when he was dismissed or removed from service. Adds that appellant's date of dismissal has been wrongly recorded as 15.01.1995 by learned Single Judge instead of 15.01.1999, thus, he was wrongly disentitled to get benefit of compensation as per Section 16 of the Act of 2010.

4. Conversely, learned counsel for respondent-bank defends the impugned order and submits that learned counsel for appellant has failed to point out any illegality or legal infirmity in the same.

5. Arguments heard. Available record perused.

6. Admittedly, appellant was appointed in respondent-bank on 08.05.1995, his services were discontinued on 15.01.1999 and he was reinstated under the provisions of the Act of 2010 on 19.08.2015. As per Section 4(a) of the Act of 2010, appellant is also entitled to be regularized in regular service of respondent-bank on one scale higher to the substantive scale or grade, held by him at the time of his termination from service. The aforesaid provision is reproduced hereunder:-

"4. Re-instatement of employees in service and regularization of employees' service.--- Notwithstanding 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 this Act, in the manner provided as under, namely:---

(a) A sacked employee appointed on permanent or temporary basis or regular or ad hoc basis or otherwise in any corporation or Government service against a regular or temporary post shall be re-instated and regularized in regular service of the employer on one 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;"

It is quite unambiguous from the above provision of law that sacked employee would be reinstated and regularized in regular service to one step higher than held by him at the time of termination, not as a matter of mercy, rather, in view of express provision of law.

Likewise, Section 16(1) of the Act of 2010 provides that a sacked employee is entitled to be paid compensation by the employer equal to gross monthly emoluments of three years, at the rate of monthly pay and allowances payable at the time of disbursement of installment for the relevant post / grade in which the sacked employee is being re-instated or regularized, if already taken back in service. The aforesaid provision is reproduced hereunder:-

"16. Payment of compensation on re-instatement.-(1) Each sacked employee, whether re-instated in service of corporation or autonomous or semi-autonomous organization or Government under provisions of this Act, or regularized, where sacked employee is already taken back in service under order of any tribunal or any court including the Supreme Court or a High Court, shall be paid compensation out of employer's own resources, without waiting for any type of transfer or receipt of funds from any other organization or Ministry, equal to gross monthly emoluments of three years, at the rate of monthly pay and allowances payable at the time of disbursement of installment for the relevant post, grade, cadre, group or designation, whatever the case may be, in which the sacked employee is being re-instated or regularized, if already taken back in service."

It is explicitly clear from the above provision that a sacked employee is also entitled to compensation in view of methodology provided by Section 16 of the Act of 2010. Reference can be made to Waqar Alam and others v. Secretary, Establishment Division and others [2013 PLC (C.S.) 12] and Hidayatullah v. Federation of Pakistan through Secretary Ministry of Information Technology and Telecommunications and 2 others [2011 PLC (C.S.) 1299].

7. In this view of the matter, instant appeal is allowed. The impugned order dated 26.10.2017, passed by learned Single Judge, is set aside and respondents are directed to grant one step higher promotion and other monetary benefits to appellant, admissible under the provisions of the Act of 2010, by modifying order dated 19.08.2015, passed by respondent No.2, forthwith.

MQ/R-10/L Appeal allowed.