

IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED
MR. JUSTICE AMIN-UD-DIN KHAN

CIVIL REVIEW PETITIONs Nos. 292 TO 302 of 2021 &
CIVIL REVIEW PETITIONs Nos. 351 TO 432 of 2021 &
CIVIL REVIEW PETITIONs Nos. 442 TO 456 of 2021

(For review of the judgment dated 17.08.2021 passed in CA No.491 of 2012, etc.)

A/W

CMA Nos. 11812 TO 11814 OF 2021 &
CMA Nos. 11837, 11862 TO 11864 OF 2021 &
CMA Nos. 11902-11903, 11982-11983 OF 2021 &
CMA Nos. 11987 OF 2021 &
CMA Nos. 11679, 12017, 12019, 12020, 12024 OF 2021 &
CMA Nos. 12025, 12028, 12029, 12031-12033 OF 2021 &
CMA Nos. 12035, 12075, 11993, 12103-12104 OF 2021 &
CMA Nos. 12161-12162, 12172-12173, 12403 OF 2021 &
CMA Nos. 12372-12373 OF 2021

A/W

CIVIL MISC. APPEAL NO.168, 158 & 175 OF 2021

Hadayat Ullah etc.

...Petitioner(s)

Versus

Federation of Pakistan etc.

...Respondent(s)

In attendance:

Kh. Muhammad Arif, ASC
(in CRP 292,388/21)
Mr. Muhammad Yousaf Khan,
(in CRP 293/21)
Mr. Muhammad Tariq Asad, ASC
(in CRP 294,CMA12033/21)
Mr. Khalid Javed Khan,
Attorney General for Pakistan
Mr. Ayaz Shoukat, DAG
a/w Ms. Maryam Rasheed &
Mr. Usman Paracha, Advocates.
(in CRP 295/21)
Muhammad Nawaz Abbasi (in person)
(in CRP 296,446/21)
Mr. S.A. Mehmood Khan Sadozai, ASC
(in CRP 297-300,416/21)
Mr. Muhammad Ilyas Siddiqui, ASC
(in CRP 301/21)
Mr. Hazrat Said
(in CRP 302/21)
S. Iftikhar Hussain Gillani, Sr. ASC
(in CRP 351,392/21)
Ms. Shireen Imran, ASC
(in CRP 252,393,394,448,CMA12104/21)
Mr. M. Safdar Shaheen Pirzada, ASC
(in CRP 253,372,375/21)
Mr. Nisar A. Mujahid, ASC
(in CRP 354/21)
Raja Abdul Ghafoor, AOR/ASC
(in CRP 355,374,CMA11982,12029/21)
Ch. Afrasiab Khan, ASC
(in CRP 356/21)
Mian Raza Rabbani, Sr. ASC

Mr. Saalim Salam Ansari, ASC
Assisted by Mr. Zeeshan Abdullan
(in CRP 357,CMApl.175, CMA12172,12173/21)

Mr. Shah Khawar, ASC
Mr. Hassan Rashid Qamar, ASC
(in CRP 355,378-381, 442, 455,456,CMA12028,12162/21)

Mr. Zubair Hussain, ASC
(in CRP 359,CMA11983/21)
Syed M. Iqbal Hashmi, ASC
(in CRP 360-363/21)
Mr. Mazullah Khan (in-person)
(in CRP 364/21)
Mr. Zulfikar Khalid Maluka, ASC
(in CRP 365,428/21)
Mr. Ghulam Sajjad Gopang, ASC
(in CRP 366/21)
Mr. Omer Farouk Adam, ASC
(in CRP 367/21)
Mr. Tariq Mehmood Mughal, ASC
(in CRP 368/21)
Syed Rifaqat Hussain Shah, AOR/ASC
(in CRP 369,385,420,CMApl.168, CMA 12032,12035/21/21)

Mr. Muhammad Sharif Janjua, AOR/ASC
(in CRP 370,386,399,400,423/21)
Mr. Saleem Ullah Ranazai, ASC
(in CRP 371/21)

Mr. Kamran Murtaza, Sr. ASC
(in CRP 373,377/21)
Mr. Waseem Sajjad, Sr. ASC
(in CRP 376,383/21)
Dr. Saeed Ahmed (in person)
(in CRP 382/21)
Mr. Aftab Alam Yasir, ASC
(in CRP 384,CMA12020/21)

Mr. Abdul Razzaq Shar, ASC
(in CRP 387,454,CMA12024/21)
Mr. Jam Khursheed Ahmed, ASC
(in CRP 389/21)
Mr. Muhammad Sajid Khan, ASC
(in CRP 390,CMA12031,12161/21)

Mr. Hamid Khan, Sr. ASC
Mr. M. Waqar Rana, ASC
(in CRP 391/21)

Mr. Liauqat Ali Karim, ASC
(in CRP 395/21)
Mr. Abid A. Zuberi, ASC
(in CRP 396/21)
Mr. Azhar Navid Shah, ASC
(in CRP 397/21)
Malik Faiz Rasool Rajwana, ASC
(in CRP 398/21)

Mr. Muhammad Umair Baloch, ASC
Mr. Shoaib Shaheen, ASC
(in CRP 401-415,418,419,CMA12372/21)

Mr. Muhammad Haseeb Jamali, ASC
(in CRP 417/21)

Mr. Malik Mansoor Hussain, ASC
(in CRP 421/21)

Ch. Aitzaz Ahsan, ASC
Mr. Gohar Ali Khan, ASC
(in CRP 422/21)

Mr. Shakirullah (in-person)

(in CRP 424/21)

Mr. Muhammad Nawaz Rai, ASC

(in CRP 425/21)

Mr. Muddasar Khalid Abbasi, ASC

(in CRP 426/21)

Mrs. Kausar Iqbal Bhatti, ASC

(in CRP 427/21)

Khalid Javed (in-person)

(in CRP 429/21)

Mr. Abdul Latif Afridi, Sr. ASC

(in CRP 430-431/21)

S. Asghar Hussain Sabzwari, Sr. ASC

S. Qamar Hussain Shah Sabzwari, ASC

S. Nayyar Hussain Bukhari, ASC

(in CRP 432/21)

Sh. Mehmood Ahmed, AOR

(in CMA 11812/21)

Mr. Sikandar Javed, ASC

(in CMA 11813,11993/21)

Ms. Attiya Khanam (in-person)

(in CMA 11814/21)

Fazal e Rabbi (in-person)

(in CMA 11837/21)

Malik Muhammad Riaz, (in-person)

(in CMA 11862/21)

Mr. Arshad Ali Makhdoom, ASC

(in CMA 11863/21)

Muhammad Ibrahim (in-person)

(in CMA 11864/21)

Mr. Faisal Siddiqui, ASC

(in CMA 11902/21)

Mr. Anees M. Shahzad, AOR/ASC

(in CMA 11903/21)

Mr. Mir Aurangzeb, AOR/ASC

(in CMA 11987/21)

Mr. Jawaid Masood Tahir Bhatti, ASC

(in CMA 11679,CM.Apl.158/21)

Mr. Mir Shahzad Khan Talpur (in-person)

(in CMA 12017/21)

Malik Muhammad Munsif Awan, ASC

(in CMA 12019/21)

Muhammad Afzal Khan

(in CMA 12025/21)

Tassawar Abbas Tanvir (in-person)

(in CRP 443/21)

Dr. Umar Farooq Siddiqui (in-person)

(in CRP 444/21)

Sardar M. Latif Khosa, Sr. ASC

Sardar M. Shahbaz Khosa, ASC

(in CRP 445,447/21)

Mr. Pervez Rauf, ASC

(in CRP 449,452/21)

Mr. Mir Afzal Malik, ASC

(in CRP 450/21)

Malik Saleem Iqbal Awan, ASC

(in CRP 453/21)

Raja Farakh Arif Bhatti, ASC

(in CMA 12075/21)

Mr. Ria M. Nawaz Kharal, ASC

(in CMA 12103/21)

Ch. M. Younas, ASC

(in CMA 12403/21)

Mr. Shahid Anwar Bajwa, ASC

(in CMA 12373/21)

Mr. Niazullah Niazi, AG ICT

SSGPL : Barrister Umer Aslam

State Life : Syed Waqar Naqvi, ASC

OPF : Mr. Aftab Alam Yasir, ASC
SNGPL : Mr. Asad Jan, ASC
Date of Hearings : 01,06-09,13-17th December, 2021

ORDER

For reasons to be recorded later, these review petitions are dismissed. The impugned legislation, namely, the Sacked Employees (Re-instatement) Act, 2010 ("**Act**") is held to be violative of, *inter alia*, Articles 25, 18, 9 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") and therefore void under the provisions of Article 8 of the Constitution.

2. However, in exercise of the Court's jurisdiction under Article 184(3) of the Constitution read with Article 187, we have taken into consideration the services rendered by the re-instated employees of the "employers" [as defined in Section 2(d) of the Act] and hereby order that:

- i. Employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) did not require any aptitude or scholastic or skill test, for appointment thereon, shall be restored from the date of the judgment under review to the posts they were holding on the same terms and conditions of service applicable on the date of their termination pursuant to the judgment under review.
- ii. Such other employees who were holding posts that on the date of their initial termination of service (from 01.11.1996 to 12.10.1999) required the passing of any aptitude or scholastic or skill test, for appointment thereon shall from the date of the judgment under review be restored to their said posts on the same terms and conditions of service applicable on the date of their initial termination.

- iii. Any improvement in the terms and conditions of service of all the restored employees shall be granted strictly in accordance with the laws and rules applicable to their service or employment and in the absence thereof by regulations laid down for this purpose by their respective employers.
- iv. The relief granted in sub-paragraphs (i) and (ii) above shall not be granted to employees whose initial termination of service (from 01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a Court of law.

Sd/-
Judge

Sd/-
Judge

I have attached my dissenting short order.

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

Islamabad
Announced in Court
On 17.12.2021.

Sd/-
J(1).

APPROVED FOR REPORTING.

Syed Mansoor Ali Shah, J. Parliamentary sovereignty or legislative supremacy is the cornerstone of a strong democracy. We must, therefore, recognize the central role of the legislature. Undermining the legislature undermines democracy. Both the legislature and the judicature must play their role in a spirit of profound respect for the other and within the limits set out in the Constitution. Rule of law is not merely public order, it is social justice based on public order. The law exists to ensure proper social life by balancing the needs of the society and the individual. The courts must protect this rich concept of rule of law. Under Article 8 of the Constitution, any law enacted by the legislature is void only to the extent it takes away or abridges fundamental rights of the people.

2. For the reasons to be recorded later and subject to ancillary and incidental declarations and orders (if any) to be made in the detailed judgment, I allow these review petitions in the following terms:

- i. The judgment under review is recalled;
- ii. The following Sections and part of Sections of the Sacked Employees Reinstatement Act 2010 are declared *ultra vires* the Constitution:
 - a) Sections 4(a) and 10 to the extent of reinstatement and regularization on "one scale higher", which give an undue advantage to the reinstated employees to the detriment of the rights of the already working regular employees and thus violate their fundamental rights. The provisions of the said Sections, except the words "one scale higher", shall however remain operative with effect from the date of enactment of the Act, and be read to mean the reinstatement and regularization in the same or restructured, as the case may be, scale, grade, cadre, group, post or designation.
 - b) Sections 2(f)(vi), 11, 12 and 13, which deal with and provide for reinstatement and regularization of such sacked employees who had been dismissed, removed or terminated from service on account of absence from duty, misconduct, mis-appropriation of Government money or stock, or unfitness on medical grounds, and the determination of their guilt or medical unfitness attained finality by being unchallenged or unsuccessfully challenged. Such employees fall

outside the class of sacked employees who suffered "political victimization," envisaged by the Act for a beneficial treatment, and they by themselves do not constitute a distinct class having an intelligible differentia, which bears a reasonable relation to the object and purpose of the Act.

- iii. All the employees terminated from service on the basis of the judgment under review, stand restored in the service with effect from the date they were so terminated, and shall be paid the pay of the intervening period treating the said period as an extraordinary leave with pay; and
- iv. The cases decided by the judgment under review, which now stands recalled, shall be deemed pending and decided on their own merits by the regular Bench(es) of this Court in accordance with the provisions of the Sacked Employees Reinstatement Act 2010, subject to the declaration made at No. ii above.

Sd/-
Judge

ORDER OF THE BENCH

For reasons to be recorded later, by a majority of four to one (Justice Syed Mansoor Ali Shah dissenting), these review petitions are dismissed.

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

-

Islamabad
Announced in Court
On 17.12.2021.

APPROVED FOR REPORTING.