

Present: Umar Ata Bandial, Sajjad Ali Shah, Syed Mansoor Ali Shah, Qazi Muhammad Amin

Ahmed and Amin-ud-Din Khan, JJ

HADAYAT ULLAH and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

Civil Review Petitions Nos. 292 to 302 of 2021 and Civil Review Petitions Nos. 351 to 432 of 2021 and Civil Review Petitions Nos. 442 to 456 of 2021 along with C.M.As. Nos. 11812 to 11814 of 2021, C.M.As. Nos. 11837, 11862 to 11864 of 2021, C.M.As. Nos. 11902-11903, 11982-11983 of 2021, C.M.A. No. 11987 of 2021, C.M.As. Nos. 11679, 12017, 12019, 12020, 12024 of 2021, C.M.As. Nos. 12025, 12028, 12029, 12031-12033 of 2021, C.M.As. Nos. 12035, 12075, 11993, 12103-12104 of 2021, C.M.As. Nos. 12161-12162, 12172-12173, 12403 of 2021 and C.M.As. Nos. 12372-12373 of 2021 and along with Civil Miscellaneous Appeals Nos. 168, 158 and 175 of 2021, decided on 17th December, 2021.

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

Per Umar Ata Bandial, J; Sajjad Ali Shah, Qazi Muhammad Amin Ahmed and Amin-ud-Din Khan, JJ agreeing; Syed Mansoor Ali Shah, J dissenting.

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

---Ss. 2(d) & 4 & Preamble---Constitution of Pakistan, Arts. 4, 8, 9, 18, 25, 184(3) & 187---Sacked Employees (Re-instatement) Act, 2010, (Act of 2010), vires of---Said Act of 2010 was violative of, inter alia, Arts. 25, 18, 9 & 4 of the Constitution and therefore void under the provisions of Art. 8 of the Constitution---Review petitions were dismissed with certain directions regarding services rendered by the re-instated employees of the employers [as defined in S.2(d) of the Sacked Employees (Re-instatement) Act, 2010]. [Majority view]

Supreme Court declared the Sacked Employees (Re-instatement) Act, 2010 as violative of the Constitution and thus void. However, in exercise of the Court s jurisdiction under Article 184(3) of the Constitution read with Article 187, the Court took into consideration the services rendered by the re-instated employees of the employers [as defined in section 2(d) of the Sacked Employees (Re-instatement) Act, 2010], and passed the following directions:

(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; and

(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.

Per Syed Mansoor Ali Shah, J; dissenting with Umar Ata Bandial, J. [Minority view]

(b) Parliamentary sovereignty, principle of---

---Scope---Parliamentary sovereignty or legislative supremacy was the cornerstone of a strong democracy---Courts must, therefore, recognize the central role of the legislature---Undermining the

legislature undermined democracy---Both the legislature and the judiciary must play their role in a spirit of profound respect for the other and within the limits set out in the Constitution.

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

---Ss. 2(f)(vi), 4(a), 10, 11, 12 & 13 & Preamble---Constitution of Pakistan, Arts. 4, 9 & 25---Sacked Employees (Re-instatement) Act, 2010, (Act of 2010), vires of---By way of judgment under review the Supreme Court held that the Sacked Employees (Re-instatement) Act, 2010 violated Arts. 4, 9 & 25 of the Constitution and was thus void and ultra vires the Constitution---Held, that judgment under review was to be recalled---His Lordship declared that only certain sections, and parts of sections of the Sacked Employees (Re-instatement) Act, 2010 were ultra vires the Constitution and passed certain directions regarding restoration in service of employees terminated from service on basis of judgment under review. [Minority view]

(i) Only certain sections and part of sections of the Sacked Employees Reinstatement Act, 2010 (the 2010 Act) were ultra vires the Constitution: firstly, sections 4(a) and 10 to the extent of reinstatement and regularization on one scale higher , which gave an undue advantage to the reinstated employees to the detriment of the rights of the already working regular employees and thus violated 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 2010 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; secondly, sections 2(f)(vi), 11, 12 and 13, which dealt with and provided 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 fell outside the class of sacked employees who suffered political victimization, envisaged by the 2010 Act for a beneficial treatment, and they by themselves did not constitute a distinct class having an intelligible differentia, which bore a reasonable relation to the object and purpose of the 2010 Act;

(ii) All the employees terminated from service on the basis of the judgment under review, stood 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

(iii) The cases decided by the judgment under review, which now stood recalled, shall be deemed pending and decided on their own merits by the regular Bench(es) of the Supreme Court in accordance with the provisions of the Sacked Employees Reinstatement Act 2010, subject to the declaration made at para (i) above.

In attendance:

Kh. Muhammad Arif, Advocate Supreme Court (in C.R.P. Nos. 292 and 388 of 2021).

Muhammad Yousaf Khan, (in C.R.P. No. 293 of 2021).

Muhammad Tariq Asad, Advocate Supreme Court (in C.R.P. No. 294 and C.M.A. 12033 of 2021).

Khalid Javed Khan, Attorney General for Pakistan

Ayaz Shoukat, D.A.G. along with Ms. Maryam Rasheed and Usman Paracha, Advocates (in C.R.P. No. 295 of 2021)

Muhammad Nawaz Abbasi (in person) (in C.R.Ps. Nos. 296 and 446 of 2021)

S.A. Mehmood Khan Sadozai, Advocate Supreme Court (in C.R.Ps. Nos. 297-300 and 416 of 2021).

Muhammad Ilyas Siddiqui, Advocate Supreme Court (in C.R.P. No. 301 of 2021).

Hazrat Said (in C.R.P. No. 302 of 2021).

S. Iftikhar Hussain Gillani, Sr. Advocate Supreme Court (in C.R.Ps. Nos. 351 and 392 of 2021)

Ms. Shireen Imran, Advocate Supreme Court (in C.R.Ps. Nos. 252, 393, 394, 448 and C.M.A. No. 12104 of 2021).

M. Safdar Shaheen Pirzada, Advocate Supreme Court (in C.R.Ps. Nos. 253, 372 and 375 of 2021).

Nisar A. Mujahid, Advocate Supreme Court (in C.R.P. No. 354 of 2021).

Raja Abdul Ghafoor, Advocate-on-Record/Advocate Supreme Court (in C.R.Ps. Nos. 355, 374, C.M.As. Nos. 11982 and 12029 of 2021).

Ch. Afrasiab Khan, Advocate Supreme Court (in C.R.P. No. 356 of 2021).

Mian Raza Rabbani, Senior Advocate Supreme Court,

Saalim Salam Ansari, Advocate Supreme Court assisted by Zeeshan Abdullah (in C.R.P. No. 357, C.M.Apl. No. 175, C.M.As. Nos. 12172 and 12173 of 2021)

Shah Khawar, Advocate Supreme Court and

Hassan Rashid Qamar, Advocate Supreme Court (in C.R.Ps. Nos. 355, 378-381, 442, 455, 456, C.M.As. Nos. 12028 and 12162 of 2021).

Zubair Hussain, Advocate Supreme Court (in C.R.P. No. 359 and C.M.A. No. 11983 of 2021).

Syed M. Iqbal Hashmi, Advocate Supreme Court (in C.R.Ps. Nos. 360-363 of 2021).

Mazullah Khan (in-person) (in C.R.P. No. 364 of 2021).

Zulfikar Khalid Maluka, Advocate Supreme Court (in C.R.Ps. Nos. 365 and 428 of 2021).

Ghulam Sajjad Gopang, Advocate Supreme Court (in C.R.P. No. 366 of 2021).

Omer Farouk Adam, Advocate Supreme Court (in C.R.P. No. 367 of 2021).

Tariq Mehmood Mughal, Advocate Supreme Court (in C.R.P. No. 368 of 2021).

Syed Rifaqat Hussain Shah, Advocate-on-Record/Advocate Supreme Court (in C.R.Ps. Nos. 369, 385, 420, C.M.Apl. No. 168, C.M.As. Nos. 12032 and 12035 of 2021).

Muhammad Sharif Janjua, Advocate-on-Record/Advocate Supreme Court (in C.R.Ps. Nos. 370, 386, 399, 400 and 423 of 2021).

Saleem Ullah Ranazai, Advocate Supreme Court (in C.R.P. No. 371 of 2021).

Kamran Murtaza, Senior Advocate Supreme Court (in C.R.Ps. Nos. 373 and 377 of 2021).

Waseem Sajjad, Senior Advocate Supreme Court (in C.R.Ps. Nos. 376 and 383 of 2021).

Dr. Saeed Ahmed (in person) (in C.R.P. No. 382 of 2021).

Aftab Alam Yasir, Advocate Supreme Court (in C.R.P. No. 384 and C.M.A. No. 12020 of 2021).

Abdul Razzaq Shar, Advocate Supreme Court (in C.R.Ps. Nos. 387, 454 and C.M.A. No. 12024 of 2021).

Jam Khursheed Ahmed, Advocate Supreme Court (in C.R.P. No. 389 of 2021).

Muhammad Sajid Khan, Advocate Supreme Court (in C.R.P. No. 390, C.M.As. Nos. 12031 and 12161 of 2021).

Hamid Khan, Senior Advocate Supreme Court and M. Waqar Rana, Advocate Supreme Court (in C.R.P. No. 391 of 2021).

Liaquat Ali Karim, Advocate Supreme Court (in C.R.P. No. 395 of 2021).

Abid A. Zuberi, Advocate Supreme Court (in C.R.P. No. 396 of 2021).

Azhar Navid Shah, Advocate Supreme Court (in C.R.P. No. 397 of 2021).

Malik Faiz Rasool Rajwana, Advocate Supreme Court (in C.R.P. No. 398 of 2021)

Muhammad Umair Baloch, Advocate Supreme Court and Shoaib Shaheen, Advocate Supreme Court (in C.R.Ps. Nos. 401-415, 418, 419 and C.M.A. No. 12372 of 2021).

Muhammad Haseeb Jamali, Advocate Supreme Court (in C.R.P. No. 417 of 2021).

Malik Mansoor Hussain, Advocate Supreme Court (in C.R.P. No. 421 of 2021).

Ch. Aitzaz Ahsan, Advocate Supreme Court and Gohar Ali Khan, Advocate Supreme Court (in C.R.P. No. 422 of 2021).

Shakirullah (in-person) (in C.R.P. No. 424 of 2021).

Muhammad Nawaz Rai, Advocate Supreme Court (in C.R.P. No. 425 of 2021).

Muddasar Khalid Abbasi, Advocate Supreme Court (in C.R.P. No. 426 of 2021).

Mrs. Kausar Iqbal Bhatti, Advocate Supreme Court (in C.R.P. No. 427 of 2021).

Khalid Javed (in-person) (in C.R.P. No. 429 of 2021).

Abdul Latif Afridi, Sr. Advocate Supreme Court (in C.R.Ps. Nos. 430-431 of 2021).

S. Asghar Hussain Sabzwari, Senior Advocate Supreme Court, S. Qamar Hussain Shah Sabzwari, Advocate Supreme Court and S. Nayyar Hussain Bukhari, Advocate Supreme Court (in C.R.P. No. 432 of 2021).

Sh. Mehmood Ahmed, Advocate-on-Record (in C.M.A. No. 11812 of 2021).

Sikandar Javed, Advocate Supreme Court (in C.M.As. Nos. 11813 and 11993 of 2021).

Ms. Attiya Khanam (in-person) (in C.M.A. No. 11814 of 2021).

Fazal e Rabbi (in-person) (in C.M.A. No. 11837 of 2021).

Malik Muhammad Riaz, (in-person) (in C.M.A. No. 11862 of 2021).

Arshad Ali Makhdoom, Advocate Supreme Court (in C.M.A. No. 11863 of 2021).

Muhammad Ibrahim (in-person) (in C.M.A. No. 11864 of 2021).

Faisal Siddiqui, Advocate Supreme Court (in C.M.A. No. 11902 of 2021).

Anees M. Shahzad, Advocate-on-Record/Advocate Supreme Court (in C.M.A. No. 11903 of 2021).

Mir Aurangzeb, Advocate-on-Record/Advocate Supreme Court (in C.M.A. No. 11987 of 2021).

Jawaid Masood Tahir Bhatti, Advocate Supreme Court (in C.M.A. No. 11679 and C.M.Apl. No. 158 of 2021).

Mir Shahzad Khan Talpur (in-person) (in C.M.A. No. 12017 of 2021).

Malik Muhammad Munsif Awan, Advocate Supreme Court (in C.M.A. No. 12019 of 2021).

Muhammad Afzal Khan (in C.M.A. No. 12025 of 2021).

Tassawar Abbas Tanvir (in-person) (in C.R.P. No. 443 of 2021).

Dr. Umar Farooq Siddiqui (in-person) (in C.R.P. No. 444 of 2021).

Sardar M. Latif Khosa, Sr. Advocate Supreme Court and Sardar M. Shahbaz Khosa, Advocate Supreme Court (in C.R.Ps. Nos. 445, 447 of 2021).

Pervez Rauf, Advocate Supreme Court (in C.R.Ps. Nos. 449, 452 of 2021).

Mir Afzal Malik, Advocate Supreme Court (in C.R.P. No. 450 of 2021).

Malik Saleem Iqbal Awan, Advocate Supreme Court (in C.R.P. No. 453 of 2021).

Raja Farakh Arif Bhatti, Advocate Supreme Court (in C.M.A. No. 12075 of 2021).

Rai M. Nawaz Kharal, Advocate Supreme Court (in C.M.A. No. 12103 of 2021).

Ch. M. Younas, Advocate Supreme Court (in C.M.A. No. 12403 of 2021).

Shahid Anwar Bajwa, Advocate Supreme Court (in C.M.A. No. 12373 of 2021).

Niazullah Niazi, AG ICT

SSGPL

Barrister Umer Aslam

State Life

Syed Waqar Naqvi, Advocate Supreme Court.

OPF

Aftab Alam Yasir, Advocate Supreme Court.

SNGPL

Asad Jan, Advocate Supreme Court.

Dates of hearing: 1st, 6th, 9th, 13th and 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

Sd/-

J(1)

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 judiciary 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

MWA/H-16/SC Petitions dismissed.