JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.54 of 2017
Pakistan Agricultural Research Council
Versus
Khurram Bashir, Ex-Research Fellow, National Research Centre and others

Date of Hearing:	15.02.2023
Petitioner by:	Syed Asad Ali, Advocate along with Ms. Samina M.H. Cheema, Deputy Director Legal, PARC.
Respondents by:	M/s Muhammad Umair Baloch and Muhammad Shakeel, Advocates. Malik Shaukat Nawaz Awan, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through instant intra Court appeal the appellant, Pakistan Agricultural Research Council (**"PARC"**), impugns the order dated 16.01.2017 passed by the learned Judge-in-Chambers allowing writ petition No.4984/2014 filed by respondent No.1, Khurram Bashir, seeking his reinstatement as Research Fellow in PARC under the provisions of the Sacked Employees (Re-instatement) Act, 2010.

2. The facts essential for the disposal of the instant appeal are that vide office order dated 16.05.1996 issued by the National Agricultural Research Centre (**"NARC"**), fifteen employees, including respondent No.1 working in various programmes of NARC were re-designated as Research Fellows. Vide letter dated 30.05.1998, respondent No.1 was informed by the NARC that the project titled *"Promotional Programme for Canola and Improved Cultivar of Rapeseed"* was to complete its tenure on 30.06.1998 and therefore it was not possible for respondent No.1's services to continue beyond the said date.

3. It was not until 17.12.2010 that respondent No.1 applied to the Minister for Food and Agriculture, Government of Pakistan for his reinstatement in service under the provisions of the Sacked Employees Re-instatement Act, 2010 (**"the 2010 Act"**). Having not received any plausible response, respondent No.1 sent reminders to

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the Minister and/or PARC on 07.06.2012, 08.03.2013 and 21.07.2014, but to no avail. Respondent No.1 had also applied on 03.05.2013 to the Secretary, Establishment Division for the reinstatement of his services as Research Fellow / Scientific Officer in PARC. On 11.12.2014, respondent No.1 filed writ petition No.4984/2014 praying for his reinstatement in service pursuant to the provisions of the 2010 Act. Vide the impugned order dated 16.01.2017, the said writ petition was allowed and PARC was directed to reinstate respondent No.1 in service. The said order has been impugned by PARC in the instant appeal.

4. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the learned Judge-in-Chambers could not have issued a writ of *mandamus* to PARC since it did not have any statutory service rules or regulations; that respondent No.1 did not come with the meaning of a sacked employee as defined in Section 2(f) of the 2010 Act; that respondent No.1 had not been dismissed, removed or terminated from service but was informed that he could not continue in service because the project where he was working was going to complete its tenure on 30.06.1998; that Section 6 of the 2010 Act had no application to the case at hand because respondent No.1's employer *i.e.,* NARC had not been closed or disbanded or wound up; that at no material stage had respondent No.1 been reinstated in service as the Division Bench of this Court had, vide order dated 15.02.2017, suspended the operation of the impugned order dated 16.01.2017; that the Hon'ble Supreme Court has vide judgment dated 17.08.2021 passed in civil appeal No.491/2012 declared the 2010 Act to be *ultra vires* to the provisions of the Constitution and that vide judgment dated 17.12.2021, the review petitions against the said judgment have also been dismissed. Learned counsel for the appellant prayed for the appeal to be allowed and for the writ petition filed by respondent No.1 to be dismissed.

5. On the other hand, learned counsel for respondent No.1 raised an objection to the maintainability of the instant appeal on the ground that since Section 3 of the 2010 Act provided a remedy to file an application for reinstatement in service to respondent No.1, the

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instant appeal is barred by the *proviso* to Section 3(2) of the Law Reforms Ordinance, 1972. Furthermore, he submitted that even if it is assumed that respondent No.1 was not dismissed, removed or terminated from service, since the project called *"Promotional Programme for Canola and Improved Cultivar of Rapeseed"* had completed its tenure on 30.06.1998, the learned Judge-in-Chambers gave the benefit of Section 6 of the 2010 Act to respondent No.1; that under Section 6 of the said Act, a sacked employee can be reinstated in service if his service is discontinued or held in abeyance due to closure or disbandment or winding up of the employer's office, organization or institution or whose employer's origination seized to exist on/or before 13.02.2009; and that the impugned order does not suffer from any legal infirmity. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

6. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 3 above and need not be recapitulated.

7. Under the *proviso* to Section 3(2) of the Law Reforms Ordinance, 1972, it is only where the law with respect to which a writ petition has been filed provides a remedy of an appeal, revision or review that an intra Court appeal would not be maintainable. Section 3 of the 2010 Act on which learned counsel for respondent No.1 placed reliance does not provide any remedy of an appeal, revision or review against the refusal by a sacked employee's employer to reinstate him in service. Section 13 of the 2010 Act is not a remedy of a review against an order refusing to reinstate a sacked employee but is a provision providing a forum *i.e.,* Review Board for those sacked employees who are dismissed, removed or terminated from service *"on account of absence from duty or misconduct or misappropriation of government money or stock or unfitness on medical grounds."* Therefore, respondent No.1's objection to the maintainability of the instant appeal is spurned.

8. Letter dated 30.05.1998 whereby respondent No.1's services were discontinued with effect from 30.06.1998 cannot be construed

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as an order for dismissal or removal or termination from service. Therefore, we are of the view that respondent No.1 did not fall within the category of *"sacked employee"* as defined in Section 2(f) of the 2010 Act. True, Section 6 of the said Act provides for the reinstatement in service of employee's whose service is discontinued due to the closure or disbandment or winding up of the employer's office, organization or institution or whose employer's organization ceased to exist on/or before 13.02.2009. Respondent No.1 however claims reinstatement in PARC. At no material stage has PARC been closed or disbanded or wound up or ceased to exist. Section 6 of the 2010 Act does not speak of any temporary project in which employees may be appointed for the duration of the project.

9. Be that as it may, the *vires* of the 2010 Act were examined by the Hon'ble Supreme Court on the touchstone of the provisions of the Constitution in civil appeal No.491/2012 and connected matters. Vide judgment reported as Muhammad Afzal Vs. Secretary Establishment Division (2021 SCMR 1569), the Hon'ble Supreme Court struck down the said Act as unconstitutional. Review petitions against the said judgment have been dismissed vide judgment reported as Hadayat Ullah Vs. Federation of Pakistan (2022 SCMR 1691). In paragraph 41 of the latter judgment, the Hon'ble Supreme Court gave consideration to the employees, who had been reinstated in service and had rendered service for ten years or more and had been nearing retirement. For such reinstated employees, the protection given by the Hon'ble Supreme Court was that if they were holding posts for which no aptitude, scholastic or skilled test was required at the time of initial termination (01.11.1996 to 12.10.1999) shall be restored to the same posts they were holding *"when they were terminated by the judgment under review."* We are of the view that respondent No.1 cannot take any benefit from the said observation of the Hon'ble Supreme Court since he had not been terminated from service by reason of the judgment dated 17.08.2021 passed by the Hon'ble Supreme Court.

10. It may also be mentioned that consideration / concession was also given to all the beneficiary employees who were holding posts on their initial termination (01.11.1996 to 12.10.1999) which required

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the passing of an aptitude, scholastic or skilled test by holding that they shall be restored to the posts on the same terms and conditions they were occupying on the date of their initial termination. There is nothing on the record to show that prior to being re-designated as Research Fellow, respondent No.1 had been required to pass an aptitude, scholastic or skilled test. On the contrary, the position taken by PARC in its written comments was that prior to the engagement of respondent No.1 as Research Fellow, he was simply hired as a daily paid labour for a period of three months in a development project and was later re-designated as a Research Fellow on the basis of his qualification.

11. In view of the above, the instant appeal is allowed and consequently, the writ petition No.4984/2014 filed by respondent No.1 is dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 21.02.2023.

(JUDGE) **(JUDGE)**

*Sultan**

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