

ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

C.P No. D-3495 of 2025

Azizuddin Versus Province of Sindh & others

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Azizuddin  
Through Mr. Amir Jamil Virk, Advocate

Respondents: Nemo for Province of Sindh,  
through Chief Secretary and others

Date of Hearing: 28.07.2025  
Date of Order: 28.07.2025

ORDER

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**Nisar Ahmed Bhanbhro, J.** Through the instant Petition, the Petitioner has sought following relief(s):

- (a) To declare that the decision of Board of Directors taken in its 55<sup>th</sup> meeting of Board of Directors’ meeting held on 03.06.2009 is ultra vires, ab initio, unwarranted, null and void in the eyes of law and liable to be cancelled, rejected, set aside and overlooked being not maintainable in the eyes of law.*
- (b) To direct the respondents, their officers, agents, representatives, assignees, subordinates and any one acting for and/or on their behalf to maintain seniority list as per law and consider the petitioner for promotion to the post of Director (BS-19) fairly, objectively, justly and in accordance with law with effect from the accrual of vacancy along with all consequential benefits.*
- (c) To restrain the respondents their agents, officers, representatives, assigns, subordinates and/ or any one acting for and/or on their behalf not to temper its official SSIC office record in respect of relevant record of the petitioner during his service tenure from the date of his appointment till his retirement which is lying with the respondents and further restrain the respondents, their officers, agents,*

***representatives, assigns and/ or any one acting for and /or on their behalf from taking any adverse action against the petitioner and if they have any grievances they should adopt due process of law.***

2. At the very outset, learned counsel for the Petitioner was put on notice to justify the laches involved in filing of the instant Petition as the Petitioner has sought reversal of the decision taken by the Board of Directors of Sindh Small Industries Corporation (SSIC) taken in the year 2009 by filing instant Petition in the year 2025 after the lapse of more than 16 years.

3. Mr. Amir Jamil Virk, learned counsel for the Petitioner contended that the Petition was maintainable as the Petitioner was denied his fundamental right of promotion to higher grade, despite of the fact that vacancy in the next higher grade was lying vacant and Petitioner fulfilled the criteria laid down under the rules for promotion in grade 19. He contended that the Petitioner filed Constitution Petition No. D-3964/2021 before this Court and Learned Division Bench of this Court disposed of the Petition vide Order dated 30.11.2022 directing the Respondents to decide the representation of the Petitioner within 15 days' time. He contended that the Respondents did not implement the Order of this Court and he has preferred contempt Petition against the official respondents which is pending before this Court. He further contended that future of the Petitioner remained hanging in balance with the Respondents but they did not consider his case for promotion despite of the several representations therefore a continued cause of action was available to the Petitioner to approach this Court seeking enforcement of his fundamental right. He contended that there was no delay in filing of the instant Petition and the same cannot be dismissed on the ground of laches. He prayed for deciding the petition on merits.

4. Heard learned counsel for the Petitioner, perused material available on record.

5. Scanning of the material placed on record revealed that in the instant petition, the Petitioner has assailed the decision taken in the meeting of the Board of Directors of SSIC held in the year 2009. He failed to bring on record any material suggesting that the case of the Petitioner was pending adjudication before the high-up and he was not dealt with in accordance law. Though the laches did not constitute a legal bar as contained in the Limitation Act, but if an action is not challenged within reasonable time, it creates rights in favor of the other party. Petitioner remained indolent and slept over his rights, the Petitioner by his own conduct deprived himself for grant of any relief as he failed to bring his cause with promptitude. Though the rule of laches is applied in accordance with facts and circumstances of each case. It cannot be made a rule of universal application but looking at the facts and circumstances of the present case that the petitioner was an

employee of SSIC and did not object upon the decision of Board Directors within a reasonable time, his case would be fully covered by the rule of laches.

6. This view finds support from the judgment of Honorable Supreme Court in the case of Special Secretary-II (LAW AND ORDER), Home and tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others Versus Fayyaz Dawar, wherein it has been held as under:

*9. Even though the above findings are sufficient to non-suit the respondent, but one more significant aspect of the case cannot be lost sight of, that the alleged claim of compensation is based on the damages caused in the year 2007, but the respondent filed his Writ Petition in the year 2019, which is virtually after 12 years. Notwithstanding the crucial aspect that a factual controversy cannot be decided in Writ jurisdiction, the Writ Petition was also hit by laches which essential point at issue was not considered by the learned High Court in the impugned judgment. Merely advancing a plea that the respondent was engaged in correspondence with different government officials for pursuing his claim does not protect or save the respondent from the drawbacks or impediments of the doctrine of laches which explicates that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.*

7. Besides, the fact that petition suffered from laches, perusal of material available on record evidenced that the Petitioner had filed another Petition No D 3964 of 2021 (available at page 87) on the same subject matter before this Court. The instant Petition was bad and not maintainable in lieu of the well-established guidelines of the Superior Court under the principle of res judicate and doctrine of estoppel. The Petitioner in the earlier petition

stressed for implementation of decision of Board of Directors taken in 55<sup>th</sup> meeting. The Petitioner through earlier petition claimed following reliefs:

- “1. Direct the respondents, their officers, agents, representatives, assigns, sub- ordinals and/ or anyone acting for and/or on their behalf to maintain seniority list in accordance with the decision of Board of Directors taken in its 55th meeting held on 03-06-2009;*
- 2. Subsequently, direct the respondents, their officers, agents, representatives, assigns, sub-ordinates and/or anyone acting for and / or their behalf to consider the petitioner for promotion to the post of Director (BS-19) fairly, objectively, justly and in accordance with law, with effect from the date of accrual of vacancy along with all consequential benefits;*
- 3. Restrain the Respondents, their officers, agents, representatives, assigns, sub- ordinates and / or anyone acting for and/or on their behalf from taking any adverse action against the Petitioner,*

8. The earlier Petition was disposed of by a Learned Division Bench of this Court through consent order dated 30.11.2022 directing the official respondents to decide the representation dated 03.03.2021 filed by the Petitioner within a period of 15 days from the date of order. A perusal of the prayer clause of the earlier petition reflected that the petitioner had sought indulgence of this Court for implementation of the decision taken by the Board of Directors of SSIC in its 55<sup>th</sup> meeting. Surprisingly through the instant Petition, the Petitioner has questioned the validity of the decision taken in the said meeting of Board of Directors. The Petitioner by his own choice brought a petition seeking implementation of decision taken by the Board of Directors, therefore he was precluded to bring a fresh petition with a different plea under the principle of Res Judicata codified under section 11 of the Code of Civil Procedure, 1908. Instant petition was bad and not maintainable under the law. The Doctrine of Res Judicata was a principle of peace, which emphasized that there should be an end to the litigation.

9. Even otherwise, the public interest required that there should be an end to litigation. The earlier Petition on the same subject matter was filed in the year 2021 and disposed of on 30.11.2022 through a consent order, the claim of the Petitioner stood settled in the earlier round of litigation. Petitioner after the lapse of three years realized that his earlier petition was misconceived and relief claimed by him did not support his case, therefore, he took a different stance and challenged the decision of Board of Director in the instant petition. The Petitioner was estopped from his own conduct to bring a fresh case by making a prayer contrary to the one made in earlier petition. The case of the petitioner fell within the bracket of Article 114 of the Qanun-e-Shahadat Order, 1984 which defines the doctrine of estoppel. When a person by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his

representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. In fact this principle is founded on equity and justness with a straightforward objective to prevent fraud and ensure justice. Although it is described as a rule of evidence, it may have the effect of constituting a substantive right that impedes someone from averring a truth that is defined as contradictory to an already established truth. The Petitioner himself approached this Court for the relief of implementation of decision of the Board of Directors and in the instant petition he seeks declaration that the decisions of Board of Directors may be declared as null and void. In the case in hand, besides the doctrine of estoppel, the doctrine of election and doctrine of qui approbat non reprobatur (one who approbates cannot reprobate) are also applicable.

10. This view finds support from the judgment of Honorable Supreme Court of Pakistan passed in the case of Quetta Development Authority through Director General Versus Abdul Basit and others reported in 2022 P L C (C.S.) 288, wherein it has been held as under:

*4. Perusal of the record would reveal that process and procedure of appointment of the present Respondents and the Petitioners of earlier Writ Petitions, as noted above, had never been a question under dispute. It was the subsequent two orders of withdrawal/cancellation of the appointments made by the DG, QDA, as reproduced above. The legality/validity of the said two orders was elaborately discussed and considered by The High Court in its earlier consolidated judgment dated 12th January, 2015 and the same was upheld by this court vide its judgment dated 18th September, 2015. The present Appellant had contested the earlier round of litigation, and was fully aware of the entire episode in the Courts. The Appellant, (the same authority/person) in the present round of litigation, has once again raised the same points of facts and the law regarding nature of appointments and then dismissal from service of the Respondents and the learned counsel for the Appellant, even argued the same points today in the Court. The earlier part of the litigation has come to an end and has attained finality between the parties. That, questions once decided by the competent Court of law, cannot be re-agitated again by the Appellant. This aspect/issue will act as res judicata against him precluding him to question the order of appointments and then dismissals. The pros and cons of the appointments and the dismissal orders of the Petitioners in earlier round of litigation, were thoroughly considered by The High Court and then upheld by this Court. These have attained finality, not open to any further dilation and consideration.*

11. In the case of Muhammad Raqeeb Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others 2023 S C M R 992 Honorable Supreme Court of Pakistan while dealing with the case involving the question of multiple litigation observed as under:

*12. In the earlier round of litigation this Court has already held that all the employees were performing duties on contract basis as project employees, thus the continuity of their services with the Board will by itself furnish no ground for grant of relief of regularization of their services and the Review Petition was also dismissed. The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim "Interest reipublicae ut sit finis litium" which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation". Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of res judicata explicated under section 11 of the Code of Civil Procedure, 1908. The Latin maxim "Re judicata pro veritate occipitur" expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court.*

12. The Petition from the face of it appears to be malicious attempt to take the benefit from the Court which under law cannot be granted to the petitioner this Court. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and strongly discouraged and one of the ways to curb such practice of instituting frivolous and vexatious

cases is by imposing of costs which lay the foundation for expeditious justice and promote a smart legal system, enhancing access to justice by entertaining genuine claims.

13. Honorable Supreme Court of Pakistan has encouraged the imposition of cost on frivolous litigation, which in fact serves as deterrent to fictitious litigation. In the case of Tanvir Sarfaraz Khan Versus Federation of Pakistan through Director Legal, Islamabad and others reported in 2025 S C M R 98 has held as under:

***6. The filing of this frivolous petition and the dishonest tactics employed by the petitioner justifies the dismissal of this petition with costs in the sum of three hundred thousand rupees, which the petitioner is directed to pay equally to the respondents who have been deprived of their legal shares. The said respondents will also be justified to claim mesne profits for all the days that the petitioner does not abide by the said 'Consent/Joint Statement'.***

14. For what has been discussed here in above, no case for interference of this Court under its writ jurisdiction is made out, consequently this petition is dismissed in *liminie* along with pending applications with a cost of Rs.10,000/- to be deposited towards High Court Clinic account within a period of 20 days from today. In case Petitioner fails to deposit the amount within said period, his CNIC shall be blocked.

**JUDGE**

**JUDGE**

*TARIQ*