

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitution Petition D 5721 of 2017

Abdul Rehman

Versus

Federation of Pakistan & Others

For the Petitioner : Mr. S. A. Khokhar, Advocate.

For the Respondents : Mr. Taha Alizai, Advocate

Date of Hearing : 13.08.2018

JUDGMENT

Agha Faisal, J: Through this petition, the Petitioner *inter alia* seeks reinstatement of his employment with Pakistan Petroleum Limited (“PPL”), the Respondent No. 2, along with all accrued benefits.

2. Mr. S. A. Khokhar, Advocate opened the case for the Petitioner and the submissions put forth are encapsulated and presented in chronological order herein below:

i. Per learned counsel, the services of the Petitioner were engaged by PPL vide appointment letter dated 14.02.2013 (“**Appointment Letter**”). Learned counsel then proceeded to draw the Court’s attention towards the achievements of the Petitioner while in service.

ii. It was sought to be demonstrated by letter dated 29.07.2013 issued by PPL to the Visa Officer Consulate General Germany (“**Visa Letter**”) that the Petitioner was a permanent employee of PPL.

iii. It was stated that the services of the Petitioner were dispensed with, w.e.f from 14.04.2014, without any letter of termination and/or show cause notice whatsoever.

iv. It was thus contended that the Petitioner was unlawfully dismissed from the service and was entitled to reinstatement along with all back benefits.

3. Mr. Taha Alizai, learned counsel for the PPL, submitted that the contentions of the Petitioner were prima facie contrary to the facts and submissions made by the learned counsel are hereby summated and delineated herein below:

i. Learned counsel drew the attention to the Appointment Letter and stated that the same was subject to the terms and conditions incorporated by express reference therein. Learned counsel then proceeded to demonstrate from the Court file that the applicable terms and conditions relevant to the present controversy were as follows:

“1. **PROBATION:** For the first year of your service with the Company, you will be on probation, this period can be extended. During this probationary period, either party shall have the right to determine this employment at any time without assigning any reason on giving 30 days notice in writing or 30 days salary inclusive of all allowances.

2. **NOTICE PERIOD:** On completion of your probationary period, if considered fit by the Company for confirmation, you will be confirmed as a permanent employee on terms and conditions to be specified in a formal Employment Agreement. Such terms will include the Company's right to terminate your employment upon 90 days notice or payment of 90 days salary

inclusive of allowances, in lieu thereof. In case of misconduct or your failure to comply with any of the terms of this Letter of Appointment or Employment Agreement, appropriate action will be undertaken by the Company in accordance with the law. In case you wish to resign you can do so by giving 90 days notice in writing to the Company and serving the notice period provided that in the event of such notice it will be the Company's option to permit you to either serve the notice period or part thereof or pay the Company salary inclusive of all allowances for the period not served, if any, out of the notice period. You will not be entitled to adjust the leave admissible to you at any time or notice against the notice period."

ii. It was contended that the Petitioner joined PPL on 21.02.2013 and was relieved of service with effect from 17.02.2014, vide letter dated 14.02.2014 ("**Termination Letter**"). It may be pertinent to reproduce the contents of the said termination letter:

"TERMINATION OF SERVICE DURING PROBATIONARY PERIOD."

You were appointed on 21 February 2013 as Business Analyst (ERM) on one year probation.

Since your overall work performance has not come upto the required standard during the probation period you have worked so far, as such your services are no longer required and being terminated during the probationary period with effect from the close of business hours on 17 February 2014 as per Terms and Conditions of Appointment letter 14 February 2013.

We are advising our Finance department, by a copy of this letter to make your full and final settlement up to and including 17 February 2014 and clear your dues as under:

1. Salary and allowances.
2. Encashment of 13 days earned leave.
3. Payment of Provident Fund as admissible under the Company rules.
4. Payment of 30 days salary in lieu of notice period.

Please return the Security Card to Security Department.

We thank you for your services with the Company and wish you well for the future.”

iii. It was thus demonstrated that the Petitioner was a probationary employee and that his services were terminated within the probationary period in due accordance with the terms and conditions applicable to the said appointment.

iv. It was stated that the terms of service employee applicable to the Petitioner did in fact provided the option to either the Petitioner or PPL to terminate the relationship by giving the requisite notice. It was submitted that this right was available to either party and had been justly exercised by PPL in the present facts and circumstances.

v. Learned counsel referred to a letter dated 27.02.2014, wherein the Petitioner had written to PPL tendering an apology for his conduct and seeking reinstatement. It was sought to be demonstrated via the said letter that the termination of the Petitioner, as particularized supra, was duly served thereupon and that the Petitioner's request for reinstatement corroborates the factual position.

vi. It was submitted that the Petitioner did not possess any vested right to be an employee or to be reinstated by PPL and hence, the present petition was misconceived.

vii. It was further submitted that there was no requirement for any show cause notice or inquiry in the present facts and circumstances as the Petitioner had been relieved in due

accordance with the terms and conditions of his probationary employment. In conclusion, it was contended that notwithstanding the forgoing the petition was in any event barred by laches as the alleged grievance of the Petitioner occurred in 14.02.2014, whereas, the present petition has been instituted on 25.08.2017.

4. We have considered the arguments of the respective learned counsel and have also perused the record demonstrated before us.

5. It is clear from the Appointment Letter that the Petitioner was serving his probationary period in the employ of PPL. The terms of employment manifestly provide the right either party to determine the employment by serving 30 days' notice. It is an admitted fact that the termination of the Petitioner's service occurred while in the probationary period.

6. We are not convinced by the Petitioner's argument that his services were dispensed with without any notice. The Termination Letter appears to have been duly issued and the contents thereof demonstrate that PPL had exercised its discretion and determined the employment of the Petitioner in the manner permissible under the terms and conditions governing the employment of the Petitioner.

7. Learned counsel for PPL submitted that all end of service benefits, delineated in the Termination Letter, were duly received by the Petitioner and the same is not only valid acknowledgement of the termination but also constitutes acceptance by the Petitioner.

Learned counsel for the Petitioner did not deny the aforesaid assertion. It is noted from the Reply / Para wise comments filed by PPL that the same assertion was made therein as well and not denied by the Petitioner in the rejoinder filed thereto.

8. The Petitioner's assertion that the Termination Letter was not served thereupon is also belied by the apology letter dated 27.02.2014 addressed by the Petitioner to PPL. This letter, filed by the Petitioner along with the memorandum of petition, seeks to tender an apology to PPL and further requests PPL to permit the Petitioner to serve on his earlier position / job. The said letter was replied to by PPL, vide its letter dated 14.03.2014, wherein the Termination Letter was specifically mentioned and PPL conveyed its inability to reinstate the Petitioner at the position whereat he was earlier serving. The record shows that PPL served another letter upon the Petitioner, dated 07.05.2014, wherein it was categorically stated that the services of the Petitioner were determined vide the Termination Letter and in pursuance thereof the Petitioner had also collected his final dues, as delineated therein.

9. It is thus apparent that the Termination Letter was well within the notice of the Petitioner and nothing could be demonstrated by the learned counsel for the Petitioner to suggest that the Termination Letter was in deviation of the terms and conditions governing the Appointment Letter.

10. The Petitioner was in the employ of PPL by virtue of the Appointment Letter. The terms and conditions governing the said relationship also envisaged the termination of the relationship upon

terms contained therein. The Petitioner reaped the benefit of employment per the Appointment Letter, yet is contesting his termination notwithstanding the fact that such termination has been undertaken squarely within the parameters prescribed in the terms and conditions governing the Appointment Letter.

11. There appears to have been no reason for PPL to issue a show cause notice or conduct an inquiry against the Petitioner as the termination of service was envisaged with the sole requirement of notice or salary in lieu thereof. It is borne from the record that end of service benefits were duly issued to the Petitioner and that such benefits included salary for 30 days in lieu of notice for the like period.

12. Learned counsel for the Petitioner has been unable to demonstrate any vested right, whereby he would be entitled to seek reemployment with PPL. The only rights available to the Petitioner were those stipulated in the terms and conditions governing the Appointment Letter and no violation thereof has been pleaded, argued or demonstrated by or on behalf of the Petitioner.

13. It is a matter of record that the services of the Petitioner were terminated vide the Termination Letter, which was dated 14.02.2014. Even if the Petitioner's contention of not having received the Termination Letter is considered, it is the Petitioner's assertion that his services were dispensed with from 14.02.2014. However, no justification has been given for the presentation of the present

petition on 25.08.2017, hence after a lapse of more than three and a half years.

14. It is well settled law that if a petitioner is culpable of lethargy, inaction, laxity and / or gross negligence in the prosecution of a cause or for enforcement of a right then the Court could justifiably refuse to exercise its Constitutional jurisdiction on the foundation of laches.

15. In view of the foregoing it is the considered view of this Court that no case has been made out by the Petitioner and that the present petition is devoid of merit. Therefore, this petition, along with listed application, is hereby dismissed with no order as to costs.

Judge

Judge

*Faizan/PA**