

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Adnan Iqbal Chaudhry

**C.P No. D- 5083 of 2013**

Abdul Rehman ..... Petitioner

V.s

The Chairman, Pakistan National  
Shipping Corporation & another ..... Respondents

**Date of hearing: 07.11.2018**

Syed Shoa-un-Nabi, advocate for the Petitioner  
Mr. Khalid Javed, advocate for the Respondents  
Sheikh Liaquat Hussain, Assistant Attorney General

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through the captioned Constitution Petition, Petitioner has called in question the order dated 23.12.2000 and 30.01.2001, whereby he was sent on forced leave and thereafter his service was terminated.

2. The Petitioner has premised his claim on the basis that he was appointed on 08.01.1973 in Pakistan National Shipping Corporation (PNSC) as a Messenger, thereafter he was promoted to the post of Senior Assistant vide order dated 24.01.2000. Petitioner has submitted that Respondent-Corporation vide Board Resolution dated 23.12.2000, sent the Petitioner and other employees of the Respondent department on forced leave and thereafter his service was terminated on 30.01.2001. Petitioner has submitted that he did not contest his case at any legal forum; however the colleagues of the Petitioners, being aggrieved by and dissatisfied with aforesaid action of the Respondents, approached this Court in C.P. No. D-402 of 2011, which was disposed of vide

order dated 06.03.2013, on account of suffering from laches. Petitioner has submitted that, in the meanwhile his service was hired by Karachi Port Trust (KPT) as Moazzin-cum-Khadim on fixed monthly stipend of Rs. 8000/- per month vide letter dated 27.04.2010. Petitioner has submitted that his entire claim is based upon the case of Hameed Akhtar Niazi Vs. Federation of Pakistan & others (1996 SCMR 1185) on the ground the some of the colleagues of the Petitioner filed Service Appeals No. 21 to 100 and 110 to 136-(K) (CE) 2001, before the learned Federal Service Tribunal (FST) against the impugned order passed by the Respondent department and the same matter was disposed of vide common Judgment dated 04.11.2003, with the following direction:-

***“17. Since the entire exercise made by the respondents was in violation of the principles of natural justice and the action of dispensing with the service was initiated by the respondents was to deprive the appellants from getting their pensionary benefits, we would set aside the impugned order dated 30.01.2001 and direct the respondent to reinstate the appellants and to made a fresh exercise of releasing those who have reached the age of superannuation with all pensionary benefits according to law and those who have not yet reached the age of superannuation to continue till they reach that particular age, considering their date of birth and also the date of their joining the job. In case any appellant has received some amount towards gratuity and CPF, the same would be returned by him within three months of his joining. The intervening period from the date of their dispensation from service, till the date of joining will be treated as leave of the kind due with continuity of service, whereas appeal Nos. 21 to 100 and 110 to 136 stand disposed of as the same have become redundant.***

***18. With the above observation all appeals stand disposed of with no orders as to costs.”***

Petitioner has submitted that the Respondent department impugned the aforesaid judgment of the learned FST before the Hon’ble Supreme Court of Pakistan in Civil Petitions No. 4-K to 89-K, 99-K to 104-K, 108-K to 199-K, 241-K of 2004, 32 and 84 to 186 of 2004 and the same was dismissed vide common judgment dated 12.08.2004 with the following observation:-

***“21. In sequel to above mentioned discussion the petitions being devoid of merits are dismissed. The PNSC may initiate fresh action, is so desired, in accordance with law and subject to all legal exceptions.***

***CIVIL PETITION NO. 32 OF 2004***

***Pakistan Notional Shipping Corporation and others .....Petitioners***

***Vs.***

***Aslam Malik .....Respondents***

***22. This petition involving similar question of law and facts arising out of the same judgment of the learned Federal Service Tribunal dated 04.11.2003 is also dismissed for the reasons as mentioned herein above.”***

Petitioner has submitted that the colleagues of the Petitioner filed another C.P. No. D-1947 of 2006 before this Court, which was disposed of vide judgment dated 16.04.2009 with the following directions:-

***“11. Hence for the intervening period i.e. when their services were dispensed with and till they were reinstated back in service, the same is to be treated as leave of the kind due with continuity of service unless any leave with pay is admissible to the Petitioners and stand to their credit. This is to be computed on case to case basis and then the final entitlement of the respective salaries of the Petitioners is to be worked out.***

***12. We therefore direct Respondents No.1 to recalculate the entitlement of each of the Petitioner in terms of the directions given here in above. This petition stands disposed off in the above terms.”***

Petitioner has submitted that the Respondent department filed Civil Petition No. 602-K of 2009 before the Hon'ble Supreme Court and the same was disposed of vide order dated 21.05.2010 with the following direction:-

***“Therefore in the circumstances, we direct that notice be issued against the then Chairman who instead of implementing the judgment in letter and spirit has violated the judgment, to appear and explain as to why he should not be proceeded against for Contempt of Court. In the meanwhile incumbent Chairman of the Petitioners department is directed to ensure implementation of the judgment in letter and spirit within a period of seven days and send report compliance to the Register of this Court for our perusal in chambers. To be fixed during Next Session.”***

At this stage the learned counsel for the Petitioner has pointed out that the Hon'ble Supreme Court vide order dated 02.03.2011 passed in Civil Petition No. 602-K of 2009 in the following terms:-

***“Consequently, we would dispose for this petition by observing that if the respondents are not satisfied with the benefits given to them as per directions of the learned Sindh High Court, they may approach that Court in the first instance.”***

Petitioner claims that he is entitled for the benefit of the Judgments passed by this Court and Hon'ble Supreme Court of Pakistan as discussed supra. Petitioner has submitted that due to in action of the Respondent-Corporation, Petitioner filed the instant petition on 03.12.2013.

3. Syed Shoa-un-Nabi, learned counsel for the Petitioner has confined his argument to the extent that the Petitioner is entitled to the benefit of Judgments rendered by the learned Federal Serviced Tribunal and Hon'ble Supreme Court of Pakistan in the case of the colleagues of the Petitioner. He next argued that the case of the Petitioner fully attracts the principles enunciated in the case of Hameed Akhtar Niazi as discussed supra, therefore the aforesaid benefits as claimed by the Petitioner in the present proceedings may be granted to him accordingly. He lastly prayed for allowing the instant petition.

4. Conversely Mr. Khalid Jawed has raised the question of maintainability of the instant petition. He next contended that the service of the petitioner was dispensed with in the year 2001 whereas he has filed the instant petition on 03.12.2013, after delay of more than 11 years which suffers from laches, which has not been explained. He next submitted that Petitioner received his all dues and thereafter joined KPT and thereafter has been working in a Canteen / Tea shop. He prays for dismissal of the instant petition.

5. We have considered the submission of the parties and perused the material available on record.

6. Record reflects that Petitioner did not litigate after his dismissal from the service in the year 2001 and thereafter received

all his dues from the Respondent-department. The important question in the present proceedings is whether the instant petition is suffering from laches or otherwise. It is evident from the record that the Petitioner after termination of his service received his dues as admitted by him in his application dated 05.04.2010, which is available on record at page 169 of the memo of petition. Petitioner for the unknown reason waited for 11 years to file the instant petition; Besides above, we do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of December 2013, whereas the alleged cause of action accrued to him in the month of October 2001, i.e. approximately 11 years prior to the filing of the instant Petition. We therefore, without touching the merits of the case, hold that this petition suffers from laches.

7. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed on account of laches.

JUDGE

JUDGE

Karachi  
Dated:- 12.11.2018.