

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan -ul-Karim Memon

C.P No. D- 1155 of 2014

Muhammad Kashif Siddiqui Petitioner

V.s

M/s Alternative Energy Development
Board of Pakistan & others Respondents

Date of hearing: **20.11.2018**

Ms. Saima Muhammad Jamil Advocate for the Petitioner
Mr. Muhammad Ajmal Khan, 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 is seeking similar relief as granted to the applicants namely Mr. Muqqaddas Yaseen and Muhammad Munnawar Khan by the learned Sindh Labour Court No. V Karachi vide Judgment dated 08.12.2012, whereby they were reinstated in service with full back benefits.

2. The Petitioner has premised his claim on the basis that he was appointed as MT Clerk in the year 2006 in the Respondent-Board and his service was terminated on 21.12.2006, however his service was adjusted in some project against the vacancy of Naib Qasid. Petitioner has submitted that on 31.05.2008 his service was dispensed with without assigning any reason. Petitioner has submitted that he requested the Respondent-Board to reinstate him in service but the same was declined vide order dated 07.11.2008. Petitioner has submitted that the case of the Petitioner was re-considered by the Chief

Executive officer of the Respondent-Board and was approved as under:-

“6. The effected employees have filed appeals against the orders of the former/Acting CEO. AEDB is now left with the following options:-

i) Maintain status quo and let them take the case to the next higher authority, the Serviced Tribunal.”

Petitioner has further submitted that he did not contest his case at any legal forum after order dated 11.05.2010 passed by the learned Federal Serviced Tribunal Karachi (FST) in Service Appeal No. 22-(K)(CE)/2008, whereby his Service Appeal was abated in the light of Judgment dated 13.04.2014 passed by the Hon’ble Supreme Court in Civil Petition No. 1863 of 2009. Petitioner has submitted that his colleagues, being aggrieved by and dissatisfied with the aforesaid action of the Respondent-Board, approached the learned SLC by filing Grievance Applications No. 64 & 65 of 2010, which was disposed of vide common Judgment dated 08.12.2012 with directions to the Respondent-Board to reinstate the applicants with full back benefits. Petitioner has submitted that his entire claim is based upon the case of Hameed Akhtar Niazi reported in 1996 SCMR 1185.

3. Ms. Saima Muhammad Jamil, learned counsel for the Petitioner has confined her argument to the extent that the Petitioner is entitled to the benefit of Judgments rendered by the learned SLC and Hon’ble Supreme Court of Pakistan in the case of Hameed Akhtar Niazi as discussed supra, therefore the aforesaid benefits as claimed by the Petitioner may be granted to him accordingly. She lastly prayed for allowing the instant petition.

4. Conversely Mr. Muhammad Ajmal Khan learned Counsel for the Respondents 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 2008, whereas he has

filed the instant petition on 05.03.2014 after delay of more than 6 years, which suffers from laches which has not been explained. He next submitted that Petitioner was only adjusted against the post of Naib Qasid on 01.01.2007 without any advertisement, therefore he has no vested right to claim reinstatement of his service as well as regularization. He prays for dismissal of the instant petition.

5. Sheikh Liaquat Hussain, Assistant Attorney General has adopted the arguments as advanced by Mr. Muhammad Ajmal Khan learned Counsel for the Respondents.

6. We have considered the submissions of the parties and have perused the material available on record and the case law cited at the bar.

7. Record reflects that Petitioner did not litigate after his Service Appeal was abated by the learned FST vide order 11.05.2010. The important question in the present proceedings is whether the instant petition is suffering from serious laches or otherwise. It is evident from the record that the Petitioner after termination of his service filed Service Appeal, which was disposed of vide order dated 11.05.2010 and record does not reflect that he impugned the aforesaid order before the Hon'ble Supreme Court of Pakistan. Petitioner for the unknown reason waited for 6 years to file the instant petition; the learned counsel for the Petitioner has offered no reason for filing the petition after 6 years rather her only prayer is that the relief as given to the other two persons may also be given to the Petitioner little realizing that those two persons agitated their claim before competent court and got the relief thereafter but the Petitioner for the reasons best known to him kept mum and indolent for 6 years and thereafter filed the instant petition on the basis of the grounds mentioned above. We are thus

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 March, 2014 whereas the alleged cause of action accrued to him in the month of May 2008, i.e. approximately after 6 years before filing of the instant Petition.

8. Reverting to the next plea taken by the learned counsel for the Petitioner that the Petitioner may be reinstated in service by extending the benefit of the Judgment of the Hon'ble Supreme Court in the case of Hameed Akhtar Niazi as discussed supra. This submission of the learned counsel for the Petitioner is also suffering from serious misconception, for the simple reason that he has not assailed his termination order before the learned SLC and the Judgment of the learned SLC is binding on the lis, therefore no benefit of the said judgment can be given to the Petitioner due to sleeping over his rights if any for a couple of years. It is a settled principle of law that law helps the vigilant and not the indolent.

9. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed being not maintainable on the ground of laches.

JUDGE

JUDGE

Karachi
Dated:- 23.11.2018

Shafi Muhammad /PA.