

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No. D- 1738 of 2012**

**Before:  
Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Adnan-ul-Karim Memon**

Nizamuddin Memon                   -----                   Petitioner

VERSUS

Water and Power Development  
Authority & another                   -----                   Respondents

**Date of hearing & Decision       :       06.10.2020**

Mr. Irfan Ahmed Qureshi, Advocate for Petitioner  
Mr. Muhammad Arshad S. Pathan, Advocate for Respondents  
Mr. Allah Bachayo Soomro Additional Advocate General Sindh

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through the captioned Constitutional Petition, Petitioner is asking for setting-aside the office order dated 31.7.2006 passed by the Management of Hyderabad Electric Supply Company (HESCO), whereby minor punishment of recovery of Rs.1,66,250/- (50% of Rs.33, 2500/-) was imposed upon him. Per petitioner, his Departmental Appeal was too dismissed by the Competent Authority vide order dated 10.4.2012. Petitioner also seeks refund of the aforesaid amount deducted from his monthly salary even after he retired from service of the respondent-company.

2. We asked learned counsel to satisfy this court about maintainability of the instant petition on two counts; i.e. laches as the impugned order was passed in 20006 and he failed to avail the remedy before the Competent Forum.

3. Mr. Irfan Ahmed Qureshi learned counsel for the petitioner has explained on the point of laches and argued that the representation of the petitioner was rejected vide order dated 10.4.2012 and he immediately approached this court on 31.8.2012 therefore the question of laches does not arise. On merits, he argued that the petitioner was appointed as LS-I Opr. Sub Division HESCO Hala in the year 1988 and during his service he was served with a show cause notice dated 20.4.2006 on the allegation of misconduct, inefficiency, and malpractice. Learned counsel states that the

Petitioner replied to the charges leveled against him vide letter dated 1.6.2006; however, the respondent HESCO vide office order dated 31.7.2006 imposed minor penalty of recovery of Rs.166,250/- (50% of Rs.332500/-) to be recovered at 1/3<sup>rd</sup> of his pay in favour of WAPDA / HESCO without holding regular inquiry. Learned counsel further argued that the petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred departmental appeal before the Chief Engineer HESCO Hyderabad. However, the same was rejected vide office order dated 10.4.2012, hence the instant petition.

4. Mr. Muhammad Arshad S. Pathan, learned counsel for the respondent HESCO has argued that the Petitioner has no locus standi, as the petition filed by the Petitioner is hit by laches as the last order was conveyed to the Petitioner on 31.7.2006, whereas the instant petition has been filed by the Petitioner in August 2012; that the case of the petitioner cannot be entertained by this Court in view of the Judgment rendered by Hon'ble Supreme Court in the case of PIA Vs. Tanveer-Ur-Rehman (PLD 2010 SC 676); that the instant petition is not maintainable on the ground that the petitioner while working in operation sub division HESCO HALA was served with a show cause notice on account of gross misconduct inefficiency and malpractice. He further argued that the case of the petitioner does not fall within the ambit of Article 199 of the constitution as he was required to approach before the concerned Labor Court and not this Court. He lastly prayed for dismissal of this petition.

5. We have heard learned Counsel for the parties on the point of maintainability of the instant petition.

6. To address the issue of maintainability of the captioned Constitutional Petition, we are only concerned with the point of laches involved in this matter, whether the petitioner has approached this court within a reasonable time when impugned action was taken against him in the year 2006, the reasoning assigned by learned counsel that the petitioner has approached this court based on appellate order dated 10.4.2012 passed by the competent authority of HESCO; that a constitutional petition involving violation and infringement of fundamental rights of the citizens could not be thrown out on the ground of delay in filing the same.

7. We do not concur with this assertion of learned counsel for the Petitioner as we are of the considered view that the instant Petition falls within the doctrine of laches as the Petitioner filed the instant Petition in August 2012 whereas the alleged cause of action accrued to him in July 2006, i.e. approximately 6 years before the filing of instant Petition. Those

who slept over their right cannot be given premium. The observation of Honorable Supreme Court in the case of *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883) is guiding principle on the issue of laches. Even otherwise the petitioner was charged with the following allegations and this court cannot reappraise the evidence brought on record against the petitioner during the inquiry proceedings in the constitutional petition.

- a. The official signed ERO (Equipment Removal Order) dated 26.2.1988 as officiating SDO Operation Sub-Division Hala and return the executed ERO to Revenue Officer Tando Adam vide Sub-Division Hala, letter dated 26.4.2000 in respect of M/s Makhdoom Cotton Factory Hala bearing account No.24-7335-0000011-0 on 16.4.2000, whereas one removed from the factory premises for its return to HESCO store.
- b. Later on, after a lapse of four years and 5 months, consumers applied for reconnection which was accorded by C.E.O. HESCO Hyderabad, vide letter dated 13.9.2004 under the incentive package.
- c. It was clarified in the RCO policy of the department that if the equipment not removed from the side at the time of ERO the cost of the material will not be recovered from the consumer at the time of reconnection but severe Disciplinary Action will be taken against the responsible officer/official found negligent in removing the material. As per abridge condition No.8 of supply of electrode equipment on the HESCO system is its property and the entire cost was borne by the consumer at the time of sanction / giving connection. It is clear in this regard in the above condition 630kwa Transformer was not returned on the implementation ERO.
- d. That by the reason of not implementation of ERO physically by petitioner in association with Muhammad Rafique LS-I the company sustained a loss of Rs.322500/-.

8. Since the case of Petitioner is suffering from serious laches, therefore, any discussion on merits is not necessary. Hence the instant petition stands dismissed along with listed applications.

9. These are the reasons of our short order dated 6.10.2020, whereby we have dismissed the captioned Petition.

JUDGE

JUDGE