

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D- 5162 of 2013

Raees Ahmed Ansari,
Petitioner through: Mr. Imtiaz Hussain Solangi, advocate

Pakistan Steel Mill & 2 others
Respondents Through: Mr. Muhammad Nishat Warsi, Assistant
Attorney General

Pakistan Steel Mill through: Mr. Sannaullah Noor Guri, advocate.

Date of hearing: 05.09.2019

Date of order: 05.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Through the captioned Constitution Petition, Petitioner is asking for setting-aside the office order dated 22.7.1993 passed by the Management of Pakistan-Steel Mill, whereby major punishment of dismissal from Service was imposed upon him. Per petitioner his Departmental Appeal was too dismissed by the Competent Authority vide order dated 7.4.2004.

2. The important question in the present proceedings is whether the instant petition is suffering from laches or otherwise.

3. It is evident from the record that the Petitioner after dismissal from service assailed the Original and Appellate orders before the learned Federal Service Tribunal in Service Appeal No. 199(k) (CE)/2004, which was decided against him on 24.12.2009, in view of judgment passed by the Honorable Supreme Court in the case of Mubeen-us Salam and others vs. Federation of Pakistan and others (PLD 2006 SC 602), which is available on record at page No. 49 of the Memo of petition. Petitioner being aggrieved by and dissatisfied with the aforesaid decisions of the department, called in question the same before this Court in C.P No.D-584 of 2010, this Court vide order dated 7.5.2010 disposed of his petition on the same analogy as ordained by the Honorable Supreme Court in the case of PIA vs. Tanveer-ur-Rehman (PLD 2010 SC). Petitioner being aggrieved by and dissatisfied with the aforesaid Order filed Miscellaneous Application No.6002 of 2010 in the same matter for restoration of his case, however the same was too dismissed vide

order dated 3.6.2010. Petitioner did not stop here, he again took up the matter before the learned Sindh Labour Court at Karachi, however he met with the same fate vide judgment dated 29.11.2011, being bared by limitation. Surprisingly he assailed the aforesaid decision before the learned Labour Appellate Tribunal, Karach in Appeal No.KAR-03 of 2012, which maintained the judgment passed by the learned Labour Court vide order dated 24.9.2013. Petitioner having faced the agony of such proceedings, took exception of the judgment dated 18.7.2013 passed by the Honorable Supreme Court in Civil Appeal No.135-k of 2010 (available at page No.69 of Memo of petition) approached this Court on 30.11.2013, for the same relief.

4. We asked the learned Counsel to satisfy this Court with regard to maintainability of this petition on three counts; i.e. his dismissal from service order passed in the year 1993, second he availed all the legal forums and failed on the legal issues, third he failed to avail an appropriate remedy against the orders passed by the learned labour Court and learned labour Appellate Tribunal.

5. Mr. Imtiaz Mansoor Solangi learned Counsel for the petitioner argued that the petitioner is victim of changing of legal forums in view of the judgment passed by the Honorable Supreme Court in the case of Mubeen-usalam, supra, therefore he cannot be nonsuited without hearing. Learned Counsel explained on the point of laches and urged that he promptly assailed the termination order as well as appellate orders before the competent forums but was non-suited on the point of limitation; that he has not been heard on merits at all legal forums. He lastly prayed for allowing the petition.

6. Mr. Sanaullah Noor Ghouri, learned Counsel representing the Respondents No. 1 and 2 argued that Petitioner has no locus standi, as the petition filed by the Petitioner is hit by laches as last order was conveyed to the Petitioner on 22.07.1993, whereas the instant petition had been filed by the Petitioner in the month of November 2013; that the cases of the Pakistan Steel Mills cannot be entertained by this Court in view of the Judgment rendered by the Hon'ble Supreme Court in the case of PIA Vs. Tanveer-Ur-Rehman (PLD 2010 SC 676). He lastly prayed for dismissal of the instant petition.

7. We have heard the learned Counsel for the parties on the question of maintainability of the instant petition and perused the material available on record and considered the decisions rendered by the Hon'ble Supreme Court as discussed supra.

8. The issue of maintainability of the captioned Constitutional Petition has been raised. To address the proposition, we deem it appropriate to have a look at the decision rendered by this court in the earlier round of litigation initiated by the petitioner.

9. Record does not reflect that the aforesaid judgment was impugned by the petitioner before the Honorable Supreme Court, which has now attained finality.

10. From the forgoing legal position of the case, petitioner is not entitled for relief which he is asking for through the instant proceedings on the premise that this Court cannot entertain the grievance of the Petitioner under Article 199 of the Constitution, in view of the bar contained under Article 212 (3) of the Constitution, which ousts the jurisdiction of this Court. The ouster clause under Article 212 (3) and Article 185 of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court on the subject, which squarely falls within the exclusive domain of the Hon'ble Supreme Court of Pakistan, being an Appellate Court in respect of the decisions of this Court and Service Tribunals. Therefore, the forum chosen by the Petitioner for invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

11. In the light of forgoing legal position of the case, this petition is not maintainable in law, thus is accordingly dismissed along with listed application(s), leaving the petitioner to avail an appropriate remedy in accordance with law.

JUDGE

JUDGE