

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D –1312 of 2021

Date	order with signature of Judge(s)
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For hearing of the main case

09.03.2022

Mr. Israr Ahmed Abro, advocate for the petitioner
Mr. Sanaullah Noor Ghouri, advocate for the respondent along with Mr. Mazhar Ali Shaikh, Law Officer
Chaudhry Waseem Akhtar, DAG

Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner has sought directions to the Respondents to reinstate him in service with all back benefits as the petitioner has served in the respondent-Pakistan Steel Mill for the last 25 years.

2. It is evident from the record that the petitioner was employed in the respondent-Pakistan Steel Mills in the year 1975 as a welder. On 02.7.1995, the petitioner moved an application to the respondent for official accommodation, which was allowed, and House No.C-326 was allotted to him. The petitioner after four years shifted to his accommodation and subsequently, the same accommodation was allotted to one Mushtaq Zahid. However, the respondents leveled serious allegations against the petitioner that he had sublet the aforesaid premises to Mushtaq Zahid without any due process of law and, the inquiry was initiated against him. Finally, the petitioner was removed from service on 03.10.2001. The petitioner preferred a departmental appeal to the respondent, but to no avail, compelling him to file a service appeal before the Federal Service Tribunal, which was abated vide order dated 30.6.2006 in the light of ratio of the judgment passed by the Honorable Supreme Court in the case of Mubeen-us-salam vide judgment dated 27.6.2006 passed in Civil Appeals No.792 and 816 of 2005. Thereafter the petitioner approached the learned Labor Court and filed Grievance Petition No.96/2006, which was dismissed on 30.5.2008 with direction to approach the appropriate forum. And subsequently approached the learned Federal Service Tribunal (FST) in Appeal No. 27(K) CE/2002, however, the same was disposed of having been abated vide order dated 05.5.2010 with direction to the petitioner to seek a remedy before the appropriate forum for redressal of his grievance and thereafter he approached the learned Labor Court, however, the matter was transferred to NIRC in the year 2014. The learned Bench of NIRC vide order dated 26.1.2021 dismissed the Grievance Petition of the petitioner on the ground that only this Court has jurisdiction to

entertain under Removal from Service Ordinance, 2000. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions of the competent courts of law has approached this Court on 19.2.2021.

3. Mr. Israr Ahmed Abro learned Counsel for the petitioner argued that the petitioner is a victim of changing of legal forums because of the judgment passed by the Honorable Supreme Court in the case of Muhammad Mubeen-us-Salam (PLD 2006 SC 602) and the case of Muhammad Idrees (PLD 2007 SC 681), therefore, the petitioner cannot be non-suited without hearing him on merit. Learned Counsel explained on the point of laches and urged that the petitioner promptly assailed the termination order dated 30.10.2021 as well as appellate orders before the competent forums but was non-suited on the point of jurisdiction and subsequent limitation; that he has not been heard on merits at all legal forums. On merits, he has argued that the petitioner has been dismissed from service on the allegations that he had sublet the official accommodation to another employee, which fact could not be proved at all, however, he was involved only on the point of slackness/negligence for not pursuing the case for issuance of cancellation letter through the Estate Department. Per learned counsel, this is hardly ground to non-suit the petitioner from service, who has rendered his service since 1975. Per learned counsel, the petitioner was not allowed to participate in the inquiry proceedings and the inquiry officer opined that the allegations and charges were verbally communicated to the petitioner which was denied. Per learned counsel, there is no evidence available on record against the petitioner and no witness was examined. He further submitted that the inquiry officer erroneously concluded that the petitioner had sublet the subject house. Learned counsel further submitted that the inquiry officer found him not guilty on the premise that subletting house C-326 to Mushtaq Zahid was not for purpose of getting the monetary benefit, therefore, he was wrongly dismissed from service. He lastly prayed for allowing the petition.

4. Mr. Sanaullah Noor Ghouri learned Counsel representing the respondent-Pakistan Steel Mills and argued that Petitioner has no locus standi, as the petition filed by the Petitioner is hit by laches as the same has been filed by the Petitioner in February 2021; that the cases of the Pakistan Steel Mills cannot be entertained by this Court give the Judgment rendered by the Hon'ble Supreme Court in the case of PIA Vs. Tanveer-Ur-Rehman (PLD 2010 SC 676). He further submitted that the petitioner failed to avail his remedy before the proper forum and consumed about eleven years at the wrong forum, so that period of eleven years is not condonable. Besides that, the Petitioner was fully aware of the case of Muhammad Dawood and others versus the Federation of Pakistan and others (SBLR 2007 Sindh 495). On merits, he submitted that charges of subletting of the official accommodation were

proved against the petitioner and were rightly punished. He supported the impugned action of the respondent-Pakistan Steel Mills that Denovo inquiry was ordered in the year 2001 wherein he was found guilty. In support of his contention, he has relied upon the cases of Sherin v. Fazal Muhammad (1995 §CMR 584), Almas Ahmad Fiaz v. Secretary Government of Punjab (2006 §CMR 783), Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed (2013 §CMR 1707), Khan Muhammad v. Senior Superintendent of Police (1989 §CMR 589), Muhammad Buta v. Habib Ahmad (PLD 1985 §C 153) and United Bank Limited v. Noor-un-Nisa (2015 §CMR 380). He lastly prayed for the dismissal of the instant petition.

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

6. First and foremost, we would address the issue of maintainability of the instant Petition under Article 199 of the Constitution on the point of laches.

7. So far as the inordinate delay to approach this Court against the impugned action on the part of the petitioner; since the petitioner was dismissed from service under Special Powers Ordinance, 2000 as such the forum chosen by the petitioner were/are not competent to adjudicate the matter against the statutory dispensation i.e. RSO, 2000, in terms of the ratio of the judgment passed by the full bench of this Court in Muhammad Dawood's case as discussed supra, besides that there is no cavil to the fact that the petitioner has been in litigation since his removal from service in the year 2001 under Special Powers Ordinance, 2000, therefore the question of laches is immaterial at this stage as we intend to decide the matter on merits.

8. It may also be noted that even otherwise the status of the petitioner was of a mere licensee or tenancy at will, insofar as the accommodation provided to him is concerned. He does not have a vested right in any manner to retain the same against the will of the employer. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme Court in the case of Estate Officer Government of Pakistan v. Syed Tahir Hussain (P L D 1962 § C 75).

9. Per learned counsel for the Pakistan steel mills, the charge against the petitioner is very specific; unauthorized subletting of a quarter allotted to the petitioner for his residential purpose to another person is misconduct and violates the law, which attracts action under relevant disciplinary rules.

10. Inquiry report submitted by the inquiry officer on 05.7.2001 as per the directions of the respondent Pakistan Steel Mills explicitly show the following position, which exonerated the petitioner from the alleged charges:

"Recommendation/conclusion

On the basis of the facts brought before the Enquiry Officer, finding as narrated above, it has been proved that in spite of clear cut approval for cancellation of house from the name of delinquent and its further allotment to Mr. Mushtaque Zahid Assistant Manager was accorded by the competent authority but Estate Section failed to take follow up action and approval in question is still in abeyance with Estate Section. And hence Mr. Waqar Ahmed skilled worker P. No:056154 hot strip mill is not guilty of the charges levelled upon.

Moreover, had the delinquent followed the case for issuance of cancellation letter, the Estate Section would have definitely been re-called for their official obligations. This slackness appears on the part of delinquent and hence on account of this slackness/negligence he may be strictly reprimanded."

11. We have noticed that re-inquiring on the same allegations vide re-inquiry report dated 17.9.2001, the respondent is estopped to take any action against the petitioner. The so-called report is being used to victimize the petitioner based on extraneous pressure. An excerpt of the report is reproduced as under:

"Recommendation

On the basis of the facts brought before the enquiry officer, detail study of the case and finding as narrated above, though apparently it is proved that house C-326 which was allotted to Mr. Waqar Ahmed Qureshi was subletted to Mr. Mushtaq Zahid, but keeping in view the facts that approval for cancellation of said house from the name of Mr. Waqar Ahmed Qureshi and its further allotment to Mr. Mushtaq Zahid was accorded by the competent authority, it is evident that subletting the house C-326 to Mr. Mushtaq Zahid was not for the purpose of getting monetary benefit.

The slackness/negligence on the part of delinquent for non pursuance the case for issuance of cancellation letter through Estate Department made this case complicated for which he may be strictly reprimanded and recovery be mad of monetary losses if there is any."

12. After the report, the de novo inquiry has become meaningless. In principle, the de novo proceedings could be initiated from the stage where the defect had crept in whereas in the previous inquiry report as discussed supra, prima facie, there was no defect then how the respondent Pakistan Steel Mills took U-turn and ordered for de novo inquiry in the disciplinary case against the petitioner.

13. It has been established that the applicant had not sublet the official accommodation to some other person as opined by the inquiry officer vide inquiry report dated 05.7.2001. The petitioner was not associated during the second inquiry proceedings by the respondent. Petitioner was not even informed of the findings of the second inquiry before the imposition of major penalty in 2001. The petitioner was deprived of the opportunity to submit his effective defense about the allegation of subletting of a quarter immediately after the report of the inquiry officer vide inquiry report dated 17.9.2001. The respondent cannot presume that the petitioner will have no defense vide impugned order dated 03.10.2001. Such an action on the part of the respondent Pakistan Steel Mills was/is against the principle of natural justice.

14. The disciplinary proceedings can be initiated, when there is an infringement of conduct rules. The respondent had initiated disciplinary action after the petitioner left the accommodation and shifted to his residence. Initiation of disciplinary action after leaving the official accommodation in May 2001 and the alleged subletting to someone else without giving him an opportunity of defense immediately after the de novo inquiry report itself cannot sustain since the petitioner was deprived of the effective defense in such a case after such a considerable period.

15. As observed above, the petitioner was a confirmed employee of the respondent, and his period in service with the respondent is near about twenty (25) years. Nothing on record that the petitioner was previously indulged in that sort of allegations.

16. It is argued by the learned counsel for the respondent that the services of the petitioner were dispensed with under Section 3(1)(b) of the Removal from Service (Special Powers) Ordinance, 2000, therefore, the appeal filed by the petitioner was not responded to, if this is the position, no blanket powers can be exercised to dispense with the service of a regular employee, who rendered his service with effect from 1975.

17. On the issue of back benefits, we are guided by the decision of the Hon'ble Supreme Court in the case of Muhammad Ashraf and others v. Inspector General of Police Punjab, Lahore, and others (2021 SCMR 962).

18. Consequently, we would allow the petition in hand and set aside the impugned order dated 03.10.2001, whereby the petitioner was ousted from service in violation of the law. The competent authority of Pakistan Steel Mills is directed to award retirement benefits including back benefits to the petitioner within two (2) weeks from today.

The petition is disposed of accordingly along with listed applications.

Let a copy of this order be communicated to the competent authority of Pakistan Steel Mills for compliance.

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