

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan Iqbal Chaudhry

No. C.P. No.D-1059 of 2014

Zaheer Ahmed
Versus
Province of Sindh & others

Date of Hearing: 02.10.2019

Petitioner: Through Mr. Jhamat Jethanand Advocate

Respondents: Through Mr. Shaharyar Mehar, Assistant Advocate General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner in this matter has prayed that withholding of posting order of the petitioner is illegal, void and mala fide and consequently prayed that the respondents be directed to issue posting orders of the petitioner.

2. It is case of the petitioner that in pursuance of recruitment policy, an advertisement dated 30.01.2004 published thereby inviting applications for the post of Junior School Teacher. The petitioner applied and submitted the documents as to his academic qualifications etc. He claimed to have appeared in the test and cleared by the Recruitment Committee. Petitioner claimed to have accepted the offer which is available at page 29 as Annexure 'H' dated 10.07.2006. However, the posting order was never issued.

3. Petitioner then kept quiet for a long period even after a decision was passed in CP No.D-1051 and others of 2007 on 04.05.2011 whereby the letter of cancellation of offer was set aside and in terms of summary of worthy Chief Minister dated 18.10.2006 show-cause to all those who

were not eligible for appointment as Junior School Teacher followed. Proceedings in terms of such show-cause notices were ordered to be concluded within one month time and in case the proceedings in pursuance of show-cause and inquiry were not concluded within two months, the petitioners therein were deemed to have been entitled to be posted to their respective posts. In case of those petitioners for whom there was no dispute regarding their eligibility, posting orders, were ordered to be issued. On the basis of this consent order petitioner through instant petition seeks that since his case is also based on the same facts and circumstances, therefore, identical order be passed in this petition as well.

4. We have heard the learned counsel for petitioner as well as learned Assistant Advocate General and perused the material available on record.

5. Petitioners in above referred petitions i.e. C.P. No.D-1051 and others of 2007 had approached the Court immediately after offer letters were issued and perhaps were withdrawn. Those petitions were filed in the year 2007 and 2008. The petitioner in the present petition kept quiet despite the fact that the cause allegedly triggered in the year 2006 when the alleged offer was made and not complied with and/or no further steps as to the postings were taken. What was concealed by petitioner was that all such offer letters were cancelled for which referred petitions were filed and considered in terms of Para 1 of conclusion on the last page of order. Thus, the petitioner's case in this petition suffers from laches on the strength that the advertisement on the basis of which petitioner participated in the process appeared in the year 2004 which process was ultimately concluded in the year 2006 and the offer was declined.

6. Furthermore, the order relied upon by learned counsel for petitioner was passed in May, 2011 while the present petition was presented on 24.02.2014. Learned counsel for petitioner has made an attempt to explain that petitioner's cause actually triggered when the judgment was passed by the Division Bench in the aforesaid petitions. Although this, we deem to be a futile attempt as even if the cause is stated to have triggered in the year 2011, this petition was filed in the year 2014 i.e. after lapse of about three years. Hence, petitioner cannot be allowed to avail the discretionary jurisdiction and indulgence of this Court after a considerable delay of more than eight years or three years, as the case may be.

7. The rationale behind the judgment of Hameed Akhtar Niazi v. Secretary Establishment Division reported in 1996 SCMR 1185 cannot be applied here as firstly the question of laches was not agitated/ considered in the referred judgment; secondly it was case of Civil Servants who were in service who were to be dealt with in accordance with law with equality even for those who have not initiated any legal proceedings as the questions therein embarked upon seniority of civil servants as well as applicability of service rules and in this regard the equity is to be seen, taking into consideration all those civil servants who never contested the matter or initiated legal proceedings. Therefore, the case of the present petitioner is distinguishable on the aforesaid count.

8. The case of Mst. Irum Alam v. Government of Sindh, an unreported case, copy of which is attached along with comments on behalf of respondent No.1, Division Bench of this Court, covers the present controversy wherein it has been held as under:-

“However, the position in the present cases is different. In one petition the cause of action accrued in 2004. In the remaining petitions the cause of action accrued to the petitioners between 2007 to 2009 and all petitions suffer

from laches. Several petitions on similar ground including C.P. Nos.D-3481/2012, 209/2011, 1518/2011, 2109/2012 etc. that were belatedly filed have been dismissed on the ground of laches, therefore, there exists no reason to hold otherwise in these petitions. Hence these petitions are dismissed in limine along with listed applications.”

9. Thus, by applying principle of laches, the petitioner has lost the efficacious remedy available to him under the law. The law favours those who are vigilant and not for those who remain idle for a long period of time. The petition as such on this count alone is dismissed along with pending application.

10. Above are reasons of our short order dated 02.10.2019.

Dated:

Judge

Judge