

# IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

## C.P No. D- 535 of 2016

Muhammad Qasim Jakhar

Petitioner

through

: Syed Shoa-un-Nabi, advocate.

Respondents

through

: Mr. Ali Safdar Depar, AAG along with Jabbar Shaheen, Focal Person, Schools Education & Literacy Department, Government of Sindh.

Date of hearing

& order

: 07.09.2021

## ORDER

**ADNAN-UL-KARIM MEMON, J.** Through the instant Petition, the petitioner is seeking enforcement of the common judgment dated 30.09.2010 handed down by the learned Sindh Service Tribunal (**SST**) in Service Appeal No.133/2009 and other connected appeals, whereby the colleagues of the petitioners were directed to be reinstated from the day they were removed from service, with all back benefits, as admissible under the law.

2. At the outset, learned counsel for the petitioner was confronted as to how the instant petition is maintainable, on the account the instant petition is suffering from serious laches, and the powers have been conferred upon the learned SST to execute its decision; whereas, the petitioner if so aggrieved at all, has remedy before the same Tribunal.

3. Syed Shoa-un-Nabi, learned counsel for the petitioner, has replied to the query as raised hereinabove and argued that the petitioner along with his colleagues was appointed as High School Teacher (BS-16) (**HST**) in the year 1995. However, later on, their appointments were declared to be fake, and ultimately vide verbal order dated 23.4.2007; they were removed from their respective services. They being aggrieved by and dissatisfied with the aforesaid decision of the respondent-Education Department, preferred departmental appeal/representation in the year 2007, which too remained un-responded. They finally filed the aforesaid appeals before the learned SST, which was entertained and they succeeded in their respective appeals vide common judgment dated 30.09.2010. Per learned counsel for the petitioner, the aforesaid decision

was not implemented, as such the colleagues of the petitioner preferred CPNo.D-1109/2011 which was disposed of vide order dated 12.5.2011 in terms of the order passed in CP No.D-15/2011, whereby direction was given to the Education District Officer Shaheed Benazirabad to comply with the judgment of learned SST in its letter and spirit within two weeks and on the same analogy the petitioner has approached this Court with the prayer to direct the respondents to reinstate him into service as per the order of the learned SST as discussed supra. Consequently, his arrears of salary may also be ordered to be released along with back benefits.

4. Learned counsel for the petitioner further pointed out that the Respondent-Education department has allowed the other colleagues of the petitioner to perform their duty as HST and the Petitioner has been ignored; that the appointment of the Petitioner cannot be subjected to discriminatory treatment; that Petitioner is entitled to similar treatment in respect of posting orders under which their similarly placed colleagues have been posted in pursuance of the judgment passed by the learned SST as discussed supra; that the Petitioner is a qualified person to hold the subject post after fulfillment of all codal formalities as such the Petitioner's fundamental rights is at stake. In support of his contentions, he relied upon the judgment passed by the learned SST. In the end, he submitted that the Petitioner is liable to be posted in the Respondent-department; and, his salary may also be directed to be disbursed accordingly.

5. On the other hand, Mr. Ali Safdar Deeper, learned AAG, has contended that the basic appointment order issued by the Directorate of School Education Sukkur Region Sukkur Sindh vide office order dated 24.8.1985 is not under the law; that the learned Sindh Service Tribunal has allowed service appeals of his colleagues in 2010, whereas he has approached this Court on 27.01.2016 after a considerable period, thus his case falls within the doctrine of laches as such he is not entitled to the benefit of the judgment passed by the learned SST; that the Petitioner has no right to agitate his service grievances before this Court under Article 199 of the Constitution of Pakistan, 1973. Learned AAG also emphasized that if the petitioner is so aggrieved against non-implementation of the judgment of the learned SST, he has the remedy to approach the learned SST who has the power to execute its order, if no appeal before the Hon'ble Supreme Court is preferred by the respondent-Education Department; hence, Petition is not maintainable. He lastly prayed for the dismissal of the instant petition.

6. We have heard the learned counsel for the parties and have perused the material available on record.

7. The issue of maintainability of the captioned Constitutional Petition has been raised. To address the proposition as discussed supra, foremost, we would address the same question. Admittedly, the colleagues of the petitioner filed Service Appeal No. 133 of 2009 and other connected appeals before the learned Sindh Service Tribunal and their respective Appeals were allowed vide common judgment dated 30.09.2010 in the following terms:-

*“9. Being fortified by the dicta laid down in above cases, we hold that the order of termination of the appellant is void ab initio, illegal, and without jurisdiction. We, therefore, declare that the instant appeal is not hit by any provision of the Limitation Act. As a result no time will run against the order of termination. The same view was held by this Tribunal in the case of Ghulam Soomro Vs. The Secretary of Education, Government of Sindh, and 4 others in Appeal No.116 of 2008 allowed by this Tribunal’s judgment dated 14.09.2009 (ibid).*

*10. It is an admitted fact that the appellant was the recipient of monthly salary and allowances for a continuous long period from December, 1995 to June 2004 as HST in B-16, and all of sudden his salary was stopped without assigning any reason thereof. It was more agonal and persecuting that he was allowed working without salary till the verbal order of 23.04.2007. Prudence demands that there must be a limit of time before which a person appointed must be informed whether his appointment was made on the basis of genuine or fake documents. As stated above the appellant in view of his long unblemished service had thus acquired a valuable right. Thus there seems absolutely no fault on the part of appellant. The fault, entirely lies on the part of the respondents who were either so careless or in a deep slumber for more than 9 years to learn about alleged irregularity in appointment. The order of termination as already stated above is in flagrant disregard of well settled law and has therefore been declared as void and without jurisdiction.*

*12. For the foregoing reasons, we find the oral order of termination of services of the appellants being without jurisdiction, illegal, void ab initio and therefore set aside with the direction to the respondents to reinstate appellants from the date they were removed from service with all back benefits admissible under the law. There is no order as to costs.*

*13. These appeals were allowed by our short order dated 16.08.2020. Above are the reasons for the same.”*

8. Reply to the query as to how the instant Petition is maintainable against the common judgment dated 30.09.2010 passed by the learned Sindh Service Tribunal at Karachi as discussed supra is not sustainable under the law on the premise that the Petitioner has failed to approach the learned SST in the light of Section 5 of the Sindh Service Tribunals Act, 1973, (**Act-1973**) whereby the powers have been conferred upon the

learned SST to execute its decision. For convenience sake, an excerpt of Section 5(2)(d) of the Act, 1973 is reproduced as under:

*5. Powers of Tribunals.- (1) A Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against.*

*(2) A Tribunal shall, for the purpose of deciding any appeal be deemed to be a Civil Court shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of –*

*(a) enforcing the attendance of any person and examining him on oath;*

*(b) compelling the production of documents;*

*(c) issuing commission for the examination of witnesses and documents; and*

***(d) execution of its decisions.***

9. Besides above, the point of laches is also involved in this matter on the ground that the petitioner has approached this court in the year 2016, whereas the alleged cause of action accrued to him in the year 2007 when he was purportedly terminated from his service, the reasoning assigned by the learned counsel for the petitioner that the petitioner has approached this court based on decision passed by the learned SST in the year 2010; 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. We do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches as rights of the petitioner were not dependent upon other petitioners in the referred petition. We are of the considered view that the instant Petition falls within the doctrine of laches as the Petitioner filed the instant Petition in January 2016, whereas the alleged cause of action accrued to him in the year 2007, i.e. approximately 08 years before the filing of the instant Petition. It is well-settled law that those who slept over their rights cannot be given a premium of their own fault because such conduct does trigger the principle of waiver. The observations of the Honorable Supreme Court in the case of *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883) is a guiding principle on the issue of laches.

10. Besides above, we are also cognizant of the fact that this Court cannot entertain the grievance of the Petitioner under Article 199 of the Constitution, in view of Section 5(2)(d) of the Act-1973. Therefore, the forum chosen by the Petitioner by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

11. Since the case of the Petitioner is barred by laches, therefore, any discussion as to the decision of the learned SST as discussed supra is not necessary.

12. In view of the foregoing, without touching the merits of the case, the captioned Constitutional Petition is found to be devoid of jurisdictional error and is accordingly dismissed along with the listed application(s). However, the Petitioner may avail appropriate remedy as provided to him under the law.

**JUDGE**

**JUDGE**

Nadir\*