

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitutional Petition No.D-4146 of 2020

(Muhammad Rizwan Memon v. Federation of Pakistan and 07 others)

Mr. Khalilullah Jakhro, advocate for the petitioner
Mr. Jaffar Hussain, advocate for Pakistan Railways
Mr. Muhammad Nishat Warsi, DAG

Date of hearing &
Order : **18.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitutional Petition, the petitioner seeks continuation of service in Pakistan Railways as Office Assistant in PR Boys High School Karachi Cant. on the plea that he continued to serve in the subject school with effect from 2014 till he was verbally removed from his posting without assigning reason in the year 2015. It is inter-alia contended on behalf of the petitioner that the above engagement of the petitioner continued for about one and half years due to his satisfactory performance. However, vide verbal order, he had been informed that his contract could not be renewed by the competent authority and as such his services were no more required for the respondents with effect from 31.08.2015.

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.

3. Mr. Khalilullah Jakhro, learned counsel for the petitioner, submitted that as per the policy decision of the Cabinet Division, Government of Pakistan, a person who has served in a Government-owned and controlled organization/public Sector School for three consecutive terms of 89 days is entitled to be regularized. In the present case, the petitioner has served for one and half years, however, the only reason put forward on behalf of the respondents against her reinstatement is that his contract period expired in August 2015, which reason by itself would not debar the petitioner from the right conferred by the policy decision of the Cabinet Division, seeking his reinstatement and subsequent regularization of service based on his service record. He further submitted that the Honorable Supreme Court has condemned the practice of keeping the employees temporarily for long periods without confirming or regularizing their services. It has been held that an employee being jobless and in fear of being shown the door has no option but to accept and continue with the appointment on whatever terms a job is offered by the employer. Such consent to continue to work as a temporary employee is not like free consent between the employees, on the one hand, and employers on the other. A person so employed is not in a position to bargain with the employers/departments which are in

a disproportionately dominating bargaining position as compared to the employee and the employer could always coerce them to waive their legal protection and accept contractual terms or face the risk of losing their jobs. In support of his contentions, he relied upon the decisions of the Honorable Supreme Court in the case of Pakistan v. Public at Large (PLD 1987 SC 304), Sui Southern Gas Company Ltd. v. Ghulam Abbas (PLD 2003 SC 724), Ikram Bari v. National Bank of Pakistan (2005 SCMR 100), Ejaz Akbar Kasi v. Ministry of Information and Broadcasting (PLD 2011 SC 22), Board of Intermediate and Secondary Education Faisalabad and others v. Tanveer Said and others, 2018 SCMR 1405 and Board of Intermediate and Secondary Education Multan and others v. Muhammad Said and others 2019 SCMR 233. He further submitted that that the case of the present petitioner is at par with the petitioners of the cited case, he is also entitled to the same relief. He also relied upon the cases of Government of Punjab v. Sameena Parveen and others (2009 SCMR 1), Secretary (Schools), Government of Punjab, Education Department and others v. Yasmin Bano (2010 SCMR 739), Province of Punjab through Secretary Communication and Works Department and others v. Ahmad Hussain (2013 SCMR 1547), Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257) and Pakistan Railways and others Vs. Sajid Hussain and others (2020 SCMR 1664). On the point of laches, he submitted that he continued to move applications to the competent authority with effect from the date of his verbal termination and lastly on 02.09.2020, and after exhausting all his avenues he filed the instant petition on 03.09.2020, which is within time. He prayed for allowing the instant petition.

4. Mr. Jaffar Hussain, learned counsel for Pakistan Railways, has referred to the para wise comments filed on behalf of Pakistan Railways and raised the question of maintainability of the instant petition. He further submitted that the petitioner was not appointed against any permanent post in the aforesaid School but engaged against D.G/ Education Fund, which is temporarily terminable at any time without notice. Per learned counsel petitioner was not paid from the funds of Pakistan Railways but the fee and funds of the private students the number of which may vary as per admission. He prayed for dismissal of the instant petition. The aforesaid stance has been refuted by the petitioner through re-joinder to the comments filed on behalf of the Pakistan Railways and relied upon the unreported order dated 30.01.2017 passed by the learned Lahore High Court Bahawalpur Bench Bahawalpur in Writ Petition No.554/2012, order dated 15.01.2018 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.2137/2017, judgment dated 09.07.2020 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeals No.17 to 29 of 2020 and judgment dated 23.01.2019 passed by the learned Bench of Lahore High Court Lahore in Writ Petition No.32515/2016.

5. We have heard the learned counsel for the parties and have perused the material available on record and case law cited by the petitioner.

6. 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. Primarily, the stance of the respondent-Pakistan Railways is that a contract employee, whose terms and conditions of service are governed by the principle of “master and servant”, does not acquire any vested right for a regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of his grievance relating to regularization; that, he/she is debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to him/her is to file a Suit for damages alleging breach of contract or failure on the part of the employer to extend the contract; after accepting the terms and conditions for contractual appointment, the contract employee has no locus standi to file a Constitutional Petition seeking writs of prohibition and/or mandamus against the authorities from terminating his/her service and or to retain him/her on his existing post on regular basis; a contract employee, whose period of the contract expires by efflux of time, carries no vested right to remain in the employment of the employer and the courts cannot compel the employer to reinstate him/her or to extend his/her contract; and, no right would accrue to a de facto holder of a post whose right to hold the said post was not established subsequently. Be that as it may, since the point of laches is also involved in this matter on the ground that the petitioner has approached this court in the year 2020, whereas the alleged cause of action accrued to him in the year 2015 when he was purportedly terminated from his service verbally, the reasoning assigned by the learned counsel for the petitioner that the petitioner has approached this court based on representations made by him to the respondents from time to time; 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 the learned counsel for the Petitioner with his explanation of laches as the rights of the petitioner were not dependent upon other petitioners in the referred petitions.

8. We are of the considered view that the instant Petition falls within the doctrine of laches as the Petitioner filed the instant Petition in September 2020, whereas the alleged cause of action accrued to him in the year 2015, i.e. approximately 04 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 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. Since the case of the Petition is barred by laches, therefore, any discussion on merit is not necessary.

9. Before parting with this order, we may observe that if any representation is made by the petitioner to the respondents, the respondents shall take into consideration the plea of the petitioner based on the judgments of the Hon'ble Supreme Court of Pakistan.

10. 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 his appropriate remedy as provided to him under the law.

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