

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2843 of 2023

Dated: Order with signature of Judge(s)

1. For order on Misc. No.13655/2023.
2. For orders on office objections No.5 & 15.
3. For order on Misc. No.13656/2023.
4. For hearing of Main Case.

Yousuf Ali Sayeed, J.
Mohammad Abdur Rahman, J.

Date of hearing : 06.06.2023.

Petitioner : Aqeel Ahmed through Mr. Nisar Ahmed
Dogar, Advocate.

Respondents: Province of Sindh & Others.

ORDER

Mohammad Abdur Rahman, J. The Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking a writ of Mandamus to be issued to the Respondent No. 1 and Respondent No. 2 for release of his salaries with all benefits from the year 2015.

2. It is apparent from the documents attached with the Memo of Petition that the Petitioner was appointed as a School Teacher in Grade BPS-14 on 1 January 2013 and was appointed to serve in the Government Boys Secondary / Higher School Pakistan National Government Secondary School No. 1 and 2 at Karachi. The Petitioner alleges that he was retained in this position in 2013 but was not absorbed into the school as of that date and voluntarily discontinued attending the school in the year 2014. He states that he had preferred "Departmental

Appeals” against the failure of the Government Boys Secondary / Higher School Pakistan National Government Secondary School No. 1 and 2 at Karachi to absorb him into their establishment.

3. Admittedly, from the end of the year 2014 till the date of filing of this petition the Petitioner has taken little or no action whatsoever to either join his employment or to seek any relief for his dues and back benefits and now has maintained this petition seeking the following reliefs:

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- i) Direct the respondents to consider the case of petitioner in compliance with the order dated 16.12.2021, passed by the Hon’ble Supreme Court of Pakistan in C.P. No.46/2021.
 - ii) Direct the respondents to immediate release the all pending salaries of petitioner with all benefits since May, 2015.
 - iii) Direct the respondents to allow the petitioner, mark his attendance in accordance with law and rules.
 - iv) Direct the respondents to allow the petitioner to perform his duty in accordance with law and rules and will not create any hurdle in his duty.
 - v) Any other relief(s), which this Hon’ble Court may deem fit and proper.”

4. The learned counsel for the Petitioner has contended that as the Petitioner was not allowed to join his employment with the Government Boys Secondary / Higher School Pakistan National Government Secondary School No. 1 and 2 at Karachi on 19 February 2014 he filed a departmental appeal challenging the omission on the part of the Respondent No.2. and 3 in this regard. He further contends that on that 16 December 2021 the Supreme Court of Pakistan vide an order dated 16 December 2021 passed in C.P. No. 46 of 2021 has directed that a “Committee” should be constituted to examine the cases of various applicants to see whether or not claims made by such person to receive a salary are genuine and if found to be genuine such persons salaries should be released forthwith. He finally contented that the Petitioner has filed a representation to the Committee constituted pursuant to the order

dated 16 December 2021 passed in C.P. No.46 of 2021 which is not being considered and hence he maintains this Petition. He did not rely on any case law in support of his arguments.

5. We have heard the Advocate for the Petitioner and have perused the record. From the facts and pleadings it is apparent that:

- (i) the Petitioner is admittedly making representations in respect of his right to receive a salary which has been subsisting since 2014 and which he is attempting to enforce in 2023 ;
- (ii) the Petitioner has not attached a copy of the purported Departmental Appeal that had been filed by him;
- (iii) the Petitioner has not attached a copy of the decision of the purported Departmental Appeal that had been filed by him;
- (iv) the Petitioner has admittedly not been in the active employment of the Respondent No. 2 and 3 since 2014;
- (v) the Petitioner has not attached a copy of the Judgment of the Supreme Court of Pakistan dated 16 December 2021 passed in C.P. No.46 of 2021

When confronted with each of these issues, no satisfactory response was received from the Advocate for the Petitioner to any of these queries that we raised and the only response from the Petitioner is that he should be treated on par with the Petitioners in CP No. 46 of 2021. Needless to say it was the duty of the Petitioner to produce the judgment of the

Supreme Court of Pakistan in CP NO. 46 of 2021 which he has himself not produced and as such we are unable to make any comment on the judgment, let alone to understand as to whether the Petitioner claim would fall within the purview of the order passed by the Supreme Court of Pakistan.

6. The principle of laches has been very aptly summarised by the Supreme Court of Pakistan in the reported case of **Ardeshir Cowasjee versus Karachi Building Control Authority (KMC), Karachi**¹ and in which it was held that:²

“ ... In our view, laches per se is not a bar to a Constitutional Petition. There is marked distinction between delay in filing of a legal proceedings within the period specified in an Article of the Schedule to the Limitation Act, 1908 and the delay in filing of a Constitutional petition for which no statutory period is provided for. In the former case delay of each day is to be explained by furnishing sufficient cause for seeking condonation of delay under section 5 of the Limitation Act in filing of a legal proceedings after the expiry of the statutory period. Whereas, in the latter case, the delay or the question of laches is to be examined on equitable principles for the reason that grant of Constitutional relief is discretionary relief and the Court may decline to process into service its Constitutional jurisdiction if it would be inequitable in keeping in view the conduct of a petition. The question of delay or laches is to be considered with reference to the facts of each case. Delay/Laches of several years can be overlooked in a Constitutional petition if the facts of the case and dictates of justice so warrant as pointed by this Court in the case of The Chairman G. District Screening Committee, Lahore and another vs. Sharif Ahmad Hashmi (PLD 1976 SC 258) (supra.), or the delay/laches of few months may be fatal to a Constitutional petition.”

We note that the Petitioner has admittedly not been in the employment of the Respondent No. 2 and 3 since the end of 2014 and is maintaining the

¹ 1999 SCMR 2883

² *Ibid* at pg. 2907-2908

Petition nearly 10 years after discontinuing his employment. Clearly any relief that the Petitioner seeks in the discretionary jurisdiction of this court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is therefore barred by laches.

7. In addition, as admitted by the Petitioner himself, a departmental appeal was preferred by him. Again no documentation has been attached to show the grounds on which such “departmental appeal” was preferred or as to the outcome of such departmental appeal. Clearly the Petitioner having exercised an alternative efficacious remedy cannot at this belated stage appear bypass all the appellate forums that existed under the existing statutory framework and seek relief from this court in the its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. For the foregoing reasons we are clear that this Petition is misconceived and is not maintainable. Hence, while granting the application for urgency, we hereby dismiss this Petition *in limine*, along with the other miscellaneous applications with no order as to costs.

JUDGE

Nasir PS.

JUDGE