

# IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-6283 of 2019

**Present:**

**Mr. Justice Yousuf Ali Sayeed,**

**Mr. Justice Arbab Ali Hakro,**

Petitioner: Faique Ali s/o Muhammad Ali Mangi  
through Mr. Sharafuddin Mangi, Advocate

Respondents No.1 & 2: Lyari Development Authority  
through Mr. Nadir Khan Burdi, Advocate

Respondents No.3 & 4: Through Mr. Kafeel Ahmed Abbasi, A.A.G

Date of hearing: 18.9.2024

Date of decision: 11.10.2024

## **J U D G M E N T**

**ARBAB ALI HAKRO, J:** This Constitutional Petition under Article 199 of the Constitution of Pakistan of Pakistan, 1973 ("the Constitution") has been filed by the petitioner, seeking the following reliefs: -

- a) *To direct the Respondent No.2 to post him in his original Secretariat Department and grant him due seniority according to his service of initial appointment.*
- b) *To grant him arrears of all allowances and difference which were due to him after his promotion and regularization as result of enhancement of his salary as per Court orders and directions.*
- c) *To grant him all relevant pecuniary and other fiscal benefits as per service law from his re-appointment to the qualified post in BPS-7 as Junior Clerk for which the petitioner is entitled.*
- d) *Any other relief.*
- e) *Cost.*

2. The brief facts leading to the filing of this petition are that the petitioner is an employee of Lyari Development Authority, Karachi ("LDA"). He was appointed as a Naib Qasid in LDA on 31.01.2000 on daily wages, temporary, and contingent basis. Subsequently, in the same department, LDA, the petitioner was appointed as a Junior Clerk on 14.9.2001 on a temporary and contingent basis. It is further stated that the petitioner was appointed 20 years ago in the year 2000 on a daily wages, temporary, and contingent basis, whereas other employees were appointed on a permanent and regular basis in

the same department during the same time by the respondents. When the respondents decided to remove the petitioner from the service, the petitioner knocked on the door of this Court by filing C.P No.D-2505/2010, in which an order dated 22.01.2013 was passed in favour of the petitioner with directions to the respondents not to remove the petitioner from his service, but to regularize him and grant him due service benefits. The petitioner further stated that in light of the above directions, he moved several applications to respondent No.3 for regularization of his service and due benefits, but no action was taken. Consequently, the petitioner filed a Contempt Application against the respondents in the above Constitutional Petition, wherein the petitioner was directed to contact the relevant authorities for redressal of his grievance and other job-related problems. Afterwards, the petitioner moved an application to respondent No.2 to redress his grievance, but respondent No.3 advised him to address the application directly to him. As such, the petitioner wrote an application addressing the same to respondent No.3, but no heed was paid to the petitioner's application, nor was his grievance resolved. Hence, he filed the present petition.

3. The notice of this petition was issued to the respondents. In response, respondent Nos.1 and No.2 filed their para-wise comments, wherein they denied the petitioner's claim and raised legal objections that the petition is barred by laches as the petitioner was regularized on 21.11.2012, while he preferred this petition on 02.10.2019. The petitioner is seeking retrospective seniority from 31.01.2000, which is not permissible under the law.

4. At the outset, the learned counsel representing the petitioner has argued that many employees in LDA were restored and regularized, and they were also given due service benefits and seniority, but the petitioner has been denied such benefits by the respondents. He has argued that the junior employees to the petitioner were promoted and shown as senior. He has also argued that the petitioner has not been given his due back benefits and arrears, which the concerned authorities were bound to give him as per orders dated 22.01.2013 and 14.10.2015, passed in C.P No.D-2505/2010.

5. Conversely, the learned counsel representing respondents No.1 and No.2 contended that this petition is not maintainable as the same is hit by laches since the petitioner was regularized on 21.11.2012 and filed this petition on 02.10.2019, after more than six years. He has contended that the petitioner is claiming retrospective seniority, which is not permissible under the Lyari Development Authority (Probation, Confirmation, and Seniority) Regulation, 1999 (the "**Regulation, 1999**"). He further contended that the contempt application moved by the petitioner in C.P No.D-2505/2010 was dismissed and that no dues remained for the petitioner against the department.

Finally, he concluded that the petitioner is regularly paid his salary after regularization. In support of his contentions, he relied upon the **2022 SCMR 897, 2000 SCMR 352, and 2010 PLC (CS) 1254 cases.**

6. Learned A.A.G, representing respondents No.3 and No.4, has adopted the arguments of the learned counsel for respondents No.1 and 2.

7. We have meticulously examined the submissions of the learned counsel for the petitioner, the respondents, and the Assistant Advocate General and have scrupulously reviewed the record with their assistance. The petitioner predicates his claim on the orders dated 22.01.2013 and 4.10.2015, rendered in C.P No.D-2505/2010, instituted by the petitioner. Consequently, it is incumbent upon us to reproduce the pertinent operative portions of these orders as follows: -

**ORDER DATED 22.01.2013**

*“Today Mr.Munawwar Malik has shown copy of Office Memorandum dated 21.11.2012, issued by the Lyari Development Authority from which it is evident that the relief sought by the petitioner for regularization has been granted and the petitioner has been regularized”.*

*In view of the above, this petition is disposed off. In case there is any dispute with regard to past salaries and emoluments the petitioner shall be free to agitate the same before the concerned authority.”*

**ORDER DATED 14.10.2015 PASSED ON CONTEMPT APPLICATION**

*“It is not in dispute that the petitioner has been regularized. It appears that the petitioner has made some representation with regard to the issue of past salaries and emoluments and grievance is that representation has not been properly addressed. Be that as it may, in these proceedings, we are only concerned with proper implementation of the order dated 22.01.2013. We have been assisted by the learned counsel and have gone through the contempt application. With respect, we are unable to see any disregard or disobedience of the order of the Court. This contempt application is therefore misconceived, and is accordingly dismissed without prejudice to the right of the petitioner to seek such remedy as may be available to him under the law in terms of any matter to which the last paragraph of the order dated 22.01.2013 relates, but we emphasize that a contempt application is not the proper remedy. File to be consigned to record.”*

8. The above Orders neither explicitly state that the petitioner is to be given back benefits and arrears. However, both orders provide a framework for the petitioner to pursue these claims through the appropriate legal channels. The petitioner was advised to address any disputes regarding past salaries and emoluments with the concerned authority and seek remedies through proper legal processes.

9. In the instant case, the petitioner asserts that he has been deprived of his rightful back benefits, arrears, and seniority. However, the petitioner has failed to elucidate or provide a detailed account of the benefits allegedly withheld from him subsequent to his regularization and appointment as a Junior Clerk, pursuant to the Office Memorandum dated 21.11.2012. The record further indicates that, upon the recommendation of the Departmental Promotion/Selection Committee, the petitioner was promoted to Senior Clerk (BPS-14) via an Office Order dated 17.9.2020. It appears that the petitioner is seeking retrospective seniority and back benefits from the period when he was appointed as Naib Qasid on a contingent/temporary basis with a fixed lump sum salary of Rs.1500/- per month. Seniority is delineated in Part-IV of the Regulations, 1999, Regulation/Rule No. 3 and 4, which stipulate that:

**3. The seniority of an employee shall be reckoned from the date of his regular appointment.** This provision implies that an employee's seniority is computed from the date of their formal and regular appointment to their position. Any tenure served in a temporary or contingent capacity is excluded from the calculation of seniority.

**4. No appointment made on an ad-hoc basis shall be regularized retrospectively.** This provision denotes that any appointment effected on an ad-hoc or temporary basis cannot be retroactively converted into a regular appointment. In essence, the duration served in an ad-hoc position is not considered part of the regular service period.

10. In the present case, the petitioner claims retrospective seniority and back benefits from when he was appointed Naib Qasid on a contingent/temporary basis with a fixed lump sum salary of Rs.1500/- per month. However, in accordance with the regulations, the petitioner's seniority should be reckoned from the date of his regular appointment as Junior Clerk, which is 21.11.2012, as per Regulation No. 3. The petitioner's initial appointment as Naib Qasid on a contingent/temporary basis cannot be regularized retrospectively, as per Regulation No. 4. Consequently, the petitioner is not entitled to claim retrospective seniority from the time he was appointed as Naib Qasid on a contingent/temporary basis. His seniority should be computed from the date of his regular appointment as Junior Clerk on 21.11.2012. Therefore, the petitioner cannot claim back benefits and arrears for the period preceding his regular appointment.

11. The petitioner has further contended that other employees within the LDA were reinstated and regularized and were concomitantly accorded due service benefits and seniority. However, in this context, the petitioner has failed to produce any substantial documentary evidence to corroborate his assertion. The sole document tendered by the petitioner is an appointment order dated

23.02.2011 pertaining to one Muhammad Ilyas, which has been appended to the petition. This appointment order, however, does not evince that Muhammad Ilyas was conferred back benefits and seniority. The dearth of concrete evidence to substantiate the petitioner's allegations enfeebles his position. In judicial proceedings, it is incumbent upon the petitioner to furnish clear and cogent evidence to buttress his claims, particularly when alleging disparate treatment or discrimination. The mere existence of an appointment order is insufficient to establish that analogous benefits were extended to other employees unless it explicitly articulates so. Consequently, in the absence of supplementary documentation or records that unequivocally indicate the reinstatement and regularization of other employees and the conferment of back benefits and seniority, the petitioner's claim remains unsubstantiated. The onus probandi rests with the petitioner to demonstrate that a precedent exists for granting such benefits to other employees under analogous circumstances. Absent such proof, the petitioner's allegations cannot be accepted at face value, and the claim for similar treatment remains unproven.

12. Furthermore, the instant petition filed by the petitioner is vitiated by laches, as he was regularized on 21.11.2012 and filed this petition on 02.10.2019. Laches is a legal doctrine that precludes a claimant from obtaining relief if they have inexcusably delayed in asserting their claim, and such delay has prejudiced the opposing party. In the realm of jurisprudence, the principle of laches is invoked to ensure that claims are prosecuted within a reasonable temporal framework and to avert the inequity that may ensue from the resuscitation of moribund claims. The doctrine is anchored in the maxim, "Equity aids the vigilant, not those who slumber on their rights." In this matter, the petitioner was regularized on 21.11.2012, yet he procrastinated for nearly seven years before instituting the present petition on 02.10.2019. This protracted delay in seeking judicial redress casts aspersions on the petitioner's diligence in vindicating his rights. Absent a cogent justification for the delay, the petitioner's claim is liable to be scrutinized with circumspection, and the Court may be predisposed to dismiss the petition on the grounds of laches.

13. In light of the foregoing, the petition at bar warrants no further deliberation and is accordingly **dismissed**.

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