ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-2375 and D-3624, D-3625, D-3626,
D-3627 and D-3628 of 2011

(1) Muhamamd Essa Bhutto & others, (2) Muhammad Yousuf Solangi, (3) Muhammad Khan, (4) Abdul Haq, (5)Muhammad Ali Shah and (6) Muhammad Yousuf

Versus

Chairman Sindh Labour Appellate Tribunal & others

Date	Order with signature of Judge

Date of hearing: 03.10.2019

Mr. Ali Asadullah Bullo for petitioners in all petitions.
Mr. M. Nishat Warsi, Deputy Attorney General.
Mr. Danish Rasheed for respondents.

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Muhammad Shafi Siddiqui, J.- This is a bunch of petitions having common facts where petitioners have challenged the judgment/decision passed by Sindh Labour Appellate Tribunal (SLAT) dated 31.05.2011.

2. Brief facts are that petitioners were employed by respondent No.3 M/s Port Qasim Authority, which is a Corporation having no statutory service rules. Somewhere in April 2001, the respondents launched a Voluntarily/Early Retirement Severance Scheme. The petitioners availed Early Retirement Voluntarily Scheme on different dates, which were accordingly accepted. The petitioners then received their emoluments and financial benefits arising out of such scheme. The petitioners then perhaps realized that they might have taken a wrong decision, and filed appeals before Service Tribunal, which abated by reason of Mubeenus Salam's case (PLD 2006 SC 602).

3. The grievance applications were then filed before Labour Court under section 46 of Industrial Relations Ordinance, 2002, which were allowed vide judgment dated 31.10.2009, which judgment was set aside by Labour Appellate Tribunal vide the impugned judgment passed on the appeal of respondent No.3 (PQA),

4. The precise question involved in these petitions is as to whether after opting to exercise right of settling dispute voluntarily with the management, are petitioners estopped themselves in claiming the relief, as prayed for in the grievance applications, as normal retirement benefits? The management in the present case has specifically provided a voluntarily separation scheme, which was agreed to by petitioners and thus they under the present circumstances cannot blow hot and cold. Learned counsel for the petitioners argued that the petitioners were compelled to accept the Scheme. But the letters dated 03.01.2001 and 31.03.2001 relied upon by learned counsel do not show any compulsion or coercion. The petitioners received the emoluments/benefits arisen out of such scheme without any resistance and/or compulsion and coercion.

5. The argument that the scheme was launched without approval of Board of Directors was not available to the petitioners now after availing financial benefit. Once petitioners had enjoyed fruits of Voluntarily Separation Scheme, they cannot come with this excuse that it was without approval of the Board of Directors, particularly after they had accepted such scheme without any duress and/or compulsion and as per their own will and wish. Besides it was old Scheme approved earlier and re-launched.

6. In an order passed in the case of Syed Alamdar Shah v. M/s Port Qasim Authority in CP No.D-1924 of 2006, copy of which has been filed along with preliminary legal objections filed on behalf of respondent

No.3, the Division Bench of this Court was pleased to dispose of the petition of the colleagues of present petitioners in the following terms:-

> *"We have considered the arguments of the learned Counsels and have gone through the record.*
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> *It appears that on 10.04.2001 the respondent Port Qasim Authority offered a Voluntary/Early Retirement Severance Scheme to all its employees and it is admitted by the counsel for the petitioners so also the Interveners that the petitioners and Interveners had opted for the Scheme and submitted their option letters. It is further admitted by the Counsel for the petitioners that the petitioners' and the Interveners' option' were accepted by the Port Qasim Authority through its office order dated 21.05.2001 and petitioners and Interveners were relieved from duties. Subsequently the petitioners and the Interveners also received all the benefits of the Scheme in full and final settlement. It further appears that after the above events were over, the petitioners gave second thought to the option exercised by them under the said Voluntary Scheme and filed a departmental appeal in the year 2002 with the Port Qasim Authority for continuation of their services. Having not succeeded in the appeal, the petitioners went before the Service Tribunal where their appeal is stated to have abated pursuant to which they have filed this petition.*
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> *Counsel for the respondent Port Qasim Authority has relied upon a judgment dated 09.10.2003 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.105/2003 (Muhammad Rustam Vs. ZTBL Head Quarters, Islamabad) where also the question before the Hon'ble Supreme Court was with regard to the withdrawal from Voluntary Golden Hand Shake Scheme. At para-5 of its judgment the Hon'ble Supreme Court has observed as follows:*
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> > *"5. In any event, the matter has assumed the status of a past and closed transaction because the option exercised by the petitioner was accepted by the competent authority on 28.10.2002 and he was relieved of his duties on 31.1.2002."*
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> *The case of the petitioners squarely falls within the ambit of the judgment of Hon'ble Supreme Court referred to above and therefore we find no merit in this petition and dismiss the same in limine.*
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> *The listed application as well as all pending applications are also disposed of."*

7. Against the above order, the matter went to Hon'ble Supreme Court and the above order of the Division Bench was maintained. The conclusion drawn by the Hon'ble Supreme Court is as under:-

> *"6. In our opinion, looking to the admitted facts of the case, where all the benefits of such voluntary retirement scheme were availed by the petitioners, they cannot be allowed to blow hot and cold at the same time by challenging the legality of such scheme. As a matter of fact by their conduct, petitioners are now estopped from raising such plea at a belated stage. Learned Division Bench of the High Court, in its impugned order, has assigned cogent reasons for not allowing any relief to the petitioners, rightly following the ratio of judgment in the case of Muhammad Rustam (supra). Thus, such findings are not open to any exception."*

8. The case of the petitioners squarely falls within the frame of aforesaid two orders/judgments. No doubt petitioners filed their grievance petitions before Labour Court but it would be termed as a belated action since by then they had already availed the benefits of Voluntary Separation Scheme. Thus, the case of petitioners in all these petitions is covered with the above two orders/judgments and no other view could be formed on the basis/ground of prompt action by the petitioners by approaching the Labour Court and/or the non-availability of approval of Board of Directors in respect of such Scheme. Such defence is not available to the petitioners in view of above facts and circumstances. Hence, we are of the view that no interference or indulgence is required to disturb the impugned judgment/decision and these petitions are accordingly dismissed along with pending applications.

9. Above are reasons of our short order dated 03.10.2019 whereby the petitions were dismissed.

Dated: 9-10-19

Judge

Judge