

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-6193 of 2016

(*Syed Musawar Shah v Managing Director CDS & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and judgment: 30.01.2025

Mr. Rehman Ghani advocate for the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J: Through this constitution petition, the petitioner has prayed as under:

- 1. To hold and determine the action of dismissal during the pendency of trial on the same issued and on the findings of the Enquiry Officer having a personal grudge against the petitioner is liable to be quashed/set aside by holding he same illegal, void abinitio with the direction of reinstatement in service with continuity of service with all consequences thereof;*
- 2. Further, hold and declare that the very allegation which has not been proved before the police, CIA & NAB, and subsequently the prosecution contracted by the FIA against the petitioner was not accepted by the Special Court resulting in acquittal of charge on the basis of detailed evidence and on the same charge very dismissal issued by the No.1 on the basis of so-called and invalid proceedings against the petitioner is liable to be quashed/set aside;*
- 3. Considering the constant representations and non-consideration of the same after passing of the judgment of the Special Court, the time consumed may please be condoned in the interest of justice and fair play as well.*

2. The instant Petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed by the Petitioner Syed Musawar Shah seeking reinstatement in service with all consequential benefits.

3. The petitioner's case is that he was found guilty of misappropriating Rs 2,37,248.13 in the Canteen Store Department (CSD) Karsaz funds. A show cause notice was issued, allowing him to explain why he shouldn't be dismissed from service by offering a personal hearing. However, he failed to respond, therefore, the competent authority dismissed him from service vide order dated 21.2.1992, effective February 29, 1992, under rule 65 d (2) and e (4) of the CSD Manual of Instructions and Procedure 1965. He preferred belated appeal which was too dismissed vide order dated 3.10.2016.

4. Petitioner is present in person along with his counsel and submitted that he was implicated in FIA case No. 5/92 and, after a lengthy trial, acquitted by the trial court on August 15, 2014, under Section 265-H(1) Cr.P.C. He argued that despite this acquittal, he was dismissed from service on February 21, 1992, for the same charges, which is apathy on the part of the respondent/department. Per learned counsel he repeatedly appealed for reinstatement, citing his acquittal from criminal charges of a similar nature for which he was departmentally proceeded but his appeals/applications had been ignored. He added that finally, the respondents were pleased to respond to his appeal vide order dated September 7, 2016, where they rejected his appeal. Thereafter he approached this court on 12.11.2016 as such the question of laches as pointed out by the learned AAG will not be a hurdle in his way. Given his acquittal, he requests reinstatement with all consequential benefits.

5. We have heard learned counsel for the parties on the point of maintainability of the instant petition and so also perused the entire material available on record.

6. First and foremost, we would address the issue of maintainability of the instant Petition under Article 199 of the Constitution based on the doctrine of laches as this petition was filed in 2016, whereas the alleged cause of action accrued to the petitioner in 1992. The petitioner asserts that he pursued his legal remedy just after involvement in the FIR lodged by FIA and in the intervening period the respondent dismissed him from service where after he preferred petition No. 2137 of 1992 before this court which was misplaced by the office of this court and an inquiry was conducted by the office, however, the fate of the inquiry could not be brought on record. In the meanwhile he was acquitted of the charges by the trial court vide judgment dated 15.08.2014 as he was accused of criminal breach of trust w.e.f. 31.03.1990 to 29.05.1990 and on similar charges, he was dismissed from the service finally the respondents were bothered to decide the departmental appeal in the year 2016, and then he approached this court immediately, therefore the question of laches did not arise.

7. We do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition falls within the doctrine of laches as the Petitioner filed the instant Petition in November 2016 whereas the alleged cause of action accrued to him in February 1992, i.e. approximately 24 years before the filing of the instant Petition. The assertion of the petitioner that his earlier petition was misplaced by the office is no ground to approach the

competent forum just after dismissal from the service in the year 1992, therefore the petitioner cannot be given a premium to put his appearance at the belated stage to claim reinstatement in service and it is for the respondent/department to look into the grievance of the petitioner if he has case on merit which is without prejudice to the right of the respondent/department.

8. The doctrine of laches states that a party cannot enforce its rights if they don't take action within a reasonable time. The principle of laches is based on fair play, equity, and natural justice. The Supreme Court of Pakistan in the case of Farzand Raza Naqvi and 5 others versus Muhammad Din through Legal Heirs and others (2004 SCMR 400) has already decided that doctrine.

9. It is also well settled that the bar of laches could not be over-emphasized in a case where the relief claimed was based on a recurring cause of action. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Umar Baz Khan through L.Hrs versus Syed Jehanzeb and others (PLD 2013 Supreme Court 268).

10. For the reasons stated above, this petition falls within the ambit of the doctrine of laches and is therefore dismissed with no order as to costs. However, the petitioner would be at liberty to seek his legal remedy from the competent forums, if available to him under the law.

JUDGE

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