

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-610 of 2020

[Maqbool Ahmed v. The Chancellor NED and others]

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| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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Before:
Mr. Justice Yousuf Ali Sayeed;
Mr. Justice Abdul Hamid Bhurgri.

Date of hearing: 25.09.2025

Date of Decision: 31.10.2025

Mr. Salahuddin Chandio, Advocate for the petitioner.
M/S Khalid Javed and Munawar-uz-Zaman Juna, Advocate for respondents.
Mr. K.A Vaswani, Assistant Advocate General Sindh.
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Abdul Hamid Bhurgri, J.- The Petitioner asserts that he was appointed as a Lecturer (BS-17) in the Civil Engineering Department at NED University, Karachi in August 1977. Following the completion of his Master's degree in the United States, he was promoted to Assistant Professor (BS-18) with effect from 28 March 1984, and was subsequently granted a move-over to BS-19 with effect from 1st December 1989. Having completed the requisite period of service for eligibility, the Petitioner was granted five years' foreign service leave by the competent authority, covering the period from 4 September 1991 to 31 March 1997. Upon expiry of this leave, he sought a short extension of 15 days due to family and employment formalities abroad. He was scheduled to rejoin on 17 April 1997 but, owing to the Eid-ul-Adha holidays continuing until 20 April 1997, he reported for duty on 21 April 1997. His joining report was duly received by the University office. However, he was served with a backdated termination letter dated 16th April 1997, which he alleges was issued with mala fide intention after he had resumed duties. The Petitioner appealed the termination order, and the University Syndicate, via Resolution No. Syn-103.8(b) dated 14 June 1997, resolved to withdraw the termination, subject to the Petitioner producing a clearance letter from his foreign employer in Saudi Arabia. In compliance, the Petitioner submitted the required documentation, including an end-of-contract certificate, exit visa, and school leaving certificates of his children. The then Vice-Chancellor also directly confirmed his disengagement from foreign service through

communication with the said employer. Despite this, the Petitioner's reinstatement was delayed, as further verification was sought from the foreign company and the Saudi Consulate in Karachi. Pending receipt of responses, the Petitioner was not permitted to resume duties. The Petitioner continued to pursue the matter by visiting the Respondents, Vice Chancellor and the Registrar numerous times and also wrote a letter dated 21st August 1997 highlighting his financial hardship, yet no posting order was issued. He was instead advised to seek compulsory retirement, which he did via an application dated 11 December 2002; however, this request was not processed. Following a change in the University's administration, the Petitioner again approached the authorities on 8 January 2014 to resolve his grievance. However, by letter dated 21st January 2015, he was informed that his claim was time-barred. His subsequent appeal dated 10 February 2015 was similarly rejected. The Petitioner contends that the University failed to honour the binding Syndicate Resolution of 14 June 1997, thereby depriving him of reinstatement, salary, and service-related benefits, notwithstanding his full compliance with the conditions set therein. He has therefore filed the present petition seeking following relief:-

- a) To hold that the intervening period, from the date of joining the duty by the petitioner as Assistant Professor, Civil Engineering Department, NED University of Engineering & Technology, Karachi, i.e. from 21.04.1997 till the date of superannuation on 03.11.2013, be treated as duty period, as the petitioner has continuously been awaiting for issuance of the posting order during such entire period.
- b) To hold that the Petitioner is lawfully entitled to be released the pensionary benefits as admissible under the rules on his attaining the age of superannuation on 03.11.2013.
- c) To order/direct the Respondents to immediately process the pension papers of the petitioner and release his pensionary amounts/benefits as admissible under the rules on his attaining the age of superannuation on 03.11.2013.
- d) To pass any other appropriate orders, as this Hon'ble court may deem proper and appropriate in the facts and circumstances of the case.

2. The Respondents, in their para-wise comments, raise preliminary objections as to the maintainability of this petition under

Article 199 of the Constitution of Pakistan, 1973. They submit that the governing service rules - the NED University Employees Efficiency and Discipline Statutes, 1990 are non-statutory in nature, and thus do not confer rights enforceable within the constitutional jurisdiction. They argue that the relationship in question is one of master and servant, governed by contract, and as such, falls outside the purview of writ jurisdiction. It is asserted that the Petitioner's services were terminated via Office Order dated 16 April 1997 due to his failure to resume duties upon expiry of his foreign service leave. The petition, filed in January 2020, is said to suffer from extreme delay and laches, with over 22 years having passed since the original termination. The Respondents further contend that the Petitioner pursued a complaint before the Provincial Ombudsman Sindh (Complaint No. POS/1444/2015/KC), which was dismissed on 6th October 2017, and the findings therein have attained finality. They also point out that the Petitioner reached the age of superannuation on 3rd November 2013. They allege that the Petitioner remained gainfully employed abroad during the period in question and submitted repeated, frivolous representations merely to keep the matter alive. They additionally submitted that the present petition is defective due to the non-joinder of NED University as a necessary party. On these grounds, they pray for the dismissal of the petition with costs.

3. Learned counsel for the Petitioner submits that the Petitioner duly filed an appeal against the termination order in a timely manner, which was allowed by the University's Syndicate via Resolution No. Syn-103.8(b) dated 14th June 1997. He argues that the said resolution was binding, but was never implemented by the University administration, despite the Petitioner's full compliance with its conditions. Had a posting order been issued in pursuance of the Syndicate's decision, the Petitioner would not have remained without redress for such an extended period. Counsel contends that repeated representations were made by the Petitioner, but no reinstatement or pensionary benefits were granted. He submits that, even during proceedings before the Ombudsman, the University failed to demonstrate compliance with procedural formalities required for lawful termination such as issuance of show cause notices, publication of notices, or maintaining appropriate correspondence records. Instead, it is alleged that the Syndicate was misled in order

to obtain confirmation of an unlawful termination. Counsel further argues that the University, in subsequent Syndicate meetings including that held on 25th April 2016 - again resolved to address the Petitioner's grievance, yet took no action. Appeals and legal notices, including those dated 1st March 2018 and 7th August 2019, were not attended to. It is submitted that the Petitioner, now retired, has consistently pursued his grievance without meaningful resolution and has been deprived of his livelihood. Lastly, learned counsel argues that the law of limitation does not bar claims relating to salary or pensionary entitlements, which are recurring rights.

4. Conversely, learned counsel for the Respondents submits that the instant petition, filed on 27th January 2020, is barred by extreme delay, as it was filed approximately 23 years after the Petitioner's termination on 16th April 1997. It is further argued that the Petitioner remained gainfully employed in Saudi Arabia during and after his period of sanctioned leave, and therefore cannot claim any deprivation of livelihood. It is submitted that the termination was due to misconduct, namely the Petitioner's prolonged unauthorized absence from duty, and as such, he is not entitled to any service benefits, including pension. Learned counsel for Respondents further submits that the petitioner has earlier filed a complaint No.POS/1444/2015/KC on 01.06.2015 before the learned Ombudsman Sindh challenging his termination from service, which was dismissed vide order dated 06.10.2017 on merits and no appeal has been preferred against the said order which attained finality. Learned counsel further submits that such fact has not been placed before this Court by the petitioner.

5. We have heard learned counsel for the parties, as well as the learned Assistant Advocate General, and have carefully examined the material available on record.

6. It is an undisputed fact that the Petitioner was terminated from service vide Office Order dated 16th April 1997. While he did file an appeal, which was allowed by the University Syndicate through Resolution No. Syn-103.8(b) dated 14 June 1997, subject to production of clearance documents from his foreign employer, it appears that despite the Petitioner's claimed compliance, no further action was taken by the University to reinstate him. However, the Petitioner failed to seek enforcement of the Syndicate's decision through any legal forum in a timely manner. Most significantly, the

Petitioner remained gainfully employed in Saudi Arabia during the entire period from his termination until the age of superannuation in 2013. This continuous foreign employment clearly demonstrates that the Petitioner not only accepted his status but also took no meaningful or sustained legal steps to assert any right of reinstatement during that time. Such conduct amounts to acquiescence and waiver of rights, particularly in matters of public employment where diligence and timely action are essential. A litigant who chooses to remain silent for over two decades while pursuing alternative employment cannot subsequently revive a stale claim seeking reinstatement or post-retirement benefits. The instant petition was filed on 27th January 2020-nearly 23 years after the date of termination-without any sufficient or legally justifiable explanation for the inordinate delay. It is well established that constitutional jurisdiction under Article 199 of the Constitution is discretionary and cannot be invoked in matters affected by gross laches. On the point of laches reliance is placed on the case of *State Bank of Pakistan through Governor and another v Imtiaz Ali Khan and others*, PLJ 2012 SC 289, the apex Court has held as under:

"Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation--Right remains with the party, but he cannot enforce it Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party."

In *Civil Petition No.3750 of 2020, Special Secretary-II (Law Order), Home & Tribunal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar*, the Supreme Court has held as under:-

"9. Even though the above findings are sufficient to non-suit the respondent, but one more significant aspect of the case cannot be lost sight of, that the alleged claim of compensation is based on the damages caused in the year 2007, but the respondent filed his Writ Petition in

the year 2019, which is virtually after 12 years. Notwithstanding the crucial aspect that a factual controversy cannot be decided in Writ jurisdiction, the Writ Petition was also hit by laches which essential point at issue was not considered by the learned High Court in the impugned judgment. Merely advancing a plea that the respondent was engaged in correspondence with different government officials for pursuing his claim does not protect or save the respondent from the drawbacks or impediments of the doctrine of laches which explicates that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking C.P.3750/2020 constitutional jurisdiction. Ref: PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400 (Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others)".

Similarly in the case of *Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others*, 2014 PLC (C.S) 1292, the Court held as under:-

"We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be laid down for the exercise of discretion by the Court for grant of refusal for the relief in the exercise of extraordinary jurisdiction".

7. The petitioner has also not disclosed the fact that he has filed a complaint before the Ombudsman, which complaint was disposed of vide order dated 06.10.2017 and no appeal has been preferred against the said order, hence that order attained finality.

8. In view of the foregoing discussion, the petition is dismissed being not maintainable in light of the non-statutory nature of the governing service rules and the petitioner's conduct of acquiescence. Pending applications are also dismissed if any.

JUDGE

JUDGE

Ayaz Gul