

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

C.P. NOs. D-3598/2011, D-2341/2010,
D-2342/2010 & D-2343/2010

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| Date | Order with signature of Judge |
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For katcha peshi.

03-04-2013

Mr. Abrar Bukhari, Advocate for petitioners.
Ms. Rukhsana, Standing Counsel.
Mr. M.G.Dastagir, Advocate alongwith Muhammad Yamin
Zuberi, Law Officer Pakistan Steel.
Mr. Sanallah Ghouri, Advocate.
Mr. Dilawar Hussain, Advocate.

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The petitioners are employees of Pakistan Steel Fabricating (Respondent No.3). On the basis of certain allegations of misconduct they were issued Show Cause Notices and thereafter they were reduced to lower stages in time scale.

2. Counsel for the petitioners contended that against the order of reduction to lower stage in time scale the petitioners preferred departmental representations which were turned down and thereafter they filed appeal before Federal Service Tribunal. However, on account of the judgment of the Supreme Court in the case of *Muhammad Mubeen-us-Salam and others vs. Federation of Pakistan* (SBLR 2006 SC 258) the proceedings stood abated. Thereafter in the year 2010 a judicial order of abatement was passed which has been challenged in these proceedings. He contended that while initiating proceedings of misconduct, no proper inquiry was conducted, right of hearing was also denied and no opportunity of cross-examining the department's witness was given. He also contended that retrospective effect was given to the punishment whereas through administrative order this cannot be done. In support of his contention, he relied upon the cases reported in SBLR 2007 Sindh

495, 2004 SCMR 623 and unreported judgment passed by the Supreme Court in Civil Appeals No. 253-K to 267-K of 2009.

3. In rebuttal counsel for the respondents Mr. M.G.Dastagir contended that after adverse action was taken against the petitioners in 2003, departmental representations were made which were turned down and the petitioners did not initiate any legal proceedings to challenge the same before any forum and after more than seven years of imposition of penalty the present petitions have been filed. He contended that earlier adverse action of termination was taken which was challenged by the petitioners and several other employees of Pakistan Steel Fabricating and they were reinstated back in service but punishment of reduction in lower stages in time scale was not challenged in legal proceedings.

4. Mr. M.G.Dastagir next contended that the terms and conditions of service of employees of Respondent No.3 are not governed by statutory Rules and Regulations, therefore, the principle of “master and servant” would apply as decided by the Supreme Court in the case reported in PLD 2010 SC 766.

5. Mr.Dilawar Hussain, counsel appearing for Respondent No.3 contended that full opportunity of defence was accorded to the petitioners and they participated in the inquiry proceedings and thereafter they were reduced in lower stages in time scale.

6. We have seen the Show Cause Notice issued to the petitioner in C.P. No.D-3598/2011 wherein it is stated that the said petitioner was given opportunity of personal hearing by the competent authority to explain his conduct but he failed to do so. However, the Department took lenient view and instead of terminating his service penalty of reduction of stages lower in time scale was imposed. Furthermore it is not the case of any of the petitioner of other connected cases that domestic inquiry was not conducted.

7. Counsel for the petitioners failed to rebut the contentions of the counsel for respondents that after imposition of penalty in the year 2003 and the rejection of departmental representations, the petitioners did not initiate any legal proceedings before any legal forum. Memo of appeal filed before the Tribunal has also not been filed in any of the petitions. It is, therefore, evident that after the competent authority turned down the departmental representations, the petitioners failed to establish that they sought legal remedy before the Federal Service Tribunal which was the forum available to them at the relevant time. As the action has been challenged after more than seven years, these petitions suffer from laches and the same are, therefore, dismissed.

JUDGE

JUDGE

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