JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 782 of 2023

Hashim Ali
Versus
The Oil & Gas Development Company Limited & another

Writ Petition No. 375 of 2023

Abdul Aziz
Versus
The Oil & Gas Development Company Limited & another

Petitioners by:	M/s Muhammad Ramzan Khan and Ishtiaq Ahmed Cheema, Advocates in W.P No.782/2023. Mr. Ishtiaq Ahmed Cheema, Advocate in W.P No.375/2023.
Respondents by:	M/s Taimoor Aslam Khan and Mudassar Abbas, Advocates (in both the writ petitions).
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**08.05.2025**

INAAM AMEEN MINHAS, J:- Through this single judgment, I intend to decide the above titled writ petitions involving similar questions of law and facts.

2. In both writ petitions the petitioners have assailed the orders dated 30.11.2010 **("Impugned Orders")**, passed by the respondents' company, whereby the petitioners were promoted to the post of Technical Officer (Civil) EG-II in C & ESS Department w.e.f. 01.07.2010 instead of their promotion to EG-IV.

3. The facts, in brief, leading to the filing of Writ Petition No.782/2023 are that the petitioner was appointed in the respondents' company on regular

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basis on 12.01.1986 and served for 29 years without any complaint regarding his performance. The petitioner was promoted to Senior Estimator (EG-I) on 12.02.2004 and subsequently to Technical Officer (Civil) EG-II in C& ESS Department w.e.f. 01.07.2010 through the Impugned Order. The petitioner's pay was re-fixed at 10% increase in basic pay vide office memorandum dated 28.12.2010 and he was also granted increment vide office memorandum dated 27.10.2016. The petitioner filed Writ Petition No. 3028/2006 on 18.09.2006 seeking grant of EG-III with effect from 01.12.2001, which was allowed vide order dated 27.05.2013, directing the respondents' company to extend the same benefits to the petitioner as granted in earlier writ petition Nos.2061/2010 and 2441/2007. During the proceedings of contempt petition and Intra Court Appeal, the petitioner was provisionally promoted to EG-III with effect from 01.12.2001, subject to the outcome of the I.C.A, which was subsequently dismissed vide judgment dated 10.11.2022 being not maintainable. Despite the fact that the order passed in the said writ petitions attained finality, the respondents' company failed to modify the Impugned Order reflecting his entitlement for promotion as EG-IV, as per the principle established in the said writ petitions filed by the other similarly placed individuals.

4. The brief facts of Writ Petition No.375/2023 are that the petitioner was appointed in the respondents' company on regular basis on 24.11.1985 and served for 36 years without any complaint regarding his performance. The petitioner was promoted to Technical Officer (Civil) EG-II in C & ESS Department w.e.f. 01.07.2010 through the Impugned Order. The petitioner's pay was re-fixed at 10% increase in basic pay and he was also granted increment vide office memorandum dated 23.12.2010. The petitioner filed Writ Petition No. 3026/2006 seeking grant of EG-III with effect from 01.12.2001, which was allowed vide order dated 27.05.2013, directing the respondents' company to extend the same benefits to the petitioner as granted in earlier writ petition Nos.2061/2010 and 2441/2007. During the proceedings of contempt petition and Intra Court Appeal, the petitioner was provisionally promoted to EG-III with effect from 01.12.2001, subject to the outcome of the I.C.A, which was subsequently dismissed vide judgment dated 22.09.2022 being not maintainable. Despite the facts that the order

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passed in the writ petition attained finality, the respondents' company failed to modify the Impugned Order reflecting his entitlement for promotion as EG-IV, as per the principle established in Writ Petition Nos. 2061/2010 and 2441/2007 filed by the other similarly placed individuals.

5. The learned counsels for the petitioners in both the petitions contended that the petitioners have been deprived of fair trial in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**; that the respondents' company has acted in a discriminatory and unilateral manner, causing continuous and substantial financial loss to the petitioners; that Impugned Orders have also been passed in violation of Articles 4, 25, and 38 of the Constitution and that in the absence of any alternate or efficacious remedy, the petitioners have rightly invoked the extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution.

6. Conversely, the learned counsel for the respondents' company contended that the writ petitions are not maintainable in light of the judgments *Dossani Travels Pvt. Ltd. and others vs. Travels Shop Pvt. Ltd*. and others, (PLD 2014 SC 1) and *Government of Khyber Pakhtunkhwa and others vs. Hayat Hussain and others*, (2016 SCMR 1021), as the petitioners have invoked the extraordinary Constitutional jurisdiction of this Court under Article 199, seeking judicial review of the Impugned Orders, whereas, Constitutional Courts can only conduct judicial review when illegality or irrationality is proven and cannot replace the decisions of competent authorities on policy or administrative matters and that the promotion to a higher post is contingent upon various factors, including relevant experience, satisfactory annual confidential reports (ACRs), availability of posts, and overall fitness. He further argued that employees are not entitled to ante-dated promotion merely on the basis of length of service, and that the petitioners, having retired on 02.08.2014 and 01.11.2021, respectively upon attaining the age of superannuation, cannot now claim such relief. He submitted that the writ petitions are hit by laches as the petitioners remained silent since passing of the Impugned Orders and failed to agitate their claim in a timely manner. He further submitted that the petitioners' claim is based

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on factual controversy, which cannot be adjudicated by this Court in Constitutional jurisdiction; that the dismissal of I.C.A No.367/2024 was on the ground of limitation, without adjudication on the merits and that no discrimination has been meted out to the petitioners. Lastly, the counsel submitted that the respondents' company has already challenged the judgment dated 10.11.2022 before the Honourable Supreme Court of Pakistan through CPLA No. 80/2023 and that the petitioners' cases are distinguishable from those of other employees.

7. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

8. The petitioners' primary grievance pertains to the respondents' company continued refusal for grant of promotion from EG-II to EG-IV along with financial benefits w.e.f. 01.07.2010, which has resulted in recurring financial loss and constitutes a violation of their fundamental rights.

7. In order to adjudicate the question of ante-dated promotion, it is essential to examine the legal framework governing the grant of promotion in the respondent's company. The employees of the respondent's company, who had been employed on regular basis prior to the promulgation of the Oil and Gas Development Company Limited (Reorganization) Ordinance, 2001 **("the Ordinance, 2001")**, were governed by the Oil and Gas Development Corporation Employees (Service) Regulations, 1994, **("The Regulations, 1994")** and the terms and conditions of their services were protected under Section 5 of the said Ordinance. However, the employees of the respondent's company employed after the promulgation of the said Ordinance, their terms and conditions of service were not governed by statutory rules/regulations, therefore, their relationship with the employer is that of master and servant. Such employees cannot file a petition under Article 199 of the Constitution with respect to a matter concerning the terms and conditions of their service.

8. In the present cases, it is an admitted position that the petitioners were employed before the promulgation of the Ordinance, 2001. The petitioners

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were appointed in the respondents' company on Regular Basis before the promulgation of the Ordinance. Therefore, the petitioners are governed by the Regulations, 1994. The procedure for promotion of the employees has been provided under *Regulations 5* & *32* of the Regulations, 1994, which are reproduced hereunder:-

> ***"5. <u>Appointment by promotion.</u>***
>
> *1) Promotion to all posts in the Corporation shall be made on the recommendations of the appropriate Departmental Promotion Committee as in Appendix-'A' to these regulations.*
>
> *2) Only those employees who possess the qualification and experience as laid down for the purpose of promotion to a post shall be considered by the Departmental Promotion Committee.*
>
> *3) No promotion to a post shall be made except in accordance with criteria as contained in Appendix-'B'.*
>
> *4) Where an employee from within the Corporation possesses the requisite qualifications and meets the conditions laid down for filling the post, the vacancy shall first be filled in by departmental promotion and it no suitable candidate is available from within, then such vacancies may be filled in by direct recruitment. No employee shall have any claim for promotion as a matter of right, notwithstanding his qualifications and experience.*
>
> ***32. <u>Appointment by promotion</u>***
>
> *(1) Promotion will be made only against vacancies available in the higher posts, subject to the conditions prescribed in Schedule-III to these regulations.*
>
> *2) All promotion cases will be considered and recommended by the Promotion Committee, as constitute vide Appendix-A, Chapter-III to these regulations.*
>
> *3) Promotion, shall be made on the basis of merit, fitness and seniority in accordance with the criteria as in Appendix-B.*
>
> *4) In case a suitable person is not available for promotion to a post required to be filled by promotion the vacancy of any such post will be filled by direct recruitment, and filling that by transfer, as may be considered necessary."*

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9. Upon careful examination of the above referred regulations, it is evident that promotions within the respondents' corporation may only be effected against existing vacancies. The regulatory framework further stipulates that, where an employee within the corporation possesses the requisite qualifications and fulfills the prescribed conditions for the post, such vacancy shall, in the first instance, be filled through departmental promotion. Only in the absence of a suitable internal candidate the vacancy may be filled by direct recruitment. This scheme of the regulation clearly indicates that no employee acquires a vested right to promotion solely on the basis of qualifications or experience; rather, the matter of promotion remains an administrative and policy decision within the exclusive domain of the competent authority.

10. The petitioners have invoked the extraordinary Constitutional jurisdiction of this Court, seeking judicial review of the respondents company's decision of not granting promotion. It is a settled principle of law that the Constitutional Courts possess the power of judicial review, however, such jurisdiction is exercised only in cases where illegality, irrationality, or procedural impropriety is established. Generally, the Courts refrain from substituting their own judgments from the decisions of the competent authorities in matters of policy or administrative discretion, as enunciated by the Hon'ble Supreme Court in ***Dossani Travels PVT. LTD vs. Travels Shop (PVT) LTD,*** **(2014 PLD 1 S.C)** and ***Government of Khyber Pakhtunkhwa vs. Hayat Hussain,*** **(2016 SCMR 1021).**

11. The record reflects that the petitioners were appointed on regular basis before promulgation of the Ordinance and retired upon attaining the age of superannuation on 02.08.2014, and 01.11.2021 having served for 29 years and 36 years, respectively; however, the grant of ante-dated promotion is not merely on the basis of length of service rather there are multiple factors, including but not limited to relevant experience, satisfactory Annual Confidential Reports (ACRs), availability of posts, and overall fitness. The Hon'ble Supreme Court has categorically held in ***Muhammad Amjad vs. The Director General, QDA Quetta and another,*** **(2022 SCMR 797)** that

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promotion is not a vested right; it is dependent upon both eligibility and fitness, subject to the availability of a post. The concept of eligibility pertains to the possession of requisite qualifications, whereas fitness relates to the competence and suitability of the candidate for promotion. Further reliance is placed on the judgments in ***Abdul Hameed vs. M/o Housing and Works, Government of Pakistan and others***, ***(PLD 2008 SC 395)*** and ***Abid Hussain Sherazi vs. Secretary M/o Industries and Production, Government of Pakistan, (2005 SCMR 1742),*** which reinforce the principle that neither antedated promotion nor seniority can be claimed as a matter of right merely on the basis of length of service or completion of a specified period in a particular grade. The Hon'ble Supreme Court, in ***Kashif Aftab Ahmed Abbasi vs. Federation of Pakistan through Secretary Establishment Division, Islamabad, (2022 SCMR 1618)*** has reaffirmed that antedated seniority is not a vested right.

12. Furthermore, the petitioners are aggrieved of the Impugned Orders, which were passed on 30.11.2010, whereas the petitioners filed the writ petitions on 07.03.2023 and 03.02.2023 without explaining inordinate delay of 13 years, thereby attracting the principle of laches. The doctrine of laches is well-settled in our jurisprudence and precludes the grant of relief where a party, despite knowledge of its rights, fails to approach the Court with due diligence and promptitude. The unexplained silence and inaction on the part of the petitioner, over the span of the years is fatal. In the case of ***Ahmed and 25 others v. Ghama and 5 others (2005 SCMR 119)***, it was held that:-

> *"We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case. The same principle is followed in "2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514."*

13. The Honourable Supreme Court has consistently held that unexplained delay or indolence in asserting a right is fatal to the maintainability of Constitutional petitions and that the Courts will not condone such delay in absence of compelling and sufficient reasons. The

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doctrine of laches, as developed in the above precedents, is rooted in equity and is intended to prevent the litigation of stale claims, thereby protecting the rights that accrue to others due to the passage of time. Equitable relief could only be granted to a vigilant person and Courts exercise their discretion to refuse relief where a party has slept over its rights. The petitioners were supposed to have filed the petitions within reasonable time for issuance of the appropriate writ in consonance with the principle laid down by the apex Court in the case of ***Pakistan International Airline Corporation and others Vs. Tanveer-ur-Rahman and others,*** **(PLD 2010 SC 676),** wherein it was held that reasonable time for filing of writ petition would be 90 days. Similar view was taken in the cases of ***Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi (1999 SCMR 2883)*** and ***Muhammad Din vs. Abdul Ghani and another,*** **(2012 SCMR 1004*).***

13. In view of above discussion, the captioned writ petitions are **dismissed** on merits as well as on the principle of laches.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.05.2025

JUDGE

R.Anjam..

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