JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.208/2017
Wajid Ahmed
Versus
Pakistan Telecommunication Company Limited and others

Date of Hearing:	14.11.2017
Petitioner by:	Mr. Muhammad Akhtar Anjum, Advocate.
Respondents by:	M/s Habib Ahmed Bhatti and Ikhlaq Ahmed Bhatti, Advocates, Mr. Raheel Zafar, Manager (Legal), P.T.C.L.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Wajid Ahmed, impugns the order dated 08.01.2011, passed by respondent No.3 (General Manager (HRA)), whereby a major penalty of "removal from service" was imposed on the petitioner under the P.T.C.L. Service Regulations, 1996.

2. Learned counsel for the petitioner submitted that on 20.03.1989, the petitioner was appointed as a Telecom Technician in the Pakistan Telegraph and Telephone Department; that by operation of the Pakistan Telecommunication Act, 1991 ("the 1991 Act"), and the Pakistan Telecommunication (Re-organization) Act, 1996 ("the 1996 Act"), the petitioner became an employee of the Pakistan Telecommunication Company Limited ("P.T.C.L."); that on 24.11.2010, the petitioner was promoted as Technical Officer (Engineering) (BPS-17); that on 04.09.2010, a notice was issued to the petitioner calling upon him to show cause as to why a major penalty of "dismissal from service" should not be imposed on him under Section 7.04(1)(b-iv) of the P.T.C.L. Service Regulations, 1996 on the charges listed in the said notice; that the charges against the petitioner were vague and non-specific; that vide order dated 08.01.2011, a major penalty of "removal from service" was imposed on the petitioner; that by dint of Section 9 of the 1991 Act and Section 35 of the 1996 Act, the petitioner's terms and conditions of service were protected; that since the petitioner was a "transferred employee", the petitioner

could not be proceeded against under the P.T.C.L. Service Regulations, 1996; that since the petitioner was a “transferred employee”, a major penalty of removal from service could not have been imposed on the petitioner without a regular inquiry in accordance with the Civil Servants (Efficiency and Discipline) Rules, 1973 (“E&D Rules, 1973”); that the petitioner came to know about the show cause notice dated 04.09.2010 after the said penalty had been imposed on him; that a copy of the show cause notice was given to the petitioner on 28.01.2011; that the said penalty was imposed on the petitioner by an incompetent authority (i.e. General Manager (HRA)); that the competent authority to impose a punishment on the petitioner was the Executive Vice President, P.T.C.L.; that it is well settled that an inquiry cannot be dispensed with if a major penalty of "removal from service" was to be imposed on any employee; that aggrieved by the said order dated 08.01.2011, the petitioner approached the Sindh Labour Court at Karachi; and that subsequently, the petitioner withdrew his petition from the National Industrial Relations Commission (“N.I.R.C.”), Karachi Bench, because the learned counsel for the P.T.C.L. had given a statement that P.T.C.L. would have no objection if the petitioner filed a writ petition, against the impugned order dated 08.01.2011. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned order dated 08.01.2011, to be set-aside.

3. On the other hand, learned counsel for the respondents took a preliminary objection to the maintainability of this petition on the ground that the same was barred by laches; that through a writ petition filed on 20.01.2017, the petitioner has impugned an order passed about six years ago; that no plausible explanation has been given by the petitioner for the delay in approaching this Court; that when the petitioner had challenged the said order dated 08.01.2011 before the Labour Court at Karachi, the respondents had taken an objection to the maintainability of the said petition; that after a delay of several years, the petitioner withdrew his petition from the N.I.R.C.,

Karachi Bench; and that the time consumed while the petitioner was agitating his grievance before the Labour Court at Karachi/N.I.R.C., Karachi Bench cannot be ignored while determining whether the instant writ petition is liable to be dismissed on the ground of laches.

4. Learned counsel for the respondents further submitted that although the petitioner's departmental appeal against the order dated 08.01.2011 was dismissed in June, 2011, the petitioner for reasons best known to him has not impugned the order, whereby his departmental appeal was turned down; that all the provisions of the P.T.C.L. Service Regulations, 1996 are in *pari materia* with the provisions of the E&D Rules, 1973, therefore, no prejudice to the petitioner was caused by the use of the term "P.T.C.L. Service Regulations, 1996" in the impugned order; that the petitioner has not pointed out any provision of the E&D Rules, 1973 which the respondents had violated in proceeding against the petitioner; that this Court is to consider the substance of the proceedings rather than the form; that an inquiry was dispensed with in the petitioner's case due to the petitioner's admission of his participation in an unauthorized strike; that just like Rule 5 of the E&D Rules, 1973, an inquiry can be dispensed with under Rule 7.06 of the P.T.C.L. Service Regulations, 1996; that it is well settled that when the facts forming the subject matter of allegations against an employee are admitted, a regular inquiry can be dispensed with; that the show cause notice dated 04.09.2010 was sent to the petitioner through TCS, and the petitioner was well aware of this fact; that the petitioner did not file a reply to the said show cause notice; that the petitioner was afforded an opportunity of personal hearing on 14.10.2010 i.e. prior to the passing of the impugned order; and that the mere fact that the respondents' counsel before the N.I.R.C. has stated that the petitioner could agitate his grievance before the appropriate forum cannot cause this Court to shut its eyes to the inordinate delay with which the petitioner has approached this Court. Learned counsel for the respondents prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

6. The record shows that on 20.03.1989, the petitioner was appointed as a Telecom Technician in the Pakistan Telegraph and Telephone Department. On 24.11.2010, the petitioner was promoted as a Technical Officer (Engineering) (BPS-17). On 04.09.2010, a notice was issued to the petitioner by respondent No.3 calling upon the former to show cause as to why a major penalty of "dismissal from service" should not be imposed on him in terms of Section 7.04(1)(b-iv) of the P.T.C.L. Service Regulations, 1996. The allegations of misconduct against the petitioner were as follows:-

i) You have appeared at your duty place but refused to perform your assigned duties w.e.f 16 August 2010 to date and left your place of duty without any intimation or permission.

ii) You instigated, forced and threatened other employees to leave their work place.

iii) You arranged an illegal gathering/procession in front of Exchange Building during the office hours.

iv) You created hindrance and interference in discharge of the official business during the office hours by shutting down electricity of the exchange compound.

v) *You violated the lawful instructions of SEVP-HR & EVP-HRA circulated, vide email dated 13th Aug-2010, directing, inter-alia, to refrain from involving in any illegal and unlawful activity. But you failed to comply with the directives and indulged yourself in unwarranted and unlawful activities.*

7. On 08.01.2011, a major penalty of "removal from service" was imposed on the petitioner under the P.T.C.L. Service Regulations, 1996. Perusal of the impugned letter dated 08.01.2011 shows that the petitioner had availed the opportunity of personal hearing on 10.12.2010. The petitioner's departmental appeal was dismissed in June, 2011 against the impugned order dated 08.01.2011.

8. Before going into the merits of the case, I propose first to decide the preliminary objection raised by the learned counsel for the respondents that the instant petition is barred by laches. Now, it is an admitted position that against the impugned order dated 08.01.2011, the petitioner had filed a petition under

Section 41 of the Industrial Relations (Revival and Amendment) Act, 2010 (Sindh) before the Sindh Labour Court at Karachi. This petition was subsequently transferred to the N.I.R.C., Karachi Bench. The respondents had filed a reply to the said petition on 02.12.2014. In the said reply, the respondents took an objection to the jurisdiction of the N.I.R.C. to adjudicate upon the matter. Vide order dated 19.12.2016, the N.I.R.C., Karachi Bench, the said petition was disposed of with the consent of the contesting parties so that the petitioner could approach the proper forum. The said order dated 19.12.2016 is reproduced herein below:-

> *"Labour representative for applicant as well as applicant is present whereas counsel for respondent is also present. Today matter is fixed for cross examination of respondents witness. Statement was filed by the applicant on which objections were also filed and the matter was fixed for hearing, on 29.09.2016 said statement was withdrawn by the applicant. However both representative/advocate stated at the bar that this case may be disposed of with direction to approach proper forum. Counsel for respondents has no objection. In the above circumstances the matter is disposed of accordingly."*

9. The instant petition was filed on 20.01.2017. It is my view that simply because the N.I.R.C., Karachi Bench had disposed of the petitioner's petition with the direction to approach the appropriate forum would not discharge this Court from its duty to consider and decide the preliminary objection raised by the learned counsel for the respondents that the instant petition should be dismissed on the ground of laches. The petitioner has not even pleaded that the period during which he was agitating his grievance before Sindh Labour Court at Karachi/N.I.R.C., Karachi Bench should be condoned or disregarded while determining whether the instant writ petition should be dismissed on the ground of laches.

10. As to the delay and laches on the part of the writ petitioner, there is substance in the argument of the learned counsel for the respondents. It is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds on which relief can be refused by a Court exercising writ jurisdiction is that the petitioner is guilty of delay and laches. It is imperative

that where the petitioner invokes extraordinary remedy under Article 199 of the Constitution, he should come to the Court at the earliest possible opportunity an inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioner. Thus, when the petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitle the petitioner from discretionary relief under Article 199 of the Constitution from the High Court, particularly, when there is no plausible explanation on the petitioner's part for his blame worthy conduct of approaching the High Court with undue delay. It is well settled that Courts cannot come to the rescue of persons, who are not vigilant regarding their rights. It is unjust to give the petitioner a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver. There is indeed no period of limitation for the High Court to exercise its power under Article 199 of the Constitution. Furthermore, there is nothing preventing the High Court from interfering in a matter after the passage of a certain length of time. But it would be a sound and voice exercise of discretion for the High Court to refuse to exercise its extraordinary powers under Article 199 of the Constitution in cases where petitioners do not approach it expeditiously for relief.

11. In the case of the *Chairman, District Screening Committee Vs. Sharif Ahmed Hashmi (PLD 1976 (S.C) 258)* it has been held that the principle of laches is applied strictly where a public servant seeks restoration to his office or other redress against a wrongful order. Furthermore, in the case of *M.H. Mirza Vs. Federation of Pakistan (1994 SCMR 1024)*, it has been held as follows:-

> ***"7. As regards laches, it is to be noticed that though the appellant had been diligently agitating in all the other forums, he invoked the Constitutional jurisdiction after about twelve years. In service matters the concept of laches is different from that of ordinary litigation. This difference has been fully brought out in the Chairman, District Screening Committee, Lahore and another v. Sharif Ahmed Hashmi (PLD 1976 SC 258) and S. Sharif Ahmad Hashmi v. Chairman, Screening Committee, Lahore and another (1978 SCMR 367)."*** **(Emphasis added)**

12. In the case at hand, even after the respondents took a preliminary objection to the jurisdiction of the N.I.R.C. to adjudicate upon the petition filed by the petitioner, it took the petitioner more than two years to file the instant writ petition. The order impugned in the instant petition was passed more than six years before the institution of the instant petition. Therefore, in such circumstances, I cannot bring myself to ignore the indolence on the petitioner's part and extend relief under the extraordinary and discretionary jurisdiction of this Court under Article 199 of the Constitution.

13. It is only in the cases where the order impugned is wholly without jurisdiction, *coram non judice* or *void ab initio* that the High Court in exercise of its jurisdiction under Article 199 of the Constitution can overlook the delay on the petitioner's part in approaching the High Court. In the case at hand, learned counsel for the petitioner submitted that the impugned order was void, because it had been passed by the respondents under the PTCL Service Regulations, 1996, whereas the petitioner being a "transferred employee" could only have been proceeded against under the E&D Rules, 1973. Learned counsel for the petitioner did not dispute the assertion of the learned counsel for the respondents that the PTCL Service Regulations, 1996 and the E&D Rules 1973 are in *pari materia*. Under both the said instruments, an inquiry can be dispensed with. Learned counsel for the petitioner was unable to identify any requirement in the E&D Rules, 1973 which had been violated by the respondents in the process culminating in the imposition of a major penalty on the petitioner. This being so the impugned order cannot be held to be void so as to overlook the delay on the petitioner's part in approaching this Court.

14. The superior Courts have held time and again that when a Court holds that a writ petition is not maintainable or that it is liable to be dismissed on the ground of laches or delay, it is inappropriate to give a finding or an observation on the merits of the case. Reference in this regard is made to the case of

Muhammad Din Vs. Abdul Ghani (2012 SCMR 1004), **wherein it has been held as follows:-**

> ***"6. ..... if a Court comes to the conclusion that the petition was barred by laches, it is not required that it should also decide the issue raised in the petition on merits."***

15. By reason of the aforementioned, this petition is dismissed due to laches/delay on the petitioner's part in approaching this Court. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Qamar Khan*

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