ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P. No.4941 of 2014
Mr. Afzal Saeed Khan
Versus.
Chairman Pakistan National Shipping Corporation and two others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.11.2017	**Ms. Shafaq Abid, Advocate for the petitioner,** **Ch. Muhammad Ashraf Khan, Advocate for respondent No.1,** **Mr. Ahsan Mahmood Satti, learned Assistant Attorney General.**

Through the instant writ petition, the petitioner, Afzal Saeed Khan, challenges the *vires* of administrative order No.8/85, dated 18.06.1985 issued by the Pakistan National Shipping Corporation (respondent No.1) ("P.N.S.C."), whereby the payment of gratuity in addition to the contributory provident fund was not to be allowed to employees of respondent No.1, who entered in service after 16.10.1984. The petitioner also challenges the amendment made in regulation No.2 of the P.N.S.C. (Gratuity) Regulations, 1979 and regulation No.2(j) of the P.N.S.C. Employees Gratuity Fund Regulations, 2007. Furthermore, the petitioner seeks a direction to the respondents to pay him gratuity.

2. Learned counsel for the petitioner submitted that on 04.09.1985, the petitioner was appointed as a Commercial Officer in respondent No.1/Corporation; that under Section 36 of the Pakistan National Shipping Corporation Ordinance, 1979, respondent No.1/Corporation was to establish an

employees' provident fund, and benevolent fund or similar funds and to introduce gratuity, group insurance and other schemes, and grant bonus and similar other benefits to its employees, as and when considered necessary; that under Section 39 of the said Ordinance, the Board of respondent No.1/Corporation could make regulations, not inconsistent with the provisions of the said Ordinance and the rules, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the said Ordinance; that on 18.09.1979, the Board of respondent No.1/Corporation made the P.N.S.C. (Gratuity) Regulations, 1979; that these regulations were deemed to have taken effect from 01.07.1979; that on 10.02.1986, the Board of Directors of respondent No.1/Corporation amended the P.N.S.C. (Gratuity) Regulations, 1979; that due to the said amendment, the P.N.S.C. (Gratuity) Regulations, were to apply to such persons who were employees of respondent No.1/Corporation on or before 16.10.1984; that since the petitioner was appointed on 04.09.1985, the benefit of gratuity, and provident fund was not made applicable to the petitioner; that the said amendment was made by the Board of respondent No.1/Corporation due to the office memorandum dated 11.02.1985 issued by the Finance Division, Government of Pakistan; that as per the said office memorandum, the Finance Division conveyed its decision to allow the benefits of gratuity in addition to contributory fund to

the employees of Autonomous/Semi-Autonomous Bodies and Corporations etc., under the administrative control of the Ministries/Divisions as available to them prior to 16.10.1984; that vide office memorandum dated 16.10.1984, the Finance Division called upon Ministries/Divisions to direct the Autonomous/Semi-Autonomous Bodies and Corporations etc., under their administrative control, where a pension scheme does not exist, and that the payment of gratuity in addition to contributory provident fund should not be allowed to their employees on their quitting the service.

3. Learned counsel for the petitioner further submitted that the petitioner retired in the year 2011 and came to know about the amendment in the P.N.S.C. (Gratuity) Regulations, 1979, after his retirement; that even otherwise an amendment made in the said regulations in the year 1986 could not be made retrospectively applicable to the petitioner, who was employed in the year 1985, i.e. prior to the said amendment; that even the P.N.S.C. Employees Gratuity Fund Regulations, 2007, are not applicable to the petitioner, since they applied to the employees of respondent No.1/Corporation who were employed on or before 16.10.1984; that respondent No.1/Corporation's letter dated 14.11.2011 shows that the Finance Division's letter dated 27.03.2007 empowers the Board of Directors of respondent No.1/Corporation to take any decision provided it does not have any impact on the Federal Budget; that in the said letter dated 14.11.2011, respondent No.1/Corporation

expressed to the Finance Division that respondent No.1/Corporation is a self accounting autonomous body and does not have any share in the Federal Budget; that furthermore, respondent No.1/ Corporation sought the Finance Division's approval for the payment of gratuity to employees inducted on or after 16.10.1984; that other Autonomous/Semi-Autonomous Bodies and Corporations etc., under the administrative control of the Federal Government, are paying gratuity to their employees in addition to the contributory provident fund irrespective of their induction into service; and that such organizations include Pakistan International Airlines Company Limited, Rice Export Corporation of Pakistan, Karachi Shipyard and Engineering Works Limited, etc. Learned counsel for the petitioner prayed for the writ petition to be allowed.

4. On the other hand, learned counsel for respondent No.1/Corporation as well as the learned Assistant Attorney-General raised preliminary objections to the maintainability of this petition. They submitted that through a writ petition filed on 05.12.2014, the petitioner was challenging an administrative order issued on 18.06.1985 and amendments made in the year 1986 to the regulations in question. Learned counsel for respondent No.1/Corporation took the position that the existence of *laches* was sufficient for the dismissal of the writ petition. He further submitted that the petitioner was in the knowledge of the said administrative order as well as the amendments to the

regulations, since the time when they were made, or at least when he retired in 2011.

5. Learned counsel further submitted that the relief sought in the writ petition is only against respondent No.1/Corporation, which is beyond the territorial jurisdiction of this Court; that respondent No.1/Corporation is operating from Karachi; and that respondent No.1's address given by the petitioner in the writ petition is also at Karachi.

6. As regards the merits of the case, learned counsel for respondent No.1/Corporation submitted that under Section 21 of the P.N.S.C. Ordinance, 1979, respondent No.1/Corporation can appoint such officers/consultants, advisors and employees as it considers necessary for the efficient performance of its functions, on such terms and conditions as it may deem fit; that given the fact that the Finance Division in its letter dated 27.03.2007 has expressed that the Board of Directors of respondent No.1/Corporation can take any decision provided it does not have any impact on the Federal Budget, and given the fact that respondent No.1/Corporation is a self accounting autonomous body and does not have any share in the Federal Budget, the Board of respondent No.1/Corporation is competent to take a decision as regards the subject matter of this petition; and that this Court does not have the jurisdiction to direct the Board of respondent No.1/Corporation to take a decision allowing the payment of gratuity to employees inducted on or after 16.10.1984. Learned counsel for respondent No.1 as well as the learned Assistant

Attorney-General prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties as well as the learned Assistant Attorney-General, and have perused the record with their able assistance.

8. The instant writ petition was filed on 05.12.2014. Through the instant writ petition, the petitioner is challenging respondent No.1/Corporation's administrative order dated 18.06.1985, as well as amendments made on 10.02.1986 by the Board of Directors of respondent No.1/Corporation to the P.N.S.C. (Gratuity) Regulations, 1979. Infact the petitioner is challenging decision made by respondent No.1/Corporation 28 years before the filing of the writ petition. In the writ petition, the petitioner has not pleaded as to when he came to know about the impugned administrative order and the impugned amendments in the said regulations.

9. Assuming that the impugned administrative order operated to the petitioner's detriment, the petitioner did not make a grievance of it at the appropriate time. The petitioner should have challenged the impugned administrative order and the impugned amendments in the said regulations within a reasonable time. The learned counsel for the petitioner did not offer any plausible explanation for the long delay in filing the writ petition. It is neither desirable nor expedient to lay down a rule of universal application but unreasonable delay denies to the petitioner the discretionary

extra ordinary remedy of *mandamus.* The petitioner who approaches the Court belatedly will be told that *laches* close the gates of the Court for him to question the legality of a transaction that had occurred a long time ago. When there is an inordinate delay in filing the writ petition, the Court should be a loath to quash the impugned orders unless they are *ab-initio* void. The High Court, no doubt has discretionary power under Article 199 of the Constitution to set-aside executive orders if the same are in violation of the Constitution or the law, but such jurisdiction should be exercised taking all relevant factors into pragmatic consideration. Since the unexplained delay in filing the instant writ petition is of about 28 years, and taking account of the law laid down by the Superior Courts in the cases of Khursheed Latif Vs. Federation of Pakistan (2010 SCMR 1081), Ahmad and others Vs. Ghama and others (2005 SCMR 119), Shahbaz Khan Mohmand Vs. Islamic Republic of Pakistan (1975 SCMR 4), and Muhammad Sadiq and others Vs. The Commissioner Rawalpindi (1973 SCMR 422), which are on the subject of delay in approaching the Court, I am of the view that this writ petition is liable to be dismissed on the ground of *laches*/delay.

10. Additionally, the petitioner is seeking relief against respondent No.1/Corporation, which is based at Karachi. This Court cannot issue a writ to a person beyond its territorial jurisdiction. Learned counsel for the petitioner submitted that although respondent No.1/Corporation is beyond the

territorial limits of this Court, respondent No.3/Ministry of Ports and Shipping, which has administrative control over respondent No.1/Corporation, is within the territorial limits of this Court. This argument has not impressed me. This Court cannot issue a writ to respondent No.1/Corporation through respondent No.3, especially since the petitioner has not sought any relief against respondent No.3. Therefore, the preliminary objection of the learned counsel for respondent No.1/Corporation as well as the learned Assistant Attorney-General succeeds.

11. Although this writ petition is being dismissed as not maintainable, the documents on the record show that respondent No.2/Finance Division has vide letter dated 27.03.2007 expressed that the Board of Directors of respondent No.1/Corporation can take any decision provided it does not have any impact on the Federal Budget. Respondent No.1/ Corporation vide letter dated 14.11.2011 sought the approval of respondent No.2 for the payment of gratuity to employees inducted on or after 16.10.1984. Respondent No.1/Corporation was established under the Pakistan National Shipping Corporation Ordinance, 1979. It is listed on the stock market, and follows the Code of Corporate Governance laid in the companies laws. Respondent No.1/Corporation is a self accounting Autonomous Body and does not have any share in the budget. This being so, the Board of Directors of respondent No.1/Corporation is empowered under its

constitution to take a decision as regards the payment of gratuity to employees inducted on or after 16.10.1984. The learned Assistant Attorney-General also submitted that respondent No.1/Corporation is independent and empowered to take such a decision. Therefore, the Board of Directors of respondent No.1/Corporation can take a decision on the said matter in accordance with its constitution. This observation is not to be treated as a direction of this Court.

12. In view of the above, this petition is dismissed as not maintainable.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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