

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 1046 of 2016

[Muhammad Suhail versus Province of Sindh & Others]

BEFORE:

MR. JUSTICE MUHAMMAD SALEEM JESSAR

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioner:

Muhammad Suhail

Through, Mr. Gulab Khan Qaimkhani,
Advocate

Respondents:

Province of Sindh & others: Through Mr. Muhammad Ismail
Bhutto, Addl. A.G.

Date of hearing: 14.10.2025

Date of Decision: 14.10.2025

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ORDER

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NISAR AHMED BHANBHRO, J - The Petitioner through instant
Petition has claimed following relief:

- a) *Direct the Respondents to issue appointment order as issued to the other candidates in compliance of order dated 06.03.2012 passed by this Honorable Court in CP No D 2559 of 2011 as Petitioner is also lawfully entitled for appointment.*

2. Learned Counsel for the Petitioner argued that the Petitioner was meted out discriminatory treatment as he was issued offer letter dated 10.07.2006 for the post of Junior School Teacher but was not

given the appointment letter and joining. He argued that petitioner has run from pillar to post to actualize the offer for appointment letter to regular appointment but to no fruits. He argued that CP No. D- 2559 of 2011 was filed before the Principal Seat of this Court at Karachi by the other appointees who were refused appointment after issuance of offer letters. He argued that Petition was allowed vide order dated 06.03.2012 directing the respondents to issue appointment letters to the petitioners in the said petition. He further submits that prior to this CP No. D- 227 of 2014 was filed by the Petitioner which was disposed of as withdrawn with permission to file a fresh vide order dated 26.04.2016. He argued that Petitioner prays for similar treatment as given to the other appointees who were issued offer letters and thereafter taken into regular service, the case of the petitioner falls in the same category, as such he was entitled for appointment.

3. Learned A.A.G. argued that the advertisement for various teaching posts was published in newspapers dated 30.01.2004. He argued that recruitment test was conducted and the petitioner along with others was declared successful. He argued that offer letter dated 10.07.2006 was issued to Petitioner which was later on withdrawn pursuant to the directions issued by the funding agency World Bank. He argued that the funding agency desired to formulate Teachers Recruitment Policy for appointment before issuing appointment letters. He argued that pursuant to World Bank instructions, policy guidelines were framed on 10.07.2008. He argued that the appointment letters issued to the petitioner and other appointees were withdrawn as they did not fall in the criteria laid down under recruitment policy. He further argued that the Petition filed by the Petitioner was hit by laches as the matter pertains to the appointments made in the year 2012 and the Petitioner has filed this Petition in the year 2016. He prayed for dismissal of the petition.

4. Heard arguments. Perused the record with the able assistance of Learned Counsel for the parties.

5. Scanning of the material made available before us shows that the claim of the petitioner regarding his appointment is not denied. The department in its reply has admitted that the petitioner qualified the recruitment process and pursuant thereto he was issued offer letter which could not be actualized on account of reservations of the funding agency that prior to appointment recruitment policy / guidelines should be framed; therefore, the offer letters were cancelled.

6. It further transpires from the record that the act of the cancellation of offer orders was challenged by the other appointees through CP No. D- 2559 of 2011 before principal bench of this Court at Karachi. The Petition was disposed of vide order dated 6.3.2012 by the consent of the parties in the following terms.

(3) By consent of the learned Counsel as well as learned A.A.G. this constitutional petition is disposed in the foregoing terms:-

(1) Since all the Petitioners have claimed that they were issued offer letters in July 2006, the Respondent No 2 shall cause these letters scrutinized and where he comes to the conclusion that the letters have been wrongly issued or improperly procured or the persons to whom the letters were issued, are not qualified, he shall communicate the reasons individually to the concerned persons.

(2) It shall be available to the concerned person to whom the reasons are communicated to challenge the same in accordance with law.

(3) Those who are found to have been issued valid offer letter shall be processed for regularization / joining duties in accordance with the rules.

(4) The above exercise shall be completed within three months and report shall be submitted to the Member Inspection Team of this Court.

7. The consent order passed by Learned Division Bench of this Court in CPD 2559 of 2011 was challenged before the Supreme Court of Pakistan by the Government of Sindh in CPLA No 10 to 16 – K of 2011. The CPLAs were disposed of by vide order dated 3.5.2012. The operative para-3 of the order reads as under:-

(3) *In these circumstances, by consent, we would direct that any or all the petitioners / Applicants fulfill the criteria laid down in the aforementioned advertisement, the Secretary Education would issue the posting orders etc. In case any or all the Petitioners / Applicants do not qualify then he would submit a detailed report before us on the next date of hearing.*

8. The case of the Petitioner was identical to the cases of the appointees who were petitioners in CP No. D- 2559 of 2011. Pursuant to orders passed by the learned Apex Court notice was published in newspapers wherein it was communicated to the successful candidates to join their duties; however, no such communication was made to the petitioner. Vide order dated 24.3.2025 this Court directed the respondents to place on record the cancellation of offer letter issued to the petitioner or any other record to say that the petitioner did not fall within the merit criteria. The order dated 24.3.2025 reads as under:-

“ Learned A.A.G again seeks time to file relevant cancellations proof as already ordered. Adjourned to 17.04.2025 at 11 a.m. with note of caution that if the compliance of order dated 11.03.2025 is not made before the next date, the matter will be heard and decided on the basis of material available on record.

9. Today when the matter was taken up, learned A.A.G. was confronted as to whether any material has been placed on record to show that the offer letter for appointment issued in favour of petitioner was cancelled or Petitioner did not qualify to be appointed on merits.

He frankly conceded that no such record has been made available by the respondents to A.A.G office.

10. The respondents refused appointment to the petitioner on the ground that his offer order was cancelled under the instructions of funding agency but no such record has been made available to establish that the World Bank a funding agency issued such instructions. As far as the framing of the policy guidelines were considered, the funding agency wanted to ensure that the appointments were made purely on merits and nothing else. No record has been placed before us to enunciate that the petitioner did not fulfill the criteria for appointment on merits contrary his entire claim in the Petition stands admitted.

11. It is also a matter of record that other similarly placed appointees have been taken into service pursuant to the court orders passed by the learned Division Bench of this Court and learned Apex Court. They have been regularized in service. The case of the Petitioner in no manner was different to the case of other appointees who are enjoying the benefits of service. It is a settled principle of law that if any Court of law or tribunal decided a question of law relating to the terms and conditions of service of a person the other identically placed persons will be entitled for the same relief as is held by the Supreme Court of Pakistan in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185) and Government of Punjab, Through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others (2009 SCMR 01). The propriety therefore demanded that the Petitioner should have been given the same treatment irrespective of the fact whether he was the part of the proceedings before this Court or not.

12. As far as the question of delay in filing the Petition is concerned the doctrine of laches no doubt hinders in granting right upon which the petitioner slept over but in the present case it was not petitioner but the respondents who were sleeping over the right of the petitioner. The petitioner time and again knocked at their doors to get them awakened but they did not wake up and failed to grant him right which accrued in his favour on account of his meritorious qualification in the recruitment process as such the petitioner had a recurring cause of action and his case cannot be declined on the ground of laches.

13. In our candid consideration such an objection of laches was frivolous and would not sustain in the case of Petitioner firstly for the reason that the law of laches was not of universal application. The doctrine of laches cannot be applied in every case as a hard and fast rule without examining the dictates of justice, equity and fair play. Secondly, in the case of Petitioner, they were the Respondents No 1 to 3 to act fairly and justly to discharge their duties by issuing him the appointment letter, and under no circumstances Respondents can be absolved of such obligation or responsibility. This obligation did not fall on the Petitioner, inaction on the part of the Respondents created a recurring cause of action for Petitioner and he cannot be knocked out on technicalities when otherwise he was entitled to job as a matter of right. If We place an embargo of laches by non-suiting the petitioner on said account, it will amount to perpetuate injustice and would militate the foundational concept of the law that a right must go to a person to whom it belongs in an unfettered manner. On account of the failure of Respondents No 1 to 3 to fulfil their statutory obligation, the Petitioner cannot be penalized.

14. We are of the considered view that Petitioner has remained vigilant all along and he has been before this Court and before Respondents begging his right which created a recurring cause of action for the petitioner and petition cannot be dismissed on account of

mere delay which in our view is not applicable and attributable to the Petitioner looking at the particular facts and circumstance of the instant case.

15. The conclusion drawn by us, finds support from the Judgment of Honorable Supreme Court in the case of Ummar Baz Khan & others Versus Jahanzeb Khan & others reported in PLD 2013 Supreme Court 268, wherein the Honorable Apex Court has held as under:

“No Court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice. Bar of Laches could not be over emphasized in a case where the relief claimed was based on a recurring cause of action”

17. In the case of Pakistan Post Office Versus Settlement Commissioner reported as 1987 SCMR 1119 while dealing with the issue of laches the Honorable Supreme Court was pleased to hold as under:

“It needs to be emphasized that there is no justification to equate laches with statutory bar of limitation. While the former operates as a bar in equity, the latter operates as a legal bar to the grant of remedy. Thus, in the former all the dictates of equity, justice and balance of legitimate rights are to be weighed; in the latter, subject to statutory relaxations in this behalf nothing is left to the discretion of the Court; it is a harsh law. Thus, passage of time per se brings the statute of limitation in operation, but the bar of laches does not deny the grant of right or slice the remedy unless the grant of relief in addition to being delayed must also perpetuate justice to other party.”

18. The petitioner has been denied the right of appointment through the acts which were beyond the bounds of law, which cannot be tenable under the law. Petitioner was discriminated with the other colleagues similarly placed to him, without any rationale. The literal

connotation of the word "discrimination" refers to different treatment of the same kind to a class of persons or behaving less favourably towards them without any intelligible differentia which was spelt out in the case of petitioner. The acts on the part of Respondents depriving Petitioner from right of job, despite having qualified all the phases of recruitment process offended his fundamental rights guaranteed under article 25 and 27 of the constitution. Article 25 and 27 of the Constitution stressed for the equal treatment and established a tremendous benchmark for maintaining equality amongst the citizens, stating that all citizens are equal before the law, and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex, age or creed in all walks of life including recruitment. The treatment meted out to the petitioner is discriminatory in nature, he was not dealt in accordance with law and his right to job was impinged upon through arbitrary and unfair decisions in gross violation of the fundamental rights guaranteed under Articles 4 and 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

19. The Respondents failed to comprehend that job sometimes becomes the sole source of earning bread and butter for family and though the same was not a vested right but it cannot be snatched once a person establishes his right to appointment by due course of law as was the case of the Petitioner.

20. For the aforementioned reasons the petitioner has successfully made out a case for indulgence by this court under its writ jurisdiction. Consequently, this Petition is allowed, the petitioner is entitled for the relief as granted to other appointees in CP No. D-1559 of 2011; therefore, he shall be issued appointment order pursuant to the offer letter dated 10.7.2006. The respondents are directed to issue appointment letter to the Petitioner within a period of 60 days from today failure whereof shall be deemed to be defiance of the court orders and appropriate action shall follow

21. It is made clear that the recruitment process was initiated in the year 2004 which was translated into the appointment process in the year 2012 and the appointment letter were issued to the successful appointees in the year 2014 and in between the Petitioner has gone over age the period lapsed in between 2012 uptil now shall be deemed to be a good ground for condonation of his over age. He shall not be refused appointment or the benefits of the service on this account; however, he shall not be granted the seniority and other benefits of the service which shall be payable to him from the date of the issuance of appointment order.

The Petition stands disposed of along with listed application in the above terms. Office to send copy of this Order to Respondents for compliance. Additional Registrar to ensure compliance.

JUDGE

JUDGE

Karar_Hussain/PS*

Approved for reporting

Hyderabad

14.10.2025