

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 1800 of 2012

Sajjad Hussain

Versus

*Province of Sindh through Secretary,
Education & Literacy Department and another.*

Date of hearing: 29.04.2019

Date of Order: 29.04.2019

Syed Amir Ali Shah Jeelani, Advocate for Petitioner.

M/s. Abdul Jalil Zubedi, AAG alongwith Jam Habibullah, State Counsel.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the captioned Constitutional Petition, Petitioner is seeking directions to the respondents to allow him joining report for the post of `Junior Clerk` vide Appointment Letter dated 29.05.2009 issued by the Executive District Officer, Education Kamber-Shahdadkot.

2. Brief facts of the case in nutshell are that Petitioner was appointed as Junior Clerk in BPS-07 and was posted at DOEE Kamber, on contract basis vide Office Order dated 29.05.2009 [available at Page-23 of Memo of Petition]. Per Petitioner, he submitted his joining report to the office of District Education Officer, Kamber-Shahdadkot @ Kamber within time, but the same was not allowed. Petitioner being aggrieved by and dissatisfied with

the aforesaid action of the Respondents filed the instant Petition on 14.05.2012.

3. We inquired from the learned counsel for the Petitioner as to how this Petition is maintainable, when he failed to submit his joining report within 15 days from the date of issuance of Appointment Order dated 29.05.2009. He, in reply to the query, has argued that he submitted his joining report within time, but the same was not accepted and no reason was assigned by the Respondents. We posted another question to him as to why he waited for approximately 03 years to file the instant Petition; he replied that the action being taken by the Respondents in cancelling the entire exercise for recruitment was illegal and malafide; that the appointment order of the Petitioner is still intact and has not been cancelled by the Respondents. We again asked to satisfy this Court with regard to his appointment letter dated 29.5.2009 [available at Page-23 of the record], which was on contract basis for a period of 03 years and since the aforesaid period had already elapsed. Syed Amir Ali Shah Jeelani, learned counsel representing the Petitioner does not deny the contract appointment but states that several employees were appointed who are still working and subsequently regularized.

4. Be that as it may, the appointment of the Petitioner was on contract basis for 3 years and such contract period had already expired and no extension apparently has been granted.

5. We have noticed that the order for notice of this Petition was passed on 16.5.2012 by this Court and on subsequent dates, however, the learned AAG appeared and opted not to file para wise comments on behalf of the Respondents and has filed a copy of

unreported Order dated 07.07.2017 passed by the Hon'ble Supreme Court in **Civil Appeal No.190-K/2015** [*re-Province of Sindh through Secretary Education and others vs. Sadaqat Ali & others*] and raised the question of maintainability of the instant Petition. He disputed the basic appointment of the Petitioner and referred to the Appointment Letter dated 29.5.2009 and argued that the same was for limited period, which period had already expired; that Petitioner failed to join the purported post applied for within the stipulated time, therefore, he is not entitled for any concession from this Court at the belated stage; that the instant Petition is suffering from laches; that the project of school was being financed by the World Bank and the purported appointment of the Petitioner was made against criteria fixed for appointment by the World Bank in Education Policy, 2008 and subsequently the entire exercise for recruitment was cancelled and afresh advertisement was made in the Daily `Kawish` dated 05.02.2012, but the Petitioner failed to avail the chance and resorted to file the instant Petition, after considerable period of time in the year 2012. He lastly prayed for dismissal of the instant Petition.

6. We have perused the order dated 07.07.2017 passed by the Hon'ble Supreme Court as discussed supra, which gives clear command that the appointment letters itself stand exhausted by efflux of time / completion of contract period. For convenience sake, an excerpt of the order is reproduced as under:-

“in our view, the appellants will be entitled to have such contract terminated. The appellants may, therefore, take action in accordance with law pursuant to the appointment letters of the respondents. The appeal, in the above terms, is disposed of.”

7. Prima facie the appointment of the Petitioner against the post of Junior Clerk in Education Department is disputed by the learned AAG, which is finding of fact and cannot be disturbed until and unless proper evidence is led in this behalf, which cannot be done in a Constitutional Petition. It is a settled principle of law that for the purpose of maintaining a Constitutional Petition it is the duty and obligation of the Petitioner to point out that the action of the Respondents was in violation of the rules and regulations, which the Petitioner has failed to point out and has also failed to make out any case for discrimination as well as no material was placed as to who were the persons, who under identical circumstances were regularized in the same department.

8. In the light of above facts and circumstances of the case, we have reached the conclusion that the Petitioner has failed to make out his case for joining for the post of Junior Clerk in BPS-07 within stipulated time. Besides above, we do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of May, 2012 whereas the alleged cause of action accrued to him in the month of May 2009, i.e. approximately 03 years prior to the filing of the instant Petition.

9. Resultantly, the instant Petition is not maintainable and is dismissed.

JUDGE

JUDGE