

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan -ul-Karim Memon

C.P No. D- 4579 of 2013

Syed Qasim Ali Petitioner

V.s

M/s Pakistan Steel & others Respondents

Date of hearing: **23.11.2018**

Petitioner present in person

Mr. Sanaullah Noor Ghouri Advocate for the

Respondents No. 1 to 3.

Sheikh Liaquat Hussain, Assistant Attorney General

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the captioned Constitution Petition, Petitioner is seeking declaration to the effect that the Notification dated 04.08.2000 issued by Pakistan Steel with regard to his acceptance of option under voluntary retirement facility (VRF) was illegal, unlawful and without lawful authority. Petitioner has premised his case by taking plea that due to his domestic affairs and his mental condition he was coerced by the Respondent Steel Mill to opt for voluntary retirement facility. Petitioner has submitted that he protested with regard to above option vide application dated 20.10.2000 but the same could not meet any conclusive result. Petitioner has submitted that number of colleagues of the Petitioner impugned the aforesaid action of the Pakistan Steel before the learned Federal Service Tribunal by filing Service Appeal No.1684/K/(CE)/2002 and the same was decided in favour of the colleagues of the Petitioner, the matter was assailed before the Hon'ble Supreme Court in CPLA No. 1027-K to

1029-K of 2002 which was decided vide order dated 29.06.2004, whereby Pakistan Steel lost its case and the Judgment dated 09.09.2002 passed by the learned FST in Appeals No. 242-K(CE)/2000, 313(K)(CE)/2224(K)(CE)/2000 was maintained. Petitioner has submitted that he also filed C.P. No. D-1891 of 2006 before this Court which was decided vide order dated 10.05.2010 with directions to him to avail the appropriate remedy. Petitioner has submitted that he filed Service Appeal No. 420-K(CE)/2004 before the learned FST, which was abated vide its order dated 30.06.2006 in view of the Judgment passed by the Hon'ble Supreme Court in the case of Mubin-ul-Islam Vs. Federation of Pakistan & others. Petitioner has submitted that on the identical circumstances, the colleagues of the Petitioner filed C.P. No.D-1872 of 2006 before this Court against VRF which was allowed vide order dated 20.12.2010 and the Respondents assailed the same before the Hon'ble Supreme Court in CPLA No. 33-K of 2011, which was dismissed vide Judgment dated 02.08.2013. Petitioner has submitted that he was not treated in accordance with law and no relief was granted to him as allowed to his peers. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondents filed the instant petition on 05.11.2013. Petitioner has further submitted that he did not contest his case at any legal forum after order dated 06.12.2010 passed by this Court in C.P. No. D-1891 of 2006. Petitioner has submitted that his entire claim is based upon the case of Hameed Akhtar Niazi reported in 1996 SCMR 1185 and seeks similar treatment as meted out with his colleagues in the aforesaid matters.

2. Petitioner who is present in person has confined his submission to the extent that he is entitled to the benefit of Judgments rendered by the learned FST, this Court and Hon'ble

Supreme Court of Pakistan in the case of Hameed Akhtar Niazi as discussed supra, therefore the aforesaid benefits as claimed by him may be granted to him accordingly. He lastly prayed for allowing the instant petition.

3. Mr. Sanaullah Noor Ghouri, learned counsel for the Respondent No. 1 to 3 has raised the question of maintainability of the instant petition and argued that the Petitioner has no locus standi to file the instant petition at this stage as he had already availed the facility of VRF in the year 2000, which was without any coercion and pressure; that in identical matters in C.P. No. D-1924 of 2006, this Court has already dismissed various Petitions vide common order dated 26.10.2010 and the Hon'ble Supreme Court upheld the decision passed by this Court vide order dated 24.06.2010 in Civil Petition No. 237-K of 2010; that Petitioner did not avail the remedy, within the stipulated time therefore petition is hit by the doctrine of laches; that Petitioner has filed his Service Appeal before the learned FST for withdrawal of his VRF and reinstatement in service, such appeal was abated vide order dated 30.06.2006, thereafter he filed petition before this Court which was disposed of vide order dated 10.05.2010 and his review application was also dismissed vide order dated 06.12.2010 thereafter he did not approach any legal forum. He lastly prayed for dismissal of the instant petition.

4. Sheikh Liaquat Hussain, Assistant Attorney General has adopted the arguments as advanced by Sanaullah Noor Ghouri, learned Counsel for the Respondents.

5. We have considered the submissions of the parties and have perused the material available on record.

6. Record reflects that Petitioner did not litigate after the order dated 06.12.2010 passed by the Court in C.P. No. D-1891 of 2006 which was disposed of and his review application was also disposed of vide order dated 06.12.2010. The important question in the present proceedings is whether the instant petition is suffering from serious laches or otherwise. It is evident from the record that the Petitioner after accepting the voluntary retirement facility on 04.08.2000 did not succeed in getting it set aside on the grounds as agitated by him before this Court and waited for 7 years to file the instant petition; the Petitioner has offered no reason for filing the petition after 7 years rather his only prayer is that the relief as given to the other persons may also be given to him little realizing that those persons agitated their claim before competent court and got the relief thereafter but the Petitioner for the reasons best known to him kept mum and indolent for 7 years and thereafter filed the instant petition on the basis of the grounds mentioned above. We are thus 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 November 2013 whereas the alleged cause of action accrued to him in the month of December 2010, i.e. approximately after 7 years before filing of the instant Petition.

7. Reverting to the next plea taken the Petitioner that the he may be reinstated in service by extending the benefit of the Judgment of the Hon'ble Supreme Court in the case of Hameed Akhtar Niazi as discussed supra. This submission of the Petitioner is also suffering from serious misconception for the simple reason that he has failed to get his voluntarily retirement facility set aside before the competent court of law within time, therefore, no benefit of the judgments as discussed supra can be given to the Petitioner due to sleeping over his rights if any for a couple of years. It is a

settled principle of law that law helps the vigilant and not the indolent.

8. We are of the view that petitioner approached this Court through C.P. No. D-1891 of 2006, which was dismissed as withdrawn vide order dated 10.5.2010. Therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within mischief of constructive res-judicata. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280).

9. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed being not maintainable.

Karachi
Dated: 26.11.2018

JUDGE JUDGE

Shafi Muhammad /PA.