

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 5269 of 2019 : Ghulam Murtaza vs.  
Federation of Pakistan & Others

For the Petitioner : Mr. Abdul Salam Memon, Advocate

For the Respondents : Mr. Muhammad Nishat Warsi  
Deputy Attorney General

Mr. Sanaullah Noor Ghouri, Advocate

Date/s of hearing : 10.12.2021

Date of announcement : 13.12.2021

## JUDGMENT

**Agha Faisal, J.** The petitioner was an employee of the respondent authority and has preferred the present proceedings to seek release of his withheld remuneration, being salary and the consequent implication on his post retirement dues.

### *Admitted facts*

2. The admitted facts, pertinent hereto, are that the petitioner held an additional post, during the tenure of his service with the respondent, with effect from 21.12.2009 till his superannuation. The said post was created by the respondent authority vide its resolution passed at the 128<sup>th</sup> Meeting of its Board<sup>1</sup>. The minutes of the 132<sup>nd</sup> Extraordinary Meeting of the Board, held on 22.06.2010, added further credence and recognition to the aforementioned. It is manifest from the minutes of the aforesaid meetings that the holder of the pertinent post was entitled to additional remuneration at the rate of twenty percent of his / her basic pay.

The petitioner held the additional designated post, however, was never paid the supplementary quantum of his remuneration. A plethora of correspondence is on record demonstrating that the petitioner made successive representations seeking his dues, during the tenancy of his employment and post superannuation; however, no response was provided

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<sup>1</sup> Meeting held on 02/03 April 2009; Minutes at Annexure R-3 to the comments filed by the respondent authority.

thereto until 26.04.2017, when his dues were denied on the premise that Finance Division did not accord its approval to the decision of the respondent's board, rendered vide the 128<sup>th</sup> Meeting of its Board.

Subsequent to receipt of the express denial, the present petition was preferred by the petitioner.

### *Respective Arguments*

3. Mr. Abdul Salam Memon articulated that the petitioner has a Constitutional right to be treated in accordance with the law and the actions of the respondent authority, denying the petitioner his due remuneration five years post retirement, *prima facie* amount to exploitation.

The learned Deputy Attorney General graciously submitted that the respondent authority had continued to obtain the services of the petitioner in the additional post, with all the accompanying rights, notwithstanding the Ministry of Defense having conveyed its disapproval in respect of creation of the relevant posts vide its letter dated 18.10.2010. In this regard it was submitted that it was the respondent authority itself that was entirely responsible for the consequences.

Mr. Sanaullah Noor Ghouri<sup>2</sup> categorically admitted that the petitioner had been retained in his additional post, even after the creation of the said post had been disapproved by the Ministry of Defense, because the petitioner was considered to be the most suitable candidate for the post. No cavil was articulated by the learned counsel with respect to the sanctity of the decisions of the respondent, undertaken vide the 128<sup>th</sup> Meeting of its Board and the 132<sup>nd</sup> Extraordinary Meeting of the Board, or to the entitlement of the petitioner to the remuneration claimed. However, the counsel sought for the dismissal of this petition on the grounds of *laches* and *forum non conveniens*.

### *Scope of this judgment*

4. We have heard the learned counsel and considered the admitted record. The respective learned counsel are in unison with regard to the facts that the petitioner was given the relevant post entitling him to additional remuneration; he rendered services thereat until his superannuation; the additional remuneration was not paid thereto; his representations remained

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<sup>2</sup> Learned counsel for the respondent authority.

pending for many years until denied in 2017 on account of a contrary view taken by the Finance Department. However, nothing was placed before us to suggest that the actions of the respondent statutory authority were subject to any *prior* approval of the Finance Ministry. The only objections taken by the counsel for the respondent authority is that of *laches* and *forum non conveniens*, and we shall endeavor to address the same in seriatim.

### *Deliberation & Findings*

5. The petitioner's claim is that of unpaid salary / remuneration in respect of services admittedly rendered. The respondent authority never called the petitioner's service / remuneration pertinent thereto into question during the tenancy of the petitioner's service or until five years post superannuation of the petitioner. It has been consistently maintained by the august Supreme Court that claims constituting payment of lawful dues constituted a recurring cause of action and delay, if any, would not automatically vitiate a claim<sup>3</sup>. It is settled law that the bar of laches was not due emphasis when the cause was of a recurring nature and that no court could dismiss a *lis* on account of *laches* if such a decision would perpetuate injustice<sup>4</sup>. Recently, the august Court held that merit and legality of a claim had to be considered prior to considering condoning of any delay<sup>5</sup>. In the present case it is manifest that the respondents have articulated no cavil to the merit and legality of the petitioner's claim.

6. There remains the question of the appropriate forum for adjudication of the petitioner's claim. Petitioner's counsel submitted that the petitioner's employment fell under the master servant rule. Learned counsel for the respondent authority concurred in such regard and submitted that the petitioner's grievance ought to be agitated before a civil court. In such regard the only apprehension expressed by the petitioner's counsel is that of limitation.

7. We are cognizant that the determination of the question of limitation is the prerogative of the court seized of the *lis*. It has already been admitted before us that the petitioner's claim is in respect of unpaid salary and its implication on post retirement dues. Such a claim has been found by the superior courts to be a cause of action of a recurring nature. Even otherwise, the law of limitation envisages exclusion of time expended in *bona fide*

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<sup>3</sup> Per *Sajjad Ali Shah J* in *Abdul Jabbar vs. Pakistan Railways* reported as 2018 PLC (CS) 375.

<sup>4</sup> Per *Ejaz Afzal Khan J* in *Umar Baz Khan vs. Jehanzeb* reported as PLD 2013 Supreme Court 268.

<sup>5</sup> Per *Ijaz ul Ahsan J* in *Abdul Hameed vs. WAPDA* reported as 2021 SCMR 1230.

proceedings before a court devoid of primary jurisdiction. We are sanguine that any learned civil court of competent jurisdiction would consider the issue of limitation guided by the principles illumined by the superior courts and would never endeavor to non-suit a supplicant if the same would *prima facie* perpetuate injustice<sup>6</sup>.

8. In view hereof, we are of the deliberated view that the petitioner's claim merits adjudication by the civil court of competent jurisdiction, hence, petitioner remains at liberty to institute the appropriate proceedings. The petitioner may also adduce the admitted record filed herein before the concerned court, in order to demonstrate the crystallized stance of the respective parties.

9. This petition is hereby disposed of in terms as aforesaid.

JUDGE

JUDGE

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<sup>6</sup> Per *Ejaz Afzal Khan J in Umar Baz Khan vs. Jehanzeb* reported as *PLD 2013 Supreme Court 268*.