

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**C.P.No. D-5618 of 2021**

(Khalid Akram and others v/s MDA Province of Sindh and others)

**PRESENT:**

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA**  
**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioners : Through Mr. Imtiaz Ali Solangi,  
Advocate  
Respondents : Through Mr. Ali Safdar Depar, AAG.  
Date of hearing : 10.03.2025  
Date of Announcement : 21.03.2025

**ORDER**

**Nisar Ahmed Bhanbhro, J.** Through the instant Petition, Petitioners have sought following relief:

- a. That this Hon'ble Court may be pleased to set aside the impugned dismissal order dated 05.12.2000 passed by the respondent No 2/Secretary Labour under the exercise of powers E&D Rules 1973 instead of RSO 2000, which was introduced w.e.f 20.08.2000 and direct the respondent No.2 to reinstate the petitioners with all the back benefits.
- b. Grant any other relief which might be appropriate and as an equitable relief very soon in the interest

2. Brief facts of the case as detailed in the Petition are that the Petitioners as they were appointed as low-Grade employees in Grade-1 to 7 during the period of 1989 on contingent basis. The services of Petitioners were regularized on 13.10.1995 by the Committee with the approval of Chief Minister, Sindh. That the Petitioners performed their duties in Labour Welfare Department, Government of Sindh until September, 2000, when a Show-Cause Notice was served upon them under Sub-Rule 3 of Rule-5 of the Sindh Civil Servants (Efficiency and Discipline)

Rules, 1973 calling in question the genuineness of their appointments. The Petitioners submitted replies Show-Cause Notice on 28.09.2000. The Competent Authority was not satisfied with the Reply of show-cause notice as such a Final Show-Cause notice dated 16.10.2000 was served Petitioners to show – cause within seven days as to why the major Penalty of removal from service may not be imposed. Petitioners were called upon to appear before Competent Authority on 02.11.2000, per claim of the Petitioners they were never called for personal hearing. The Petitioners were imposed major penalty of removal from services on 05.12.2000 by the Competent Authority while exercising powers conferred under Rule-4 (1)(b)(iii) of the of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973. The Petitioners filed Constitution Petition No.D-2575 of 2010 before this Court seeking reinstatement in service with back benefits. The Petition was disposed of vide Order dated 25.01.2016 with directions to Respondent No. 3 (Assistant Commissioner, Mines Labor Welfare) to decide the Appeals of the Petitioners within three months in accordance with the law. That the Respondents heard the Appeals of Petitioners and rejected the same vide Order dated 15.04.2021 issued by the Services General Administration & Coordination Department, Government of Sindh (“SGA&CD”) . The Petitioners assert that they were not treated at Par with their other colleagues who were removed from service along with Petitioners but reinstated. The Petitioners prayed for reinstatement in service with back benefits.

3. On Notices, the Secretary Labor Department, Government of Sindh and Assistant Commissioner, Mines Labor Welfare (Respondents No.2 and 3) filed a joint written Reply, wherein, they have raised objections as to the maintainability of Petition in view of the Article 212 of the Islamic Republic of Pakistan, 1973, for the reason that the Petitioners were the Civil Servants and action of imposing major penalty for removal of service was taken under Rule

4 of the Sindh Civil Servants ( Efficiency and Disciplinary) Rules 1973. That the action of imposing Major Penalty was taken after a departmental inquiry, which established that the Petitioners were illegally appointed by the then Assistant Commissioner Mines Labor Welfare namely Rabnawaz without the approval of competent authority and in violation of provisions of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974. The Petitioners did not follow the due course of law by filing Departmental Appeal and service appeal as mandated under the rules but filed Constitution Petition No D 2575 of 2010 Sukkur Bench of this Court. The said Petition was disposed of vide order dated 25.01.2016 with directions to Competent Authority to decide the Appeal of the Petitioners if any pending. The Competent Authority in Compliance of Court Order heard and decided the appeal of Petitioners in accordance with law. The Secretary Mines / Labor Welfare Organization submitted compliance report before Sukkur Bench of this Court. The Petition suffers from laches preferred after 20 years. The Petition is also barred under the Principle of Res Judicate. The Respondents prayed for dismissal of the Petition.

4. At the very outset, Learned Counsel for the Petitioners was put on notice to satisfy this Court as to the maintainability of this Petition, as Petitioners were Civil Servants and matter involved terms and conditions of their Services. The delay in approaching the Court, as the lis was preferred after the lapse of more than 20 years.

5. Mr. Imtiaz Ali Solangi, Learned Counsel for the Petitioners contended that the Petition was maintainable under the law and did not suffer from laches. He contended that the impugned Order dated 05.12.2020 has been passed in violation of law as Sindh Removal from Service (Special Powers) Ordinance

2000 (**RSO**) was in the field at that time and action for Removal from Service was not taken under the said law. The Petitioners were condemned unheard, right of fair trial as enshrined under Article 10-A of the Constitution was not given. The major Penalty of Removal from Service was imposed without holding Regular Inquiry. He contended that the Petitioners were appointed in service by adopting due course of law and their services were regularized based on the report of Inquiry Committee. He contended that under similar circumstances, the colleagues of the Petitioners who were also removed were taken back in service. The Petitioners were discriminated against without any rational cause which violated fundamental rights guaranteed under Article 25 and 27 of the Constitution. He contended that is no delay approaching this Court, as the Competent Authority passed a final Order on the appeals in month of April 2021. Instant Petition was filed in the month of June 2021, the Petition is not hit by laches. He contended that the Petitioners were removed from services under a wrong provision of law as the Competent Authority was required to take action under the provisions of Removal from Service (Special Powers) Sindh Ordinance 2000 (RSO), but action was taken under Rule 4 of the Sindh Civil Servants (Efficiency & Discipline) Rules 1973 (E&D Rules), thus entire exercise was nullity in the eyes of law, hence Constitution Petition was maintainable. He prayed to allow this petition. He placed reliance on the cases of **Tara Chand and others Versus Karachi Water and Sewerage Board Karachi** reported in **2005 SCMR 499** and **WAPDA Versus Abdul Ghaffar** reported in **2018 SCMR 380**.

6. Conversely Mr Ali Safdar Depar Learned Additional Advocate General Sindh strongly opposed this Petition, both on maintainability and laches. He contended that the Petitioners were appointed in service by the then Assistant Commissioner without adopting due process of law, who otherwise not

competent authority to make appointments. That the Departmental Inquiry was conducted in which Appointment Letters of Petitioners were declared illegal and bogus, the disciplinary proceedings were initiated against the Petitioners in the light of inquiry. The Petitioners were issued Show-Cause Notices under Rule 4 and Final Show-Cause Notice under Rule-5 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. That the Petitioners were afforded an personal hearing by the competent authority. That the sufficient material was available on record to establish the misconduct, therefore dispensing with the Regular Inquiry, the Competent Authority imposed major penalty of Removal from Service. The Petitioners did not prefer any Department Appeal and Service Appeal laid down under the Rules. The Petitioner filed first Petition before Sukkur Bench of this Court after 10 years and instant Petition after about more than 20 years of the impugned action without furnishing any explanation. The Petitioners slept over their rights, did not choose the right forum for redressal of their grievance. This Petition is not maintainable and barred under Article 212 of the Constitution, hit by laches, be dismissed.

7. We have heard Learned Counsel for the parties and examined the material available on record with their able assistance.

8. we don not find force in the contentions of Learned Counsel for the Petitioners regarding maintainability of this petition and explanation of delay in adopting due course of law against the action. We have carefully examined the appointment orders dated 6<sup>th</sup> December 1995 of the Petitioners (available at page 43 to 67 of the memo of the Petition) and find that clause iii of the appointment orders contains a condition that the services of the employee/ appointee shall be governed by the Sindh Government Service Rules, meaning thereby that the services of the Petitioners were being governed by the Sindh Civil Servants Act 1973 and rules framed thereunder. The Competent Authority

initiated inquiry and imposed Major Penalty of Removal from Service under Rule 4 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. The Petitioners were appointed and removed from Services under the provisions of Rules framed under Sindh Civil Servants Act 1973. The final action relating to the terms and conditions of services including but not limited to Removal from Services fell within the terms and conditions of the service thus was amenable to the jurisdiction of the competent judicial forum created to adjudicate service matters. The Petitioners did not file any departmental appeal before the Competent Authority and Service Appeal before the Services Tribunal thus the orders passed by the Competent Authority attained finality. The remedy against the orders of the Competent Authority impugned in the instant petition lied under RSO as such illegal, as the latter being Special Law had the overriding effects, thus amenable to the writ jurisdiction of this Court under Article 199. We have examined the provisions of relevant Rules and Law and find that both are in aid to each other, leaving an option for the Competent Authority to adopt a course whatever it deemed appropriate. The contents of the impugned Order explicitly demonstrate that the Petitioners were removed under RSO, merely because the impugned orders contained a different provision of law that would not change the forum for challenge. The Petitioners had the remedy under the law to file a Service Appeal before Services Tribunal, but they did not, the Petition was not maintainable being barred under article 212 of the Constitution.

10. Adverting to the question of laches, We find the arguments of Learned Counsel for the Petitioner that the Petition was within time without any force. Arguments of Learned Counsel that the appeals of Petitioners were decided on 15.04.2021 and petition was filed on 21.06.2021. We are afraid as the contention does not survive, the Petitioners prayed to this Court to set aside the order dated 06.12.2000 as set out in the prayer clause. The Petitioners after the lapse of 10 years filed the Constitution Petition before Sukkur Bench of this

Court which was disposed of without granting any relief except to direct the Department to decide the appeals of Petitioners if any. The Department complied with Court Orders, decided the appeals of the Petitioners. The decision in appeals did not give a fresh cause to the Petitioners, in fact the cause had arisen in the year 2000 and non-deciding of departmental appeals did not in any manner debar the Petitioners from filing of Service Appeal. The Petitioners filed an instant petition in the year 2021 seeking reversal of an order passed by the Competent Authority in the year 2000. The Petitioners slept over their rights and are guilty of inaction, laxity, contumacious lethargy and gross negligence, instant lis is hit by laches, a principle under the law which necessitates to initiate the legal proceedings promptly.

We are fortified in our view by the dicta laid down by the Honorable Supreme Court in the case of **Secretary School Education Government of Punjab and others versus Asghari Begum and another** reported in **2023 PLC (CS) 214**, which holds as under:

*“The Record speaks volumes about the Respondents conduct, who was afforded several opportunities to defend herself, she did not do so. It was after 19 years that the Respondent awoke and realized that her appointment order was withdrawn. The case of the Respondent is hit by the principle of laches due to the fact that she remained in a slumber throughout these years, and it was only after the Respondent was dismissed that she realized that she had to challenge the order of withdrawal. It is settled principle of law that a litigant who sleeps on his rights has no right to claim relief. Admittedly Respondent challenged her order of withdrawal after 19 years, and as such is not entitled to claim any relief at this stage.”*

11. The cases of **Tara Chand and WAPDA** (*supra*) relied upon by the Learned Counsel for the Petitioners wherein the Learned High Courts entertained the writ petitions of employees or on different premise. The Petitioners under litigation were the employees of public sector company / organization, they were public servants governed under the statutory rules of service. With reverence the case laws are distinguishable from the facts of present petition.

12. The discussion made herein above leads us to a firm conclusion that the impugned action against the Petitioners involved terms and conditions of service therefore the Constitution Petition under article 199 of the Constitution was not maintainable. The Petition suffered from laches filed after 21 years' time, consequently the same is dismissed with pending applications if any.

**Judge**

**Judge**

Jamil