

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-1462 of 2020

Before:

*Mr. Justice Zulfiqar Ali Sangi;
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Zakir Hussain,
through Mr.Ghulam Shabbeer Shar,
Advocate.

Date of Hearing: 17.04.2025.

Date of Order. 17.04.2025.

ORDER

Abdul Hamid Bhurgri, J.- The petitioner asserts that Respondent No.2, the Director General Agriculture Extension Sindh, issued an advertisement dated 20-11-2006 inviting applications to fill vacancies for the post of Field Assistant/Crop Reporter (BS-11). A subsequent advertisement dated 17-07-2008 was also published, inviting applications to fill 102 such vacancies across Sindh Province. The petitioner submitted his application in due course for the position of Field Assistant. Upon completion of the scrutiny process and validation of applications, a District-Level Interview Committee was constituted by Respondent No.2. The petitioner, along with other candidates, was shortlisted and called for interviews scheduled on 20-10-2008, 22-10-2008, and 25-10-2008. A merit list was subsequently finalized and signed by members of the interview committee.

2. Despite having successfully passed all requisite stages of the selection process, the petitioner contends that Respondent No. 2 failed to issue any appointment order in his favour. It is alleged that even up to 30-11-2010, no offers were made to qualified candidates. Instead, Respondents No. 2 and 3 issued appointment orders in favour of individuals who had not participated in the recruitment process nor appeared before the Interview Committee. These actions, according to the petitioner, were tainted with illegality, favouritism, nepotism, and other extraneous considerations, leading to his unjust exclusion. The petitioner claims that his exclusion was not only arbitrary but also unlawful and

constituted a blatant act of maladministration. Accordingly, petitioner has sought following relief:-

- (a) *To direct the respondents No.2,3 and 4 to issue appointment/offer orders to the petitioner for appointment as Field Assistant immediately and positively.*
- (b) *To direct the Respondents to cancel the illegal and unlawful offer orders issued by them for the above posts of Field Assistant on the political basis on the instance of their well wishes as same are arbitrary and discriminatory, illegal, mala fide, unwarranted, without lawful authority and of no legal effect.*
- (c) *To Declare that the respondent No.3 had in connivance with other respondents, arbitrary issued the orders offering appointment to the post of field Assistant to their favourite persons and the respondents have collusively withheld petitioners legitimate right to appointment for the post of field Assistant BS-11.*
- (d) *To grant any other relief/relieves, as deems fit and proper in circumstance of the case.*
- (e) *Award the costs of the petition.*

3. Counsel for the petitioner argued that after successfully qualifying in accordance with the recruitment policy, the petitioner had a legitimate expectation to be appointed as Field Assistant (BS-11). The counsel further submitted that Respondents unlawfully withheld appointment orders from the petitioner and others similarly situated and instead issued such orders in favour of candidates who had neither taken part in nor were party to the recruitment proceedings.

4. It was further contended that these appointments were politically motivated and made on considerations of nepotism, to the prejudice of the petitioner's fundamental rights. The petitioner's prayer is for the issuance of appointment orders in his favour and the cancellation of those issued to others alleged to have been appointed illegally.

5. The learned counsel for the petitioner was heard and the record perused. The recruitment process in question pertains to the years 2006 and 2008. Interviews were held in the year 2008, and as per the petitioner, the process concluded in 2010. The petitioner seeks not only issuance of appointment orders based on the merit list but also the cancellation of appointment orders made in favour of persons who did not participate in the recruitment process.

6. It must be noted that the petitioner has failed to implead as respondents the individuals whose appointments he seeks to challenge. Furthermore, the petition has been filed in 2020, ten years after the recruitment process concluded. This unexplained delay renders the petition liable to be dismissed on the ground of laches.

7. It is well-settled that the exercise of writ jurisdiction is discretionary. Principles of equity, such as delay, acquiescence, and waiver, must be considered. A petitioner invoking relief under Article 199 of the Constitution must approach the Court with clean hands and without undue delay. The doctrine of laches, founded on equitable principles, is firmly embedded in our jurisprudence. It presumes that those who sleep on their rights and delay seeking redress demonstrate abandonment of claim.

8. Even if the petitioner had a valid grievance, the failure to act with reasonable promptness undermines the case. In constitutional matters, unexplained and prolonged delay is fatal. The doctrine of laches in equity, though not rigid, is rooted in fairness. Relief may be denied if delay prejudices the opposing party or causes administrative disruption.

9. In England, judicial review procedures under the Civil Procedure Rules (CPR Part 54) Rule 54.5 require that claims be filed promptly and, in any case, within three months of the cause of action arising. In *R v. Secretary of State for Education and Science ex parte Avon CC* [1991] QB 558, it was held that even claims brought within the three month period may be dismissed if delay is unexplained and causes prejudice.

10. The doctrine of laches is a discretionary bar against equitable relief, particularly where prolonged delay affects administrative processes or

causes injustice to others. The equitable maxim “delay defeats equity” remains relevant. A petitioner who seeks relief after an excessive lapse of time cannot reasonably expect judicial intervention, especially when public employment or third-party rights are involved. The doctrine of laches is founded on the maxim “*vigilantibus non dormientibus jura subveniunt*”, the law assists those who are vigilant of their rights.

11. In this case, the petitioner has sought cancellation of appointments without impleading the appointed individuals. His allegations of favouritism remain unsubstantiated. The petition suffers from laches and is devoid of plausible explanation for the delay. The plea for cancellation is therefore not maintainable. On the point of laches this Court relies upon the case law of *State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others*, PLJ 2012 SC 289, the Honourable apex Court has held as follows:

“Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation--Right remains with the party, but he cannot enforce it Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party.”

In Civil Petition No.3750 of 2020, *Special Secretary-II (Law & Order), Home & Tribunal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar*, the Honourable Supreme Court has held as under:-

“9. Even though the above findings are sufficient to non-suit the respondent, but one more significant aspect of the case cannot be lost sight of, that the alleged claim of compensation is based on the damages caused in the year 2007, but the respondent filed his Writ Petition in the year 2019, which is

virtually after 12 years. Notwithstanding the crucial aspect that a factual controversy cannot be decided in Writ jurisdiction, the Writ Petition was also hit by laches which essential point at issue was not considered by the learned High Court in the impugned judgment. Merely advancing a plea that the respondent was engaged in correspondence with different government officials for pursuing his claim does not protect or save the respondent from the drawbacks or impediments of the doctrine of laches which explicates that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking C.P.3750/2020 constitutional jurisdiction. Ref: PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400 (Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others)”.

Similarly in the case of *Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others*, 2014 PLC (C.S.) 1292, the Court held as under:-

“We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional

petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be laid down for the exercise of discretion by the Court for grant of refusal for the relief in the exercise of extraordinary jurisdiction”.

12. The contention of the petitioner that securing the passing marks entitles him to appointment is also misconceived. It is a trite principle of service jurisprudence that mere inclusion in merit list does not confer any vested right to appointment. Appointment is contingent upon fulfilling all required conditions and the discretion of the appointing, subject to the availability of posts and budgetary approval and according to recruitment rules and policy. Reliance is placed on is the case of *Secretary Finance and others v. Ghulam Safdar*, reported in **(2005 SCMR 534)**, wherein the Honourable Supreme Court held as under:-

"10. Be that as it may, it is difficult to sustain the prayer of the respondents since mere selection in written examination and interview test would not, by itself, vest candidates with a Fundamental Right for endorsement as such in the exercise of Constitutional Jurisdiction of the High Court. Admittedly, the appellants had not issued any offer of appointment to the respondents and their appointment was subject to clearance by the Establishment Division under the Centralized System of Recruitment till it was discontinued in November, 1996, which again coincided with the imposition of ban on fresh recruitment, which could not be safely ignored by the appellants. Thus, the high court was not right in overlooking this aspect of the case and issuing a writ of a mandamus of the nature prayed for."

13. The argument of the learned counsel for the petitioner that the respondents have issued appointment orders to the persons who have never appeared in interview hence process is against law and recruitment rules, in order to substantiate his arguments nothing has been placed before this Court to substantiate such plea. Even otherwise this plea requires factual probe, which in exercise of Constitutional Jurisdiction cannot be done as held in the case of *Mst. Kaniz Fatima through legal*

heirs v. Muhammad Salim and 27 others (2001 SCMR 1493), the Honourable Supreme Court has held as under:-

"Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan".

Similarly, in *Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279)*, following observations were made:

"The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused".

14. In conclusion, the record reflects that:-

- i) The petitioner approached the Court after a delay of more than ten years;*
- ii) No appointment orders were ever issued in his favour;*
- iii) No enforceable right or legitimate expectation was established;*
- iv) The doctrine of laches applies squarely, precluding any relief.*

15. It is settled law that unexplained delay in service matters, particularly involving appointments, is sufficient ground for denial of relief. The petitioner has failed to establish any compelling reason for such delay. Therefore, this petition, being without merit and hit by the doctrine of laches, is accordingly dismissed in *limine*.

Judge

Judge