

## **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Constitution Petition No.D-292 of 2023

### **Before:**

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

Petitioner : Mukhtiar Ahmed son of Muhammad  
Ismaeel bycaste Channa through Mr. J.K  
Jarwar, Advocate for Petitioner.

Respondents: Province of Sindh and others through Mr.Ali  
Raza Balouch, Additional Advocate General  
Sindh.

**Date of Hearing & order : 21.05.2025.**

### **O R D E R.**

**Abdul Hamid Bhurgri, J,-** The petitioner's case is that Respondent No.3 had issued a public advertisement on 15.03.2012 in the daily newspaper Awami Awaz, inviting applications for various posts, including that of Junior Physical Education Teacher. Being eligible for the said post, the petitioner submitted his application and was issued an admit card. He subsequently appeared in the recruitment examination held on 06.05.2012 and, having successfully passed all requisite stages, was issued an offer letter dated 29.11.2012.

2. In compliance with the requirements, the petitioner obtained a physical fitness certificate and character certificate from the competent authorities and submitted the same to Respondent No.3. He was also directed to appear before the Medical Superintendent, Ghulam Muhammad Mahar Medical College, Sukkur, for medical clearance, which he successfully obtained. A satisfactory character verification report was also issued by the Senior Superintendent of Police, Khairpur.

3. The petitioner states that he holds a Master's degree in Economics and a Bachelor's degree in Physical Education, and that he hails from a modest financial background. He alleges that certain other candidates, less qualified but politically connected or otherwise influential, were issued appointment and posting orders, whereas he was unjustly denied the same. He further asserts that a

similar constitutional petition bearing No. D-426 of 2013 was allowed, and that he too is entitled to similar relief on the ground of parity. He seeks following reliefs:-

- (a) That this Court may be pleased to declare the act and action of the respondents not issuing the appointment and posting orders to the petitioner, as illegal and unlawful.*
- (b) That the respondents may be directed to issue appointment and posting orders to the petitioner.*
- (c) To grant any other relief, which this Honourable Court deems fit and proper in circumstances of the case.*

4. Learned counsel for the petitioner contended that a right had accrued to the petitioner upon the issuance of the offer letter dated 29.11.2012, and that the respondents unlawfully withheld the appointment order without offering any cogent justification. He submitted that politically favoured candidates were issued appointment letters, while the petitioner's legitimate claim was ignored. He relied upon the order in CP No.D-426/2013 passed by this Court. On this basis, it was urged that the petition be allowed.

5. At the very outset, the learned Additional Advocate General Sindh objected to the maintainability of the petition on the ground of laches. It was submitted that the recruitment process in question pertains to the policy of 2012, while the present petition has been filed after an inordinate and unexplained delay of over eleven years. Accordingly, it was prayed that the petition be dismissed as barred by delay.

6. We have heard learned counsel for the parties and perused the available record with care and circumspection.

7. We note that the recruitment process in question was initiated pursuant to the Recruitment Policy of 2012, and the selection process, including the conduct of examinations, culminated in the year 2013. While the petitioner claims to have approached the authorities repeatedly, no tangible or documentary evidence has been placed on record to substantiate such attempts. The present petition, filed after an unexplained hiatus of eleven years, is thus tainted with gross and inordinate delay.

8. It is trite law that while delay alone may not invariably bar relief, once vested rights have accrued in favour of third parties, and there is an unexplained failure to assert a right within a reasonable time, a constitutional petition may be rendered non-maintainable on the grounds of laches. The petitioner's prolonged silence and inertia suggest abandonment of his claim.

9. In this regard, we are fortified by the observations of the Honourable Supreme Court in *State Bank of Pakistan v. Imtiaz Ali Khan (2012 PLC (C.S) 218)*, wherein it was held:

*“—Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement, if it is found by the court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party, but he cannot enforce it. The 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<sup>li</sup>mitation/laches, same right then vests/accrues in favour of the opposite party.”*

The Hon'ble Supreme Court in the case of **Jawad Mir Muhamamd and others v. Haroon Mirza and others** reported in **PLD 2007 sc 472**, has held as under:

*“ Article 199. Constitution petition. Latches. Principles. Laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case---Question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be overlooked' or ignored subject to facts and circumstances of each case”.*

Likewise in the case of **Chairman PCSIR v. Dr. Mrs. Khalida Razi** reported in **1995 SCMR 698**, the Honourable Supreme Court observed as under :

*“Article 185. Constitution of Pakistan 1973, Employee's Constitutional petition before High Court suffered from gross laches---Such fact by itself was sufficient to deny her relief sought in the Constitutional petition-. Anyone seeking restoration to the office from? which he/she had been removed in an illegal manner was required to show some measure of diligence which had been entirely wanting in the case.*

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, it was 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 or refusal of the relief in the exercise of extraordinary jurisdiction.”*

10. As far as the contention of the petitioner that a similar constitution petition bearing No.D-426/2013 was allowed, and that he too is entitled to similar relief on the ground of parity. We have gone through the referred petition bearing No.D-426/2013 and found that petition has been filed in year 2013 well within reasonable time to challenge the process of recruitment made in pursuance of policy of 2012; hence, it was not barred by laches. Therefore, in our view the case relied upon by learned counsel for petitioner is distinguishable.

11. In light of the above precedents and given the facts of the instant case, we are of the firm view that this petition is squarely barred by the doctrine of laches. The unexplained delay of over a decade in asserting the claim renders the petitioner disentitled to discretionary relief under Article 199 of the Constitution.

12.               Consequently, the petition, being devoid of merit and hit by inordinate and unexplained delay, is hereby dismissed.

JUDGE

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