

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-6425 of 2024

[Abdul Shakoor versus Province of Sindh & others]

Before:

Justice Muhammad Karim Khan Agha
Justice Nisar Ahmed Bhanbhro

Date of hearing & Judgment: 13.11.2025

Mr. Ali Asadullah Bullo, advocate for the petitioner.

Mr. Ali Safdar Depar, AAG along with Ms. Humaira Jatoy, advocate.

ORDER

Nisar Ahmed Bhanbhro, J. It is the case of the petitioner that he was dismissed from service vide office order dated 16.12.2022 issued by the Secretary to Government of Sindh Auqaf Religious Affairs, Zakt & Ushr Department, Government of Sindh. Petitioner filed departmental appeal, which was declined vide order dated 05.07.2023 by the Chief Secretary to Government of Sindh. Petitioner filed Service Appeal No.648/2023 before the Sindh Service Tribunal, which was dismissed as withdrawn vide order dated 13.11.2024, hence petitioner preferred this petition.

2. Learned Counsel for the petitioner contended that Petitioner has assailed the impugned dismissal and Appellate orders dated 16.12.2022 and 05.07.2023 before this Court on the sole ground that petitioner was not afforded an opportunity of proper defence by the inquiry committee constituted by the Department, therefore, the right of fair trial was denied to the petitioner as articulated under Article 10-A of the Constitution. He contended that the Petition may be allowed and direction be issued to the department for a de novo inquiry.

3. Learned AAG has opposed this petition on the ground that the same suffered from laches and was bad under the law on the principal of election of remedies as petitioner had filed service appeal before Service Tribunal which was withdrawn without getting adjudication on merits.

4. Heard the arguments. It transpired from record that the petitioner on dismissal from service chose to file departmental appeal before the Appellate Authority which was declined and thereafter elected Sindh Service Tribunal as remedy to challenge the dismissal order thus he filed Service Appeal No.648/2023, the service appeal was presented before the Service Tribunal on 10-07-2023 and was dismissed as withdrawn on 13.11.2024 by assigning no reasons either in the application or in the statement made at bar before the Tribunal. Petitioner preferred the instant petition before this Court on 24-12-2024 after about 19 months from the date of the order passed by the Appellate Authority (Chief Secretary Government of Sindh) on an appeal preferred under Sindh Civil Servants Appeals Rules 1980.

5. Under the doctrine of election of remedies, the petitioner was required to choose appropriate forum and proceed with his case accordingly. Order dated 13.11.2024 passed by Service Tribunal reflected that it was a withdrawal without assigning any reasons. Petitioner cannot choose another forum, once he agitated the grievance by way of filing service appeal. Law does not permit for the multiple bites at cherry, as under the doctrine of election of remedy in presence of multiple legal fora to address the same issue, the aggrieved person must choose the one and once the choice is made, he is required to pursue the same forum. Once the petitioner had opted the forum before the service tribunal, he was required to get results of his appeal on merits or could have got an order on the point of jurisdiction from the said fact findings forum. By election of remedy before tribunal at the very initial stage the petitioner cannot change the forum of his own choice subsequently.

6. The Sindh Service Tribunal was conferred the powers of Civil Court under Section 4 of the SST Act 1973, therefore, the dismissal of Service Appeal as withdrawn would operate as a bar for filing a fresh petition on the same cause of action before this Court in terms of the order XXII Rule 1 CPC. Such dismissal order attained finality and operated as 'estoppel' or "waiver" precluding the petitioner from bringing a fresh cause. Guidance in this regard is sought from the judgment of Honorable Supreme Court in the case of Trading Corporation Vs Dewan Sugar Mills Limited reported as PLD 2018 SC 828, wherein the Learned Apex Court has depreciated the practice of agitating the same grievance before multiple forums in multiple manners.

7. When confronted to the above legal position, Learned Counsel for the Petitioner failed to convince this Court. The contention that the Tribunal was not competent to adjudicate the case of the petitioner as he was not a civil servant, was also not born out from the record.

8. The contention of the Petitioner that he was not provided a right of hearing by the Enquiry Committee was controverted from the record as Petitioner was issued notices to appear before Enquiry Committee on 15.11.2022 and 18.11.2022 but he chose to remain absent. Record evidenced that such notices were served upon petitioner through whatsapp, in person and through telephonic messages, which established that right of defence was provided to the petitioner but he failed to avail it.

9. In wake of the above discussion, this petition being not maintainable is hereby dismissed with no order as to cost along with pending application(s).

JUDGE

HEAD OF CONST. BENCHES

Shahzad Soomro