

JUDGMENT SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.585 of 2015

Malik Amanat Rasul **V/S** *Federation of Pakistan etc.*

J U D G M E N T

Date of hearing	11.09.2024
Petitioner(s) by	Mr. Zaheer Ahmad Qadri and Arshad Mehmood, Advocates.
Respondent(s) by	Mr. Arshad Mehmood Malik, Assistant Attorney General. Mr. Muhammad Yasir Akbar Butt, Advocate for Respondent No.4 and 5.

JAWAD HASSAN, J. By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”), the Petitioner has challenged quasi-judicial order dated 04.08.2014 passed by Respondent No.4 pursuant to directions issued by this Court in W.P.No.2556 of 2013 vide order dated 08.05.2014.

2. Facts of the case are that the Petitioner joined POF Board Wah Cantt. on 07.11.1985 and rendered his services there till 07.09.1999. Subsequently he was relieved therefrom consequent upon his selection to the post of Director (BS-19) in Ministry of Population Welfare. However, while relieving on 07.09.1999, his lien was retained in POF till completion of probation period for one year extendable by one further one year. The Petitioner brought W.P.No.2556 of 2013 seeking allotment of residential plot in the Officers Colony, POF Society, Wah Cantt. which was disposed of vide order dated 08.05.2014 with a direction to concerned Respondent to decide it; pursuant to which the impugned order was passed, hence this petition.

3. Learned counsel for the Petitioner, while reiterating the contents of the petition *inter alia* submitted that the Petitioner rendered 13 years and 10 months services with POF Board and if the service rendered in Ministry of Religious Affairs and period of lien retained in POF is considered, the criteria regarding minimum length of service i.e. 15 years becomes fulfilled; that the POF has accepted his request qua counting of continuous service therefore the Petitioner is entitled for the relief which has been rejected through the impugned order.

4. On the other hand, learned law officer submitted that as per report and parawise comments submitted by the Respondents, the Petitioner is not entitled for the relief claimed for as he was relieved from POF upon his selection as Director in the Ministry of Population Welfare and his lien was retained till completion of probation period of one year and that too was expired.

5. I have heard learned counsel for the parties and gone through the available record.

6. The rendering of service by the Petitioner to the POF w.e.f. 07.11.1985 to 07.09.1999 is not disputed by the parties. However, matter in issue is with regard to allotment of residential plot which has been denied by the Respondents through the impugned order. It evinces from the impugned order that the Petitioner served POF for 13 years and 10 months whereas the minimum length of service required for allotment of plot as per POF Rules for Allotment of Residential Plots to Officers, 2002 (the “**Rules**”) is 15 years. Rule 5 of the “**Rules**” prescribes eligibility conditions for allotting of plots which reads as under:

“5. Eligibility conditions for allotment of plots: (1) The minimum length of service for allotment of plots shall be 15 years which will include the service qualifying for pension rendered in POF and other Government department and also the contractual service rendered in POF.

(2) Following persons shall be entitled to allotment:

- i. All officers of POF holding posts in BS-16 and above;**
- ii. Commissioned Army Officers posted to POF on secondment against POF posts or against**

the Post of Army sanctioned for POF having stay at their present appointment in POF at least for a period of 02 years.

- iii. *Officers of allied departments namely COFA, DSG, IDA, FAOF, SSD and FIU, holding posts in BS-16 and above or equivalent having stay at their present appointment in POF at least for a period of 02 years.*
- iv. *A POF employee holding posts in BS-16 and above, who retired after last allotment of 1994 and widow of POF employee who died after last allotment of 1994.*
- v. *A POF employee (holding posts in BS-16 and above), invalidated i.e. Boarded out on Medical ground.*
- vi. *In case of death of an employee as result of accident during course of employment, next of kin (widow or legitimate heir) shall be entitled to allotment of plot (as per entitlement of deceased employee at the time of death) on priority irrespective of length of service or other eligibility conditions subject to availability of land”.*

7. Above said Rule prescribes eligibility conditions for allotment of plot; Rule 5(1) of the “Rules” clearly depicts that 15 years length of service is required to become entitled for allotment of residential plot while Rule 5(2) of the “Rules” mentions the category of persons entitled to allotment. In the case in hand, the Petitioner was admittedly relieved from the service of POF on 07.09.1999 to join the post of Director (BS-19) in the Ministry of Population Welfare; though his lien was retained to get back in POF till completion of his probation period yet the Petitioner joined the new post as Director (BS-19) in the Ministry of Population Welfare where his services were regularized and even he was promoted to BS-20 and he never get back to his parent department within probation period. In the context of service law, the term "lien" has a statutory connotation and refers to a legal right of a civil servant to hold a particular post, typically a higher one, to which they have been promoted or transferred, while still retaining a right on their original post, based on provisions provided for the same under the rules or regulations framed by the appropriate Government. Hence,

simply put, lien in service law is a right of a civil servant to return to his original position, based on the fulfilment of the conditions set out in the rules or regulations framed by the appropriate Government. Pertinently, the “Rules” were promulgated on 31.05.2002 and Rule 1(3) of the “Rules” clearly speaks that the “Rules” shall come into force at once. The “Rules” thus does not, either expressly or impliedly, provide for any retrospective application of the clauses of the “Rules”, the same cannot therefore operate to reverse or undo an action which took effect from 07.09.1999, prior to the date the said Rules came into existence. Furthermore, the Petitioner was not the employee of the POF at the time of promulgation of the “Rules” therefore, he is not entitled for the allotment of plot in terms of Rule 5 of the “Rules”.

8. The order dated 04.08.2014 is indicative of the fact that the “Respondent No.4” complied with directions of this Court dated 08.05.2014 and decided the matter while providing opportunity of hearing to the Petitioner on 27.07.2014. Pertinently, the petition in hand was filed on 04.03.2015 questioning the above-stated impugned order after lapse of almost six months without explaining any convincing reasons for the inordinate delay, as such principle of laches is also applicable upon this case as three months’ time is considered reasonable for a party to assail an adverse order in writ jurisdiction of this Court. The Supreme Court of Pakistan in “CIVIL AVIATION AUTHORITY through Director General and 3 others Versus Mir ZULFIQAR ALI and another” (2016 SCMR 183) has held as under:

“The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such”

In “STATE BANK OF PAKISTAN through Governor and another Versus IMTIAZ ALI KHAN and others” (2012 SCMR 280) it has held as under:

“laches is 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 it cannot enforce it. The limitation is examined by the Limitation Act 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 do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on 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”.

It was further held by Supreme Court of Pakistan in “MEMBER (S&R)/CHIEF SETTLEMENT COMMISSIONER, BOARD OF REVENUE, PUNJAB, LAHORE and another Versus Syed ASHFAQUE ALI and others” (PLD 2003 Supreme Court 132) as under:

“On account of Laches in setting the machinery of law into motion they have indeed disentitled themselves to the exercise of discretionary and equitable jurisdiction, which in all cases must be exercised in order to foster the ends of justice and to right a wrong. Writ jurisdiction is undoubtedly discretionary and extraordinary in nature which may not be invoked by a party who demonstrates a style of slackness and laxity on his part. Furthermore, if a party does not choose legal remedy available under the Statute strictly speaking Constitutional jurisdiction of the High Court cannot be exercised in his favour. Law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief. One who seeks equity must show that equities lean in his favour. In the facts and circumstances of the appeal we are, therefore, in no manner of doubt that the High Court was not competent to exercise its writ jurisdiction conferred under Article 199 of the Constitution”.

9. It is noted that the Petitioner first time brought his claims regarding financial benefits of his previous service with POF and also claimed a residential plot on the basis thereof in year 2014 however, his previous service rendered with the POF were allowed to be counted

merely for pension purposes vide letter dated 29.10.2014 but this does not a solid ground for entitlement of plot under Rule 5 of the “Rules” as he was not the employee of the POF at the time of promulgation of the “Rules” as discussed above. Moreover, it is settled law that, writ is only for enforcement of fundamental rights and not for entitlement of rights as per law laid down by Hon’ble Supreme Court of Pakistan in “ASDULLAH MANGI and others Versus PAKISTAN INTERNATIONAL AIRLINES CORPORATION and others” (2005 SCMR 445) wherein it has been held that *“the right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justifiable right in existence, to give jurisdiction to the High Court in the matter. Unless whatever right, no order can be issued under Art. 199.”* It has been further held in the judgment supra that *Object of proceedings initiated under Article 199 of the Constitution is the enforcement of a right and not the establishment of legal right and therefore, the right of the incumbent concerned which he seeks to enforce, must not only be clear and complete but simplicitor and there must be an actual infringement of the right”*.

10. In view of above, learned counsel for the Petitioner is unable to point out any illegality or irregularity in the impugned order warranting interference by this Court in its Constitutional jurisdiction. Resultantly, the instant petition stands **dismissed**.

(JAWAD HASSAN)
JUDGE