

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.2666 OF 2020.

Danish Mehmood
VS.
Federation of Pakistan etc.

Petitioner by : Mr. Muhammad Wasim Abro, Advocate.

Respondent No.1 by : Rana Imran Farooq, AAG.

Respondents No.2 to 5 by: Ms. Misbah Gulnar Sharif, Advocate.

Date of Hearing : 10.05.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition the Petitioner [Danish Mahmood] has, *inter alia*, challenged the termination of his employment by the Respondents No. 2 to 5 (Capital Development Authority) and the discriminatory manner in which his departmental appeal has been decided.

2. Brief facts of the case, as per the Memo of Petition, are that the Petitioner applied for the post of LDC BPS-07 on contract/regular basis in response to an advertisement published by the Respondent No.2 [Chairman CDA] in the daily newspapers in the year 2008. The Petitioner obtained highest marks in both the test and interview and qualified for the post yet he was not selected and his departmental appeal was dismissed. The Petitioner was constrained to file and institute Writ Petition No.2451/2009 wherein order dated 10.10.2011 was passed directing Capital Development Authority ("CDA") to examine the case of the Petitioner and decide the same strictly in accordance with law. Thereafter the Petitioner was appointed on contract basis vide appointment letter dated 14.03.2011 ("**Appointment Letter**"). On 07.01.2013 vide letter No.CDA-7(01) HRD-III/2013/103 the Respondents regularized the service of the Petitioner in the light of cabinet sub-committee decision regarding regularization of contract/daily wages employees against dated 31.05.2012. On 05.01.2018 issued show cause notice to the Petitioner alleging that the Petitioner was not entitled to be appointed under PM Assistance Package for the families of government employees, who died in service as the Petitioner's father is alive. The Petitioner responded vide application dated 12.01.2018. However the respondents CDA awarded the

Petitioner major penalty of termination of employment vide order dated 27.02.2019. The Petitioner filed a departmental appeal however such appeal was dismissed by the Respondent No.1 vide 26-08-2019 without referring the matter or asking for the opinion of the Law & Justice Division, which was done in the case of Respondent No.5 [Umar Raza]. Hence, the instant writ petition.

3. Learned counsel for the Petitioner, *inter alia*, contended that the Petitioner never applied for employment with the CDA under any Prime Minister Assistance Package rather he applied in response to advertisement issued by the Respondents; that the Petitioner has been employed with CDA since the year 2011 and was regularized in the year 2013 during all this time no such issue was raised and the Petitioner has been performing his duties to the best of his abilities without complaint from any quarter; that during personal hearing direction issued by this Court in Writ Petition No.2451/2009 was not considered; that on the other hand the Respondents are giving relaxation to the other employees; that termination of the Petitioner from the service is illegal, unlawful, malafide, arbitrary, unjust, unauthorized and discriminatory; that the petitioner not only possesses the required educational qualification but has extra qualification as required by the Respondents' criteria.

4. On the other hand, learned counsel for the Respondents No.2 to 5 controverted arguments of learned counsel for the Petitioner and contended that the Petitioner was initially appointed as LDC BPS-07 in CDA on contract basis for a period of two years under Prime Minister Assistance Package vide order dated 26.04.2011 and thereafter he was regularized; that an investigation was carried out regarding appointment of the Petitioner and as per report the appointment of the Petitioner was found illegal being against the Rules, merit and eligibility criteria; that according to Prime Minister Assistance Package, the assistance is to be provided to the family of government servants, who die in service, whereas father of the Petitioner is alive and is working in CDA; that all the documents/correspondence including death certificate of father of the Petitioner were found bogus; that during investigation, the Petitioner confessed that his father is alive and he paid Rs.50,000/- as bribe to get job; that charges/allegations have been established against the Petitioner; that after adopting due process of law, the Petitioner has been terminated from service while imposing major penalty; that the Petitioner filed an appeal before the Secretary, Ministry of Interior for his re-instatement into service, which was

dismissed; that even otherwise the instant writ is not maintainable as CDA does not have statutory rules of service. Learned counsel for the Respondents No.2 to 4 has prayed for dismissal of the instant Writ Petition.

5. The learned AAG adopted the arguments submitted by the learned counsel for the Respondents No. 2 to 5. None appeared on behalf of the Respondent No. 5 despite notice.

6. Arguments advanced on behalf of learned counsel for the parties have been heard and record perused with their able assistance.

7. Learned counsel for the Petitioner's main argument was that the Petitioner never applied for employment with the CDA under the Prime Minister Assistance Package and that he applied in response to advertisement that appeared in the newspaper therefore he cannot be held liable under any conditions of such package. Be that as it may, it is a matter of record that the Petitioner's initial appointment was on contract basis vide the Appointment Letter, which clearly stated in its introductory paragraph that the Petitioner's appointment was *under the Prime Minister Assistance Package for the families of civil servants, who died during service*. It is evident from the Petitioner's response dated 12.01.2018 to the show cause notice issued to him that he was aware of the aforementioned despite which he failed to clarify that he neither applied under Prime Minister Assistance Package nor that his father was deceased. The sole argument of learned counsel for the Petitioner is that major penalty of termination should not be awarded to the Petitioner simply because of efflux of time as the Respondents did not raise this issue in a timely manner. However, no violation of law, rule or regulations has been identified by learned counsel for the Petitioner.

8. I am not convinced that employment of the Petitioner which was granted due to a mistake of fact should be continued simply because of the Respondents' failure to discover the mistake in a timely manner especially considering that the Petitioner himself did nothing to identify such mistake.

9. Even otherwise, the Petitioner has invoked Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which is an extraordinary, discretionary and equitable jurisdiction and one of the main principles for exercising such jurisdiction is that the Petitioner must show that he approached the Court in a timely manner without any delay. In the instant case, the Petitioner was awarded major penalty vide order dated 27.02.2019,

whereafter he filed departmental appeal, which was denied on 26.08.2019 whereas, he filed the instant writ petition on 24.09.2020 i.e., after a delay of more than one year, which has not been explained in any manner. It is settled law that the Petitioner is required to satisfy this Court about the delay of each and every day of delay, which the Petitioner has failed to do. Discretionary relief under Article 199 of the Constitution cannot be exercised in favor of the indolent. I would like to quote the following passage from the case of *Ghulam Sarwar Vs. Federation of Pakistan*, 2020 PLC (C.S.) 1211 on the issue of “laches”:

“27. It is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds on which relief can be refused by a Court exercising writ jurisdiction is that the petitioner is guilty of delay and laches. It is imperative that where a petitioner invokes extraordinary remedy under Article 199 of the Constitution, he should come to the Court at the earliest possible opportunity. An inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioner. Courts cannot come to the rescue of persons who are not vigilant regarding their rights. It is unjust to give the petitioner a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver. Thus, when a petitioner approaches the High Court with undue delay, the principle of laches disentitles him from discretionary relief under Article 199 of the Constitution, particularly when there is no plausible explanation on the petitioner's part for his blameworthy dilatory conduct. Since the unexplained delay in filing the instant writ petitions is of more than nine years, and taking account of the law laid down by the Superior Courts in the cases of *Khurshed Latif v. Federation of Pakistan* (2010 SCMR 1081), *Ahmad and others v. Ghama and others* (2005 SCMR 119), *Shahbaz Khan Mohmand v. Islamic Republic of Pakistan* (1975 SCMR 4), and *Muhammad Sadiq and others v. The Commissioner Rawalpindi* (1973 SCMR 422), which are on the subject of delay in approaching the Court for the issuance of a writ, laches is an added reason why the instant petitions should be dismissed.”

10. Moreover, CDA does not have statutory rules as held by the Honourable Supreme Court in case of *M.H. Mirza vs. FOP and 2 others*, 1994 SCMR 1024 due to which, it was held in such case that constitutional petition was not competent. This is yet another reason why the instant writ petition is not maintainable.

11. For the foregoing reasons and above discussion, I am of the view that the instant writ petition is devoid of merit and is as such **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 12-5-2022

JUDGE