

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.893 of 2016

Ghulam Yaseen Jalbani

Versus

Secretary, Ministry of Science & Technology, Islamabad and others.

Petitioner by:	Mr. Muhammad Aslam Sandhu, Advocate.
Respondent No. 1 & 3 by:	Raja Abid Hassan, Advocate.
Date of Decision:	03.02.2021.

Tariq Mehmood Jahangiri, J: The petitioner has filed the

instant writ petition with the following prayer:-

***“Under the circumstances, it is therefore respectfully
prayed that this honorable Court may graciously direct
the respondents to extend the benefit of judgments
dated 06.02.2013 of Honorable Islamabad High Court,
Islamabad being identical to the case of petitioner and
release the outstanding salaries from 1st July 2006 to
30th January 2007 with all other benefits (deputation
period, pension contribution, GP Fund and seniority etc
to meet the ends of justice).***

2. Brief facts of the case are that the petitioner was initially appointed in Petroman Training Institute, Karachi working under the Ministry of Science and Technology, Islamabad as a Trainee Engineer, in the year 2005. The said Training Institute was transferred to Comsat Institute of Information Technology under the control of Ministry of Science and Technology, thereafter controversy started between the Comsat Institute of Information Technology and Ministry of Science and Technology due to which the salary of the employees was

stopped. Due to the said controversy, Ministry of Science and Technology / respondent No. 1 offered Voluntarily Separation Scheme (VSS), whereas some employees of Petroman opt and some did not opt the said VSS Scheme. The petitioner was amongst the employees who did not opt the VSS Scheme. Thereafter, some other employees filed writ petition in Hon'ble Islamabad High Court, Islamabad for the release of their salaries and dues which was disposed off vide judgment dated 06.02.2013, wherein the direction was issued to the department to expedite the matter of releasing the salaries etc. within the period of 02 months.

03. The petitioner was not a party in *writ petitioner No. 2262/2008 titled as "Muhammad Ikhlq Malik etc V. Secretary, Ministry of Science & Technology etc"* and *writ petition No. 1956/2009 titled as "Salman Ahmad Khan V. Federation of Pakistan, etc"*. The petitioner has filed the instant petition for getting the benefit of judgment dated 06.02.2013 passed by this Court and prayed for release of his salary from 01.07.2006 to 30.01.2007.

04. Notices were issued to the respondents, whereas the respondent No. 1 / Ministry of Science and Technology and respondent No. 3 / Comsat Institute of Information Technology have filed their report / comments, wherein they have categorically stated that salaries to all the petitioners of writ petition No. 2262/2008 were paid, whereas salary of the petitioner has not been released for the period from 01.07.2006 to 30.01.2007, on the ground that the petitioner has not attended his office during the said period and has prayed for dismissal of the writ petition.

05. Learned counsel for the petitioner has contended that it is fundamental right of the petitioner that salary for the period from 01.07.2006 to 30.01.2007 should be paid and benefit of judgment dated 06.02.2013 passed in writ petition No. 2262/2006, be also extended to him.

06. On the other hand, learned counsel for the respondent Nos. 1 & 3 has contended that as the factual controversy is involved in the matter which cannot be resolved in writ jurisdiction, hence the instant petition is liable to be dismissed.

07. Arguments heard and record perused with the able assistance of both the learned counsel for the parties.

08. The petitioner has prayed for release of outstanding salary from 01.07.2006 to 30.01.2007 but has filed the instant writ petition on 09.03.2016 with the delay of more than 09 years. The petitioner has further prayed that benefit of judgment dated 06.02.2013 passed by this Court be also extended to him. It is an admitted fact that the petitioner was not a party in the said writ petition and the respondents have stated that all the lawful dues have been paid to the petitioner in compliance of Judgment dated 06.02.2013 passed in writ petition No. 2262/2008, so the petitioner cannot claim the benefit of said Judgment, wherein he was not a party. As instant writ petition was filed on 09.03.2016 with the delay of more than 03-years of passing the judgment dated 06.02.2013 in writ petition No. 2262/2008, surprisingly, the petitioner kept silent for a very long period of more than 09 years and invoked the constitutional jurisdiction of this Hon'ble Court on 09.03.2016 which is badly barred by time and hit by the principle of laches.

09. In the case of “**Ahmed and 25 others VS. Ghama and 5 others reported as 2005 SCMR 119**”, it is held by the Hon’ble Supreme Court of Pakistan that “*there is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition*”. It is further held that “*We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case*. The same principle is followed in “**2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514**”.

10. The respondents No. 1 & 3 have categorically mentioned that the salary for the period w.e.f. 01.07.2006 to 30.01.2007 has not been paid due to the fact that the petitioner has not attended his office during the said period, in this regard letter dated 06.07.2015 was sent to the petitioner by Ministry of Science and Technology, wherein he was informed that he has not attended the office at Petroman Corporate / Liaison Office, Karachi from 01.07.2006 to 31.07.2007, whereas salaries of all those employees have been released who were regularly attending the office and were performing their duties. The petitioner sent a letter to Ministry of Science and Technology on 03.08.2015, wherein the petitioner has stated that he has been working in Petromen, Sukkur Campus from 01.07.2006 to 31.07.2007 and is entitled for the salary. Again on 11.11.2015 Ministry of Science and Technology has sent a letter to the petitioner, wherein it is mentioned that the petitioner has failed to provide the satisfactory attendance/presence record w.e.f. 01.07.2006 to 30.01.2007. The petitioner has again requested the said ministry vide letter dated 18.11.2015, for release of his

salary and has also mentioned that he can submit an affidavit showing that he was not gainfully employed at any other place and has not drawn salary from any other source during the period from 01.07.2006 to 30.01.2007.

11. All the above mentioned correspondence clearly proves that it is a case of factual controversy, whether the petitioner has performed his duties for the period w.e.f. 01.07.2006 to 30.01.2007 or not, cannot be resolved in the writ jurisdiction, as it has been held by the Hon'ble Supreme Court of Pakistan in case titled as **"Pakistan WAPDA Employees PEGHAM Union V. Member, National Industrial Relations, Commission Islamabad and others" (2014 SCMR 1676)**, that High Court cannot resolve the factual controversy in its constitutional jurisdiction. Same principle is laid down in **"PLD 2011 SC 44, 2011 SCMR 1813 and 2011 SCMR 1023"**.

12. In the light of above discussion, the case of petitioner is badly hit by the principle of laches as well as factual controversy cannot be resolved in the writ jurisdiction, so the instant petition is **dismissed** being merit less.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal

Approved for reporting.