

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1603 of 2017

Munir Ahmad Qureshi

Versus.

Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.10.2019	

Mr. Muhammad Asif Gujjar, Advocate for the petitioner,
Qazi Azher Mahmood, Advocate for N.C.H.D.,
Mr. Muhammad Nadeem Khakwani, learned Assistant Attorney-General.

Through the instant writ petition, the petitioner, Munir Ahmad Qureshi, impugns letter dated 04.02.2014, whereby he was suspended pending disciplinary proceedings against him.

2. The record shows that on 22.01.2008, the petitioner was appointed as a Trainee (Literacy) at the National Commission for Human Development ("N.C.H.D.") for a period of six months on contract basis. Vide N.C.H.D.'s letter dated 08.06.2010, the petitioner was offered the position of Literacy Coordinator at the N.C.H.D. on the terms and conditions mentioned in the said letter. The petitioner's services could be terminated with three days' prior notice.

3. Apparently, the N.C.H.D. had started the verification process of the educational testimonials submitted by its employees. The Controller of Examinations, University of Peshawar, vide letter dated 16.12.2013, informed the N.C.H.D. that the petitioner's Bachelor degree was fake. The Controller of Examinations, Hazara University, Mansehra also informed the N.C.H.D., vide letter dated 27.12.2013, that the petitioner's Bachelor degree was fake.

4. On 04.02.2014, the petitioner was suspended pending disciplinary proceedings against him. The petitioner was alleged to have committed misconduct by submitting a fake degree during the course of his employment. On 04.02.2014, a show cause notice was issued to the petitioner under Rule 17(2) of the N.C.H.D. Employees Service Rules, 2006 calling upon the petitioner to show cause as to why the penalty of dismissal/termination should not be imposed on him on account of getting employment in the N.C.H.D. on the basis of a fake degrees. The petitioner was afforded an opportunity of personal hearing on 27.02.2014. According to the N.C.H.D.'s letter dated 27.02.2014, the petitioner had admitted presenting fake degrees and had asked for clemency. Vide order dated 27.02.2014, a major penalty of dismissal from service was imposed on the petitioner for having submitted fake degrees.

5. The said order dated 27.02.2014 has not been challenged by the petitioner in the instant writ petition. The petitioner has, however, challenged the order dated 04.02.2014, whereby he was placed under suspension pending disciplinary action.

6. Learned counsel for the petitioner submitted that initially the petitioner was appointed on contract basis and subsequently his services were regularized pursuant to the recommendation made by the Cabinet Sub-Committee for the regularization of the contract employees; that in order to be appointed as Literary Coordinator, a Bachelor degree was not required; that the petitioner had never submitted a fake degree

in order to gain employment in the N.C.H.D.; that at no material stage was any regular inquiry conducted against the petitioner; and that when the instant petition was filed, the petitioner was not in the knowledge of the order dated 27.02.2014, whereby a major penalty of dismissal from service was imposed on the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2008 SCMR 1475, 1997 SCMR 46, 1997 SCMR 1552, 1996 PLC 79 and 986 SCMR 883.

7. On the other hand, learned counsel for the N.C.H.D. submitted that the instant writ petition is not maintainable as the N.C.H.D. does not have any statutory service rules; that the instant petition involves disputed questions of fact which cannot be resolved in the Constitutional jurisdiction of this Court; that the petitioner was well aware that he had been dismissed from service on 27.02.2014 but he had not assailed the said order in the instant petition; that the petitioner had submitted two fake degrees in order to gain employment in the N.C.H.D.; that the Controller of Examinations, University of Peshawar as well as the Hazara University, Mansehra had confirmed vide letters dated 16.12.2013 and 27.12.2013, respectively, that the petitioner's Bachelor degrees were fake; that in the "*Employee Fact Sheet*" submitted by the petitioner, it was stated that he was a graduate; and that the imposition of major penalty of dismissal from service did not

suffer from any legal infirmity. Learned counsel for the N.C.H.D. prayed for writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

9. In the instant petition, the petitioner has not assailed the order dated 27.02.2014, whereby the major penalty of dismissal from service was imposed on the petitioner for submitting fake B.A. degrees in order to gain employment in the N.C.H.D. The petitioner has only assailed the order dated 04.02.2014, whereby he was suspended pending disciplinary proceedings against him.

10. As mentioned above, learned counsel for the petitioner had submitted that the said order dated 27.02.2014 was not in the petitioner's knowledge when this writ petition was filed.

11. I am of the view that the petitioner has not been honest in instructing learned counsel. Along with the writ petition, the petitioner has filed an application dated 22.03.2017, seeking his reinstatement in service. In the said application, it is clearly mentioned that the petitioner was terminated from service. This leads me to form the view that the petitioner was well within the knowledge of the order, whereby major penalty of dismissal from service was imposed on him when this petition was filed. Since the said order dated 27.02.2014 has

not been assailed in the instant petition, it would not be appropriate for me to give my opinion on the legality of the same. Even otherwise, the order impugned in the instant petition was passed more than three years before the filing of the instant petition. Therefore, the instant petition is liable to be dismissed on account of *laches*.

12. 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 the 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. Thus, when the 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 blame worthy dilatory conduct.

13. It is well settled that 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. Since the unexplained delay in filing the instant writ petition is of more than three years, and

taking account of the law laid down by the Superior Courts in the cases of *Khursheed Latif Vs. Federation of Pakistan (2010 SCMR 1081)*, *Ahmad and others Vs. Ghama and others (2005 SCMR 119)*, *Shahbaz Khan Mohmand Vs. Islamic Republic of Pakistan (1975 SCMR 4)*, and *Muhammad Sadiq and others Vs. The Commissioner Rawalpindi (1973 SCMR 422)* which are on the subject of delay in approaching the Court for the issuance of a writ, I am of the view that this writ petition is liable to be dismissed on the ground of *laches*.

14. The Superior Courts have held time and again that when a Court holds that a writ petition is not maintainable or that it is liable to be dismissed on the ground of *laches* or delay, it is inappropriate to give a finding or an observation on the merits of the case. Reference in this regard is made to the case of *Muhammad Din Vs. Abdul Ghani (2012 SCMR 1004)*, wherein it has been held as follows:-

“6. if a Court comes to the conclusion that the petition was barred by laches, it is not required that it should also decide the issue raised in the petition on merits.”

15. By reason of the aforementioned, this petition is dismissed due to *laches*/delay on the petitioner's part in approaching this Court. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Sultan**