

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.494/2018

Zulfiqar Ali

Versus

Federation of Pakistan through Secretary, Ministry of Information
Technology & Telecommunication and others

Date of Hearing: 13.02.2020.
Petitioner by: Mr. Mubashar M. Jaffar Kasuri, Advocate.
Respondents by: Mr. Arshid Mehmood Kiani, learned Deputy
Attorney-General.
Mr. Nadeem Khan Khakwani, learned Assistant
Attorney-General.
M/s Shahid Anwar Bajwa, Tassadaq Hanif,
Shaifque-ur-Rehman Dab, Habib Ahmed Bhatti
and Akhlaq Ahmad Bhatti, Advocates for the
P.T.C.L.
Mr. Raheel Zafar, Manager (Legal), P.T.C.L.
Barrister Ahsan Jamal Pirzada, for P.T.E.T.
Sheikh Matee-ur-Rehman, Manager (Legal),
P.T.E.T.

MIANGUL HASSAN AURANGZEB, J:- For the reasons recorded
in judgment of even date, passed in W.P. No.2114/2016 titled "Ghulam
Sarwar and others Vs. Federation of Pakistan through its Secretary,
Ministry of Information and Technology and others", the instant writ
petition is also dismissed as not maintainable. There shall be no order
as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20-02-2020

(JUDGE)

*Qamar Khan**

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2114/2016

Ghulam Sarwar and others

Versus

Federation of Pakistan through its Secretary, Ministry of Information and
Technology and others

Date of Hearing: 13.02.2020

Petitioners by: M/s Muhammad Asif Mehmood, Nawazish Ali Gondal
and Jameel Hussain Qureshi, Advocates in
W.P.Nos.2114, 2345, 3108 & 3625 of 2016
Mr. Mubashar M. Jaffar Qasuri, Advocate in
W.P.Nos.483, 494, 495 & 496 of 2018

Respondents by: Mr. Arshid Mehmood Kiani, learned Deputy Attorney-
General,
Mr. Nadeem Khan Khakwani, learned Assistant
Attorney-General
M/s Shahid Anwar Bajwa, Tassadaq Hanif, Shaifque-
ur-Rehman Dab, Habib Ahmed Bhatti, and Akhlaq
Ahmad Bhatti, Advocates for P.T.C.L.
Mr. Raheel Zafar, Manager (Legal) P.T.C.L.
Barrister Ahsan Jamal Pirzada for P.T.E.T. in
W.P.No.494/2018
Mr. Muhammad Latif Saeedi, Advocate for P.T.E.T.
Sheikh Matee-ur-Rehman, Manager (Legal) P.T.E.T.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide the writ petitions listed in "**Schedule-A**" hereto since they entail common questions of law and fact. All the petitioners who are retired employees of the Pakistan Telecommunication Company Limited ("**P.T.C.L.**") after having opted for the Voluntary Separation Scheme ("**V.S.S.**") introduced by P.T.C.L. and having received all the benefits under the said scheme, seek a direction to the respondents to pay their pension along with increases in pension at the same rate as announced by the Government for retired civil servants.

2. Some of the petitioners were employed in the Telephone and Telegraph Department ("**the T&T Department**") and transferred to the Pakistan Telecommunication Corporation ("**P.T.C.**") by operation of Section 9 of the Pakistan Telecommunication Corporation Act, 1991 ("**the 1991 Act**") and retired while in service of P.T.C. or further transferred to P.T.C.L. by operation of Sections 35 and 36 of the

Pakistan Telecommunication (Re-organization) Act, 1996 (**“the 1996 Act”**) whereas the others were employed in P.T.C. after the enactment of the 1991 Act. The petitioners in the first category would hereinafter be referred to as **“the departmental employees”**.

3. The 1991 Act was enacted on 25.11.1991. Section 9(1) of the said Act provided *inter alia* that all departmental employees shall, on the establishment of P.T.C., stand transferred to and become employees of P.T.C. on the same terms and conditions to which they were entitled immediately before such transfer. Section 9(2) of the said Act provided that the terms and conditions of service of the departmental employees transferred to P.T.C. shall not be varied by P.T.C. to their disadvantage.

4. The 1996 Act was enacted on 13.10.1996. Under Section 35 of the said Act departmental employees or employees appointed by P.T.C. could be transferred to become employees of P.T.C.L. The proviso to Section 35(2) provided that the terms and conditions of service of such transferred employees shall not be varied to their disadvantage. Additionally, the proviso to Section 36(1) of the said Act provided that the Federal Government shall guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees, whereas Section 36(2) provided that the terms and conditions of service of any transferred employee shall not be altered adversely by P.T.C.L. except in accordance with the laws of Pakistan or with the consent of the transferred employees and award of appropriate compensation.

5. It is not disputed that on 15.11.2007, P.T.C.L. introduced a V.S.S. which could be opted for by regular employees of P.T.C.L. under the age of 58. The employees interested in opting for V.S.S. had sixty days from 15.11.2007 to complete and submit the option/waiver form to the V.S.S. Support Centre. P.T.C.L. reserved to itself the power to review the applications for the V.S.S. and decide whether or not to accept such applications. It was clearly mentioned in the terms of the V.S.S. that an employee who chooses not to opt for the V.S.S. would remain employed at P.T.C.L. under the existing terms of employment. The letters addressed by P.T.C.L. to the eligible employees clearly provided that the employees' decision either to

participate or not to participate in the V.S.S. programme would be voluntary and at their own will.

6. Employees opting for the V.S.S. were to be paid severance pay, separation bonus, medical benefits, leave encashment, housing allowance, and provident fund. Employees with less than ten years of service were to be paid a lump sum bonus of Rs.3,00,000/- whereas employees with service between 10 to 20 years were to be paid a lump sum bonus of Rs.4,50,000/-. The terms of the V.S.S. also made it clear that the regular status of employees with a minimum of twenty years of service were eligible for early retirement and enhanced gross pension. The pension figure was to be enhanced by increasing the employees' qualifying years of service by five years subject to a maximum of thirty years, and increasing the final sum by 7.5%.

7. The option for the V.S.S. exercised by the petitioners was accepted by P.T.C.L., and they were paid all benefits under the V.S.S. Several years after receiving such benefits under the V.S.S., the petitioners have invoked the Constitutional jurisdiction of this Court and seek a direction to P.T.C.L. and Pakistan Telecommunication Employees Trust ("P.T.E.T.") to pay their pension along with such increases as were announced by the Federal Government for civil servants from time to time.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

8. Learned counsel for the petitioners submitted that the petitioners had opted for the V.S.S. which was introduced by P.T.C.L. on 15.11.2007; that in the V.S.S. forms prepared by P.T.C.L., it was not mentioned whether the employees who opt for the V.S.S. would be deprived of pensionary benefits; that the petitioners signed the V.S.S. forms under coercion; that the petitioners had been threatened by P.T.C.L. that they would be thrown out if they did not opt for the V.S.S.; that the words "*Surplus*", "*Not Needed*" and "*redundant*" on the V.S.S. calculation sheet led the petitioners to believe that if they did not opt for the V.S.S., their services would be terminated; that under the Pension Rules, 1973, ten years of service qualifies an employee for pensionary benefits; that in the V.S.S. forms prepared by P.T.C.L., it was stated that in order to qualify for early retirement, an

employee had to have a minimum of twenty years of qualifying service; that it should have been clearly mentioned in the V.S.S. forms that those who opted for the V.S.S. would not be entitled to pension if they had ten years of service; that the petitioners are not just entitled to the payment of their pensionary benefits but also to the increase in pension at the same rate as given by the Federal Government to civil servants from time to time; that the protection as to the petitioners' terms and conditions of service afforded under Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act could not be denied to them simply because they had opted for the V.S.S.; that the provision in the V.S.S. forms making a minimum of twenty years of service a condition for the eligibility of early retirement and payment of enhanced gross pension was unlawful and in violation of the protection of the petitioners' terms and conditions of service under Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act; that even though some of the petitioners were employed in P.T.C. after the enactment of the 1991 Act, they were nonetheless entitled to be given the protection afforded to them under Sections 35 and 36 of the 1996 Act; and that the change in the petitioners' terms and conditions of service on the ground that they had opted for the V.S.S. is in contravention of the said provisions of the 1991 Act and the 1996 Act.

9. Furthermore, it was submitted that P.T.C.L. had paid pension to the employees who had opted for the V.S.S. introduced in 1997-98; that under the V.S.S. introduced in the year 2014, employees with less than ten years of service had been given pension; that by depriving the petitioners who opted for the V.S.S. in 2007 of their pension, P.T.C.L. meted out discriminatory treatment to them; and that since all the petitioners had ten years of qualified service, they were entitled not just to the payment of pension but also the periodic increases in pension commensurate to the ones announced by the Federal Government for civil servants from time to time. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

CONTENTIONS OF THE LEARNED COUNSEL FOR P.T.C.L.:-

10. Learned counsel for P.T.C.L. submitted that some of the petitioners were employed in P.T.C. after the enactment of the 1991

Act whereas others were employed in the T&T Department prior to the enactment of the 1991 Act; that for instance, 23 out of the 42 petitioners in writ petition No.3625/2016 were employed in P.T.C. whereas the remaining 19 petitioners were employed in the T&T Department; that similarly 39 out of the 100 petitioners in writ petition No.2114/2016 were employed in P.T.C. whereas the remaining 61 petitioners were employed in the T&T Department; that in view of the law laid down in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), the petitioners employed in P.T.C. after the enactment of the 1991 Act could not file a writ petition to agitate a grievance regarding the terms and conditions of their service; that in the said judgment, the Hon'ble Supreme Court held *inter alia* that the terms and conditions of service of employees employed in P.T.C. after the enactment of the 1991 Act were not governed by statutory regulations; that in the said judgment, it was also held that the V.S.S. was also not under any statutory rules; that since the terms of the V.S.S. were not governed by any statutory rules, an employee who is aggrieved by any of its terms or who seeks their enforcement cannot agitate his grievance in the Constitutional jurisdiction of this Court; that in the case of State Bank of Pakistan Vs. Imtiaz Ali Khan (2012 SCMR 280), it was held *inter alia* by the Hon'ble Supreme Court that since the employees of the State Bank of Pakistan who had opted for the V.S.S. had neither retired from service under the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980 nor by application of the State Bank of Pakistan Staff Regulations, 1993 but had left the service by exercising the option of accepting the V.S.S., therefore, their cases were squarely governed and controlled under the terms and conditions as were clearly spelt out in the V.S.S.; and that in the judgment dated 27.05.2016 passed by the Hon'ble Lahore High Court in writ petition No.5978/2011 titled S.M. Abu Talib Naqvi etc. Vs. President/Chief Executive Officer, PTCL, it was held *inter alia* that the employees of P.T.C.L. who had availed the V.S.S. package were not entitled to the increase in pension etc. as were allowed to civil servants vide Finance Division's Office Memoranda dated 05.07.2010.

11. Learned counsel for P.T.C.L. further submitted that since the petitioners had more than ten years of service but had less than twenty years of service, they were not qualified for or entitled to the payment of enhanced gross pension under the V.S.S.; that the V.S.S. was launched on 15.11.2007 and the final payment to all the employees who opted for the V.S.S. was made by 04.04.2008; that the petitioners took all the financial benefits under the V.S.S. and severed their relationship with P.T.C.L.; that for eight years, the petitioners did not agitate the matter relating to their pension; and that the petitions filed with an inordinate delay are liable to be dismissed due to *laches*.

12. Furthermore, it was submitted that Section 36(2) of the 1996 Act provides that the terms and conditions of any transferred employee shall not be adversely altered by P.T.C.L. except in accordance with the laws of Pakistan or with the consent of the transferred employees and the award of appropriate compensation; that P.T.C.L. complied with the requirements of Section 36(2) of the 1996 Act by obtaining the petitioners' consent regarding the execution of the V.S.S., and by making payment of compensation under the V.S.S.; that under the terms of the V.S.S., only the employees having twenty years of service could be given pensionary benefits whereas the employees with less than twenty years of service were given a bonus in lump sum; that it was available to the petitioners not to have opted for the V.S.S.; that the acceptance of a V.S.S. amounts to a written agreement between the parties; that the V.S.S. was not a statutory scheme but was in the nature of an offer which was accepted by the petitioners; that whether the petitioners were compelled or coerced to opt for the V.S.S. is a disputed question of fact which cannot be resolved in the Constitutional jurisdiction of this Court; and that about 29,900 employees had opted for the V.S.S., out of which only a handful employees have filed writ petitions asserting that they had opted for the V.S.S. under coercion. Learned counsel for P.T.C.L. prayed for the writ petitions to be dismissed as not maintainable.

13. 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 writ petitions have

been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

WHETHER THE PETITIONS FILED BY THE PETITIONERS EMPLOYED BY P.T.C. AFTER THE ENACTMENT OF THE 1991 ACT ARE MAINTAINABLE:-

14. At the very outset, I deem it appropriate to deal with the objections taken by the learned counsel for P.T.C.L. to the maintainability of the petitions. It first needs to be determined whether those petitioners who were employed in P.T.C. after the enactment of the 1991 Act could agitate a grievance regarding the terms and conditions of their service before this Court in its Constitutional jurisdiction. The answer to this question would depend on whether the terms and conditions of such an employee of P.T.C. are governed by statutory rules or regulations. If such rules or regulations are not statutory, the principle of 'master and servant' would govern the relationship between the employee and the employer organization. In the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), it has explicitly been held that the Pakistan Telecommunication Corporation Service Regulations, 1996 framed pursuant to Section 20 of the 1991 Act had not been notified in the Official Gazette. Since the said Regulations did not have a statutory status, the employees of P.T.C. employed after the enactment of the 1991 Act and governed by the said Regulations could not agitate a dispute regarding the terms and conditions of their service (including their rights to receive pension) by filing a petition under Article 199 of the Constitution. Therefore, the writ petitions filed by such petitioners are liable to be dismissed on that score alone.

WHETHER THE PETITIONS FILED BY THE DEPARTMENTAL EMPLOYEES WHO AVAILED THE BENEFITS UNDER THE V.S.S. ARE MAINTAINABLE:-

15. As regards the departmental employees who were employed in the T&T Department and transferred to P.T.C. and subsequently to P.T.C.L. by dint of Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, their status would be different from those employees who had been employed in P.T.C. after the enactment of the 1991 Act or who were employed in P.T.C.L. after the enactment of the 1996 Act. Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act

protected the terms and conditions of service of the departmental employees. In view of the law laid down by the Hon'ble Supreme Court in the cases of P.T.C.L. Vs. Masood Ahmed Bhatti (2016 SCMR 1362), Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (2015 SCMR 1472), and Muhammad Riaz Vs. Federation of Pakistan (2015 SCMR 1783) such employees (i.e. departmental employees) could agitate a grievance regarding the terms and conditions of their service in the Constitutional jurisdiction of this Court. However, the door of this Court exercising Constitutional jurisdiction cannot be left ajar for those departmental employees who had also opted to avail the benefits under the V.S.S. I say this, because the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Limited through Chairman Vs. Iqbal Nasir (supra) held as follows:-

“29. As to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions.”

(Emphasis added)

16. On the basis of the law laid down by the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), this Court, vide order dated 16.02.2017, dismissed a number of writ petitions as not maintainable wherein the petitioners had sought to impeach the V.S.S. entered into by them on the ground that they were coerced or arm-twisted into doing so.

17. Additionally, the Hon'ble Lahore High Court vide judgment dated 27.05.2016 passed in writ petition No.5978/2011 titled S.M. Abu Talib Naqvi Vs. President/Chief Executive Officer PTCL (supra) held that the petitioners who had availed the V.S.S. package were not entitled to the relief granted vide Finance Division's Office Memoranda issued on 05.07.2010 regarding increase in pension, medical allowance and in family pension.

18. Now, it needs to be determined whether the petitioners are agitating a dispute arising from and related to the V.S.S. which they had opted for and had received benefits thereunder years ago. Retirement in the ordinary course would entitle an employee having pensionable service to pension. Under the terms of the V.S.S. opted for

by the petitioners, an employee with twenty years of service was eligible for early retirement, and upon such early retirement the employee was entitled to enhanced gross pension. It was also explained in the V.S.S. forms that the employees with twenty years of service would be paid their pension in addition to the benefits under the V.S.S. For the purposes of clarity, the said explanation is reproduced herein below:-

"قبل از وقت ریٹائرمنٹ کے لیے اہلیت:-"

وہ ملازمین جو ملازمت کے بیس 20 سال مکمل کر چکے ہیں وہ قبل از وقت ریٹائرمنٹ کے فوائد اور بہتر مجموعی پینشن حاصل کرنے کے لیے اہل ہیں اگر آپ قبل از وقت ریٹائرمنٹ کے اہل ہیں تو آپ ان فوائد کی مالی قدر و قیمت ٹیبل کی قطار میں دیے گئے عنوانات مبادلہ اور مابانہ پینشن میں ظاہر کی گئی ہے اگر آپ قبل از وقت ریٹائرمنٹ کے فوائد کے اہل نہیں ہیں ان میں سے ہر شعبہ (صفر) مجموعے کو ظاہر کرتا ہے۔ برائے مہربانی اس بات سے آگاہ رہیں کہ قبل از وقت ریٹائرمنٹ کے فوائد رضا کارانہ علیحدگی کے سمجھوتے سے علیحدہ دیے جائیں گے۔ یہ فنڈز پی ٹی سی ایل کی ریٹائرمنٹ کے طریقہ کار کے معیاری ٹائم لائن کے مطابق ہو گا۔

(Emphasis added)

19. It is an admitted position that none of the petitioners had twenty years of service to make them eligible for receiving enhanced gross pension under the V.S.S. Nonetheless, the petitioners assert that on account of the statutory protection under Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, their terms and conditions of service, including their entitlement to receive pension with periodic increases, could not have been adversely affected by the V.S.S. In other words, the petitioners want pension to be paid to them in the same manner as was being paid to the employees with pensionable service who had not opted for the V.S.S. It is with this avowed purpose in mind that the petitioners have thrown a challenge to the provision in the V.S.S. which only entitles an employee having twenty years of service to early retirement and pension. Therefore, the claim for pension or increase in pension made by the petitioners who had taken benefits under the V.S.S. could not be separated from the V.S.S.

20. But for the option for the V.S.S. exercised by the petitioners, they would have continued to remain in service for a period so as to make their service pensionable. There would have been no occasion for this dispute to have arisen had the petitioners not opted for the V.S.S. Had the petitioners completed twenty years of service, they would have been entitled to the payment of pension upon retirement. P.T.C.L., in its

written arguments, had taken a categorical stance that all those employees having twenty years of qualifying service were being paid their pension whereas employees having less than twenty years of qualifying service were not entitled to pension. As mentioned above, it is by virtue of the terms and conditions of the V.S.S. that the employees with twenty years of service were made eligible for early retirement and therefore to the payment of pension upon such retirement.

21. In the cases at hand, the petitioners did not retire by operation of any statutory rules but due to the option exercised by them for the V.S.S. Therefore, the ratio set in the cases of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), and State Bank of Pakistan Vs. Imtiaz Ali Khan (supra) are fully attracted in the instant cases. Since the law laid down by the Hon'ble Supreme Court has a binding force on this Court, and since the petitioners' claim arises from and is related to the V.S.S., I hold that the instant petitions are not maintainable.

22. In the case of State Bank of Pakistan Vs. Imtiaz Ali Khan (supra), the respondent had opted for the Voluntary Golden Handshake Scheme introduced by the State Bank of Pakistan that offered a voluntary exit to its employees on payment of retirement benefits under the existing rules in addition to other normal benefits as compensation. The writ petition filed by the respondent was accepted by the Hon'ble High Court directing the State Bank of Pakistan to pay commutation on the respondent's gross pension irrespective of the Golden Handshake Scheme. The Hon'ble Supreme Court, while allowing the State Bank of Pakistan's appeal against the judgment of the Hon'ble High Court, held *inter alia* that the respondent had not retired from service by application of the State Bank of Pakistan's Regulations but only after he had voluntarily accepted the Golden Handshake Scheme, which was to govern his case. In paragraph 28 of the said report, it was held as follows:-

"28. Since the respondent-employees have not retired from service of the appellant-Bank by application of the Regulations, 1980 nor under the Staff Regulations, 1993 but they have left the service of the appellant-Bank at their own exercising their own right of option by accepting the Scheme, therefore, their cases are squarely governed and controlled under the terms and conditions as was clearly spelt out in the Scheme itself. As no reference can be made as to how and against whom the respondents were differently treated in a

discriminatory manner, we have failed to understand as to how there was any violation of Article 25 of the Constitution.”

(Emphasis added)

23. Whether the petitioners had opted for the V.S.S. under coercion is a controversial question of fact, which cannot be resolved without the recording of evidence. This exercise is indeed not permissible in the Constitutional jurisdiction of this Court. Be that as it may, this Court, in the case of Pakistan Telecommunication Company Limited Vs. Muhammad Dilpazir (2016 PLC 367) dealt with the plea regarding the execution of the V.S.S. under coercion in the following terms:-

“In the instant case as well the respondents were given option to sever their ties from the petitioner company by way of Voluntary Separation Scheme. The terms and conditions of the Scheme were circulated amongst the employees/private respondents in English as well as Urdu and reservations/errors were invited; it is only after the referred fact that respondents executed Voluntary Separation Scheme. The bare reading of the terms and conditions of the Scheme shows that it is opted by the employees voluntarily without any coercion or duress and the terms/clauses mentioned therein are accepted. At the end of the Scheme there is also an acknowledgement and waiver to the effect that the employee acknowledges and accepts the terms and conditions and waives the right to challenge the same.”

24. It ought to be borne in mind that the petitioners having less than ten years of service had already received a separation bonus of Rs.3,00,000/- whereas employees/petitioners having service between 10 to 20 years had received Rs.4,50,000/- as a bonus in lump sum. This payment would not have been made to them had they not opted for the V.S.S. and had retired in the ordinary course. Additionally, the petitioners would not have received benefits like severance pay, medical benefits, leave encashment, housing allowance, and provident fund at a stage much before their retirement in the ordinary course had they not opted for the V.S.S.

25. The petitioners had also asserted that P.T.C.L. ought to have counted their training period towards their length of service while determining whether they were entitled to the enhanced gross pension on account of having twenty years of service. This matter was conclusively dealt with by the Hon’ble Supreme Court in the judgment dated 18.03.2019 passed in civil appeal No.2506/2016 titled Mst. Tasneem Fatima Vs. Pakistan Telecommunication Company Ltd. and connected matters in the following terms:-

“7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned / refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants’ actions are destructive of their claim to pension, because if they had twenty years or more of service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned Judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension.”

WHETHER THE PETITIONS ARE LIABLE TO BE DISMISSED DUE TO LACHES:-

26. Another reason why I feel that the instant petitions ought to be dismissed is the inordinate delay with which the petitioners have approached this Court. As mentioned above, the option for the V.S.S. was given to the petitioners on 15.11.2007 and they had a period of sixty days within which to exercise the said option. Admittedly, pursuant to the option for the V.S.S. being exercised by the petitioners, they were all relieved from service in the year 2008. Ever since then the petitioners have not been paid any pension. For the several years after exercising the option for the V.S.S. and receiving the benefits under the V.S.S., they remained silent and accepted their disentitlement to the payment of pension. Writ petition No.2345/2015 was filed on 13.06.2016, writ petition No.2114/2016 was filed on 31.05.2016; writ petition No.3108/2016 was filed on 16.08.2016, writ petition No.3625/2016 was filed on 07.10.2016, writ petition No.494/2018 was filed on 09.01.2018, writ petition No.483/2018 was filed on 09.01.2018, writ petition No.495/2018 was filed on 09.01.2018, and writ petition No.496/2018 was filed on 09.01.2018, i.e. more than nine years after the deadline for exercising the option for the V.S.S.

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 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, *laches* is an added reason why the instant petitions should be dismissed.

28. No plausible explanation was put forth for the inordinate delay in the filing of the petitions. The mere fact that the Hon'ble Supreme Court in the cases of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (*supra*), Masood Ahmad Bhatti Vs. Federation of Pakistan (2012 SCMR 152), Pakistan Telecommunication Employees Trust PTET Vs. Muhammad Arif (*supra*), Muhammad Riaz Vs. Federation of Pakistan through Secretary Ministry of Information Technology (*supra*), and P.T.C.L. Vs. Masood Ahmad Bhatti (*supra*) held *inter alia* that the departmental employees (not being civil servants *per se* after their transfer to P.T.C.) were entitled to be given the same service benefits as civil servants would be entitled to receive. In none of these cases was it held that the departmental employees who had opted for the V.S.S. would also be entitled to the protection of such service benefits regardless of whether the employee had become disentitled to them by virtue of having opted for the V.S.S. On the contrary, as mentioned

above, in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), it has been held that since the terms of the V.S.S. were not statutory, a writ petition with respect to the same was not maintainable. Additionally, in the unreported judgment dated 18.03.2019 passed by the Hon'ble Supreme Court in Civil Appeal No.256/2016 titled Mst. Tasneem Fatima Vs. Pakistan Telecommunication Company Limited and connected matters, it was held *inter alia* that employees with less than twenty years of service having opted for the V.S.S. and having received the separation bonus thereunder were held not to be entitled to their claim for pension. The Hon'ble Supreme Court had also spurned the petitioners' contention that their training period should have been counted towards their length of service. For the purposes of clarity, paragraph 6 of the said judgment is reproduced herein below:-

"We have noted that the appellants did not disclose the amounts received by them pursuant to VSS and particularly the amount of four hundred and fifty thousand rupees on account of the Separation Bonus. The appellants could only receive the Separation Bonus if they had less than twenty years of Qualifying Length of Service. The appellants also did not disclose that they had voluntarily participated in the VSS, accepted the calculations made by the Company and had executed the Waiver Form. This constituted nondisclosure of material facts. The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance petitions without considering whether they had a grievance. In our opinion, the appellants did not have a grievance as they had voluntarily severed their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employee who had less than twenty years of service could receive. The case of P.T.C.L. v. Masood Ahmed Bhatti, which as been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to an employee, may be set aside however, in the present case the Company did not take any action prejudicial to the appellants. On the contrary the appellants had voluntarily availed of the VSS, received payments thereunder, including Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service."

29. In view of the above, the objections taken by the learned counsel for P.T.C.L. to the maintainability of all the petitions succeeds. Consequently, all the petitions listed in "**Schedule-A**" hereto are dismissed as not maintainable. Since I have found these petitions not be maintainable, I have refrained from giving any finding on the merits

of the petitioners' claim. However, nothing observed herein shall operate to the detriment of any party in the proceedings before the competent forum. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

Uploaded By : Engr. Umer Rasheed Dar

"SCHEDULE-A"

S.No.	Case No.	Title
1.	W.P.No.2114/2016	Ghulam Sarwar and others Vs. Federation of Pakistan and others
2.	W.P.No.2345/2016	Waqar Muhammad and others Vs. Federation of Pakistan and others
3.	W.P.No.3108/2016	Rahmdil and others Vs. Federation of Pakistan and others
4.	W.P.No.3625/2016	Qasim Bin Ahmad and others Vs. Federation of Pakistan and others
5.	W.P.No.483/2018	Muhammad Asif Vs. Federation of Pakistan and others
6.	W.P.No.494/2018	Zulfiqar Ali Vs. Federation of Pakistan and others
7.	W.P.No.495/2018	Faizan Ahmad Vs. Federation of Pakistan and others
8.	W.P.No.496/2018	Syed Shahid Rafique Vs. Federation of Pakistan and others