

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**Civil Appeal No.1562/2020, C.M.A.259-Q/2020 in C.A.1562/2020
and C.A.1563/2020, C.M.A.260-Q/2020 in C.A.1563/2020,
C.A.1564/2020, C.M.A.262-Q/2020, C.A.1565/2020 and C.M.A.264-
Q/2020 in C.A.1565/2020**

(On appeal from the judgment dated 16.9.2020 passed by the High Court of Balochistan, Quetta in C.P.No.970/2015, CP.1011/2015,CP.1258/2015,1257/2018

Quetta Development Authority through Director General v. Abdul Basit and others

...Civil Appeal No.1562/2020

Quetta Development Authority through Director General v. Abdul Basit and others

..C.M.A.259-Q/2020

Quetta Development Authority thr: Director General v. Asif Ali and others

..C.A.1563/2020

Quetta Development Authority thr: Director General v. Asif Ali and others

..C.M.A.260-Q/2020

Quetta Development Authority thr: Director General v. Aziz Ahmed

..C.A.1564/2020

Quetta Development Authority thr: Director General v. Aziz Ahmed

..C.M.A.262-Q/2020

Quetta Development Authority thr: Director General v. Abdul Jalil

..C.A.1565/2020

Quetta Development Authority thr: Director General v. Abdul Jalil

..C.M.A.264-Q/2020

...Appellant/Applicant/Respondents

For the appellants

(In all cases):

Syed Ayaz Zahoor, ASC (Via Video Link, Quetta)

For the respondents

In CAs.1562-1563/20:

Mr. Gul Hassan Tareen, ASC (Via Video Link, Quetta)
Syed Rifaqat Hussain Shah, AOR

Respondent

(In CAs.1564-1565/20):

Nemo

Date of hearing:

31.5.2021

Judgment

MAZHAR ALAM KHAN MIANKHEL, J-. The Quetta Development Authority ('**QDA**') duly advertised different posts in various pay scales. After completing all the codal formalities under 'Quetta Development Authority Employees (Service) Regulations 2010', ('**Regulations**'), Departmental Selection Committee recommended the names of successful Applicants/candidates for appointment to different posts. The Director General ('**DG**'), QDA in exercise of powers conferred upon him under 'Quetta Development Authority Ordinance, 1978', ('**The Ordinance**'), vide its order dated 8th January, 2013 issued their appointment orders and resultantly almost all such appointees submitted their joining reports for their respective posts. But just after few days of such exercise, their appointments were withdrawn/cancelled by the DG, QDA, ('**the appointing authority**'), vide its two different orders dated 24th January, 2013 and 12th February, 2013. For ready reference both the orders are reproduced hereinbelow respectively:-

"QUETTA DEVELOPMENT AUTHORITY
Dated Quetta the 24 January 2013

ORDER

No.1-16/78(135) Admn: 1860-66/. In view of weak financial position of QDA, decreasing of interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid, the recruitment orders of staff issued vide this

office order No.1-16/78(135) Admn: 1574 to 1732 dated 8th January 2013 and No.1-16/78(135) Admn: 1733 to 1855 dated 9th January 2013 are hereby withdrawn/cancelled.

Sd/-
DIRECTOR GENERAL
Quetta Development Authority"

ORDER - dated-12.2.2013:

"No.1-16/78(135) Admn:525-30). In view of weak financial position of QDA, decreasing interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid, the recruitment orders of staff issued vide this office order No.1-16/78(135)Admn: 1553-60 dated 8th January 2013, office order No.1-16/78(135) Admn: 1561-67 dated 8th January 2013 and No.1-16/78(135) Admn: 1567-74 dated 8th January 2013 are hereby withdrawn/cancelled".

2. The said orders were questioned before The High Court of Balochistan, Quetta ('**The High Court**'). The High Court vide its detailed and elaborate consolidated judgment dated 12th January, 2015 rendered in different Writ Petitions, filed by some of the affectees, set aside the above noted withdrawal/cancellation orders by allowing their Writ Petitions, and declared the said orders to be null and void having no legal effect and their appointment orders were restored. This Court vide its judgment dated 18th September, 2015 passed in Civil Petition No.167/2015, etc dismissed the Civil Petitions and refused to grant the leave to appeal by upholding the judgment of The High Court dated 12th January, 2015. The said order was complied with and acted upon to the extent of the Petitioners of the Writ Petitions.

The present Respondents, being the remaining affectees of the withdrawal/cancellation orders (*noted above*) regarding their appointments, submitted their applications for reinstatement in the light of judgments rendered by The High Court and The Supreme Court noted

above, but the present Appellant-DG, QDA, turned down their request. They being aggrieved and having no other remedy, approached The High Court with their respective Constitutional Petitions which were allowed vide the impugned judgment dated 16th September, 2020 and the Respondents, herein, were ordered to be reinstated to their respective posts in the light of recommendations of the Departmental Selection Committee and their respective appointment orders. The DG, QDA, feeling aggrieved, approached this Court with leave of this Court dated 23rd December, 2020.

3. Learned counsel for the parties were heard and record of the case perused. The main contention of the learned counsel for the Appellant was that the Constitution Petitions before The High Court filed by the Respondents were hit by the principle of laches as many of the same were filed by the Respondents after about two years and ten months. Besides the above, his next stance was that the Respondents were project employees and as per terms and conditions of their appointment orders, their services were liable to termination without assigning any reasons. Whereas the learned counsel for the Respondents, simply sought for the alike treatment to the Respondents as was meted out to the similarly placed employees of QDA who were appointed with the Respondents vide the same appointment orders dated 8th January, 2013 on similar terms and conditions of service, as per mandate of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (**The Constitution**). He further argued that principle of laches in such circumstances, loses its force. He went on to maintain that orders of withdrawal/cancellation of appointment orders had earlier been struck down qua the litigating affectees in earlier round of litigation and the same has attained finality; validity of which now cannot be considered/challenged in the present set of Writ Petitions.

4. Perusal of the record would reveal that process and procedure of appointment of the present Respondents and the Petitioners of earlier Writ Petitions, as noted above, had never been a question under dispute. It was the subsequent two orders of withdrawal/cancellation of the appointments made by the DG, QDA, as reproduced above. The legality/validity of the said two orders was elaborately discussed and considered by The High Court in its earlier consolidated judgment dated 12th January, 2015 and the same was upheld by this court vide its judgment dated 18th September, 2015. The present Appellant had contested the earlier round of litigation, and was fully aware of the entire episode in the Courts. The Appellant, (the same authority/person) in the present round of litigation, has once again raised the same points of facts and the law regarding nature of appointments and then dismissal from service of the Respondents and the learned counsel for the Appellant, even argued the same points today in the Court. The earlier part of the litigation has come to an end and has attained finality between the parties. That, questions once decided by the competent Court of law, cannot be re-agitated again by the Appellant. This aspect/issue will act as *res judicata* against him precluding him to question the order of appointments and then dismissals. The pros and cons of the appointments and the dismissal orders of the Petitioners in earlier round of litigation, were thoroughly considered by The High Court and then upheld by this Court. These have attained finality, not open to any further dilation and consideration.

The present round of litigation has been narrowed down only to the question of entitlement of the Respondents as per the mandate of Article 25 of the Constitution. Whether they can be extended the same relief/benefit as was extended to their similarly placed colleagues through the intervention of the Court in an earlier round of litigation. We in the peculiar circumstances of the case, legally can only

look into this aspect of the case. It's a matter of record that present Respondents were appointed on the same terms and conditions of service as that of the Petitioners of earlier Writ Petitions who have been given relief by the Court by restoring their orders of appointment and declaring the orders of withdrawal/cancellation as null and void, having no legal effect. The present Respondents were hired and fired together in the same manner as Petitioners of earlier Writ Petitions and are standing on the same pedestal as the earlier one. Both the sets of appointees cannot be separated from each other with regard to their appointments and dismissal. The only difference between the two sets is that the earlier group is the one who litigated for their rights and second group, the present Respondents, did not go to litigation earlier and through instant litigation has sought the relief already given to the first group who litigated. To claim such a relief is their fundamental right and the Constitution extends protection to their such right and as such they cannot be treated differently. The scale of justice has to be balanced on the same pattern. This is the mandate of Article of 25 of the Constitution. The law of the land in this regard has become well established. References in this regard can be made to the cases of Hameed Akhtar Niazi v. Secreatry, Establishment Division (1996 SCMR 1185), Tara Chand v. Karachi Water and Sewerage Board (2005 SCMR 499), Government of Punjab v. Sameena Parveen (2009 SCMR 1) and Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others (2014 SCMR 1336). When we hold that the Respondents being equally and similarly placed as the Petitioners of earlier Writ Petitions, then they become entitled to the same relief which was extended to them.

5. In view of the law laid down by this Court (noted above), we cannot non-suit the Respondents and allow the laches to be a stumbling block in the way of dispensation of justice. This will amount to a refusal of a

fundamental right accrued in their favour after earlier decisions of The High Court and this Court. The rule of laches is applied in accordance with facts and circumstances of each case. It cannot be made a rule of universal application. The question of laches, in the circumstances loses its force. The earlier judgment of The High Court was upheld by this Court and has attained finality. So, The High Court has very aptly dealt with the matter in favour of present Respondents in the present round of litigation.

6. We in the circumstances find no merit; hence these appeals are dismissed with no order as to costs. All the CMAs are also disposed of accordingly.

Chief Justice

Judge

Judge

Islamabad,
31st May, 2021
Sarfraz /-
"Not approved for reporting"