

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

*Ch.Muhammad Ibrahim Zia, C.J.*  
*Raja Saeed Akram Khan, J.*

Civil Appeal No.197 of 2017  
(PLA filed on 15.06.2017)

Tanvir Tahir son of Muhammad Fazal, r/o  
Chaman Abad Dabsi Chakrali, Tehsil Fatehpur  
Thakyala, District Kotli.

....APPELLANT

**VERSUS**

1. Azad Government of the State of Jammu and Kashmir through Secretary Electricity Department having his office at Muzaffarabad.
2. Chief Engineer Electricity Department, Muzaffarabad.
3. Selection Committee for Sub Engineers through its Chairman and Secretary Electricity Department having their offices at Civil Secretariat, Muzaffarabad.

4. Shafiq Ahmed son of Muhammad Razzaq Sub Engineer Electricity Department, Kotli.
5. Muhammad Wasim Akram son of Muhammad Anjum, Sub Engineer, Electricity Department, Kotli.
6. Awais Farooq son of Muhammad Farooq, Sub Engineer, Electricity Department, Kotli.
7. Muhammad Wasim son of Muhammad Hanif, Meter supervisor, Electricity Department, Kotli.
8. Khurram Riaz son of Muhammad Riaz, Sub Engineer, Electricity Operation Division, Kotli.
9. Muhammad Salim son of Muhammad Yousaf, Sub Engineer, Electricity Operation Division, Kotli.
10. Aamer Altaf, Sub Engineer, Electricity Operation Division No.1, Kotli.
11. Amjad Rahim, Sub Engineer, Electricity Operation Division No.1, Kotli.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 27.04.2017 in writ petition No.1850 of 2011)

FOR THE APPELLANT: Sardar Ghulam  
Mustafa and Ch.M.  
Ashraf Ayaz,  
Advocates.

FOR THE RESPONDENTS: Raja Saadat Ali Kiani,  
Additional Advocate-  
General and Mr.Riaz  
Naveed Butt,  
Advocate.

Date of hearing: 19.03.2019

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— This appeal by leave of the Court has been directed against the judgment of the High Court dated 27.04.2017, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the appellant, herein, filed a writ petition before the High Court, alleging therein, that the Chief Engineer Electricity Department, Muzaffarabad advertised 03 posts of Sub-Engineer (BPS-11) for District Kotli along with some other posts for distinct units. The appellant participated in the selection

process and his name was placed at serial No.14 of the merit list. The department in violation of law, appointed more than 08 persons on the strength of the advertisement issued only for 03 posts. The appellant also claimed better qualification and performance during his test and interview before the selection committee. It was further contended that Shafiq Ahmed, respondent No.4, herein, applied for job on the basis of fake credentials, so, he was not eligible for appointment. The learned High Court after necessary proceedings dismissed the writ petition vide impugned judgment dated 27.04.2017, hence, this appeal by leave of the Court.

3. Sardar Ghulam Mustafa and Ch.Muhammad Ashraf Ayaz, Advocates, the learned counsel for the appellant argued that the impugned judgment is based on non-adherence to the statutory provisions of law

which is liable to be vacated. They submitted that the principle of *laches* was not attracted in the instant case and the learned High Court while wrongly applying the same has dismissed the writ petition. The learned High Court failed to adhere to the fact that the principle of *laches* cannot be applied in routine in every case. They contended that valuable rights of the appellant were involved in the matter but the learned High Court instead of deciding the case on merits dismissed the same on technical ground which is against the settled norms of justice. They added that in the case in hand it is clear from the record that the selection process was non-transparent; but the learned High Court while shutting the eyes dismissed the writ petition which is not warranted under law. They forcefully contended that during the pendency of writ petition the appellant, herein, moved

an application for amendment in the writ petition which was allowed and thereafter the appellant filed the amended writ petition, wherein, he challenged the appointment orders of the private respondents and also impleaded the selection committee as party in the line of the respondents; thus, the learned High Court after allowing the amendment application could not dismiss the writ petition on the ground that the appellant made the amendment at the belated stage as the amendment shall take effect from the date of institution of the original writ petition. They referred to and relied upon the case law reported as *Mst. Barkat Bibi v. Khushi Muhammad and others* [1994 SCMR 2240], *Director General Health Services v. Muhammad Tariq Aziz and others* [2000 SCR 256], *Secretary for Prime Minister and 3 others v. Muhammad Aslam and 5 others*

[2000 SCR 263], *Nazar Hussain v. Additional District Judge, Chakwal and 4 others* [2004 YLR 322], *Amjad Ali Khokhar v. Chief Engineer and 3 others* [2017 SCR 87] and *Muhammad Sarwar and another v. Ufone and 7 others* [2018 SCR 518].

4. On the other hand, Mr. Riaz Naveed Butt, Advocate, and Raja Saadat Ali Kiani, Additional Advocate-General, strongly controverted the arguments advanced by the learned counsel for the appellant. They submitted that the appointments of the private respondents were made validly. The appellant challenged the selection process in the year 2011, without arraying the selection committee as party in the line of the respondents and after a lapse of 4 years' period he moved application for amendment in the writ petition, therefore, the principle of *laches* was fully attracted and the learned High

Court has not committed any illegality while applying the same. They referred to and relied upon the case law reported as *AJK Government and 3 others v. Fehmida Abdul Hussain and 8 others* [2001 SCR 368], *Tabassum Arif v. Azad Government and others* [2013 SCR 134] and *Fatima Bibi v. Najma Parveen and 15 others* [2016 SCR 15].

5. We have heard the arguments and gone through the record made available along with the impugned judgment. As the learned High Court has dismissed the writ petition mainly on the point of *laches*, therefore, we deem it proper to examine; whether the learned High Court has rightly applied the principle of *laches* or not. The perusal of the record shows that the appellant challenged the selection process and some of the appointment orders issued in pursuance thereof, by filing writ petition on 30.11.2011. It is an admitted



fact that the appellant challenged the selection process without arraying the selection committee as party in the line of the respondents; moreover, the appellant also failed to array some of the appointees as party. On 12.03.2012, the Electricity Department filed the written comments, wherein, an objection was raised that the writ petition has been filed without impleading the necessary party, therefore, the same is liable to be dismissed. The appellant even after raising the aforesaid objection by the other side remained silent for a considerable period and on 16.10.2015, filed an application for amendment in the writ petition. From the scrutiny of the record it transpires that no plausible explanation in respect of delay has been offered by the appellant. Although, we agree with the stance taken by the learned counsel for the appellant that the principle of

*laches* cannot be applied in routine in every case, however, in view of the settled principle of law when negligence of a party is proved and due to its negligent conduct, a right is accrued to the other party then principle of *laches* is fully attracted. In a recent unreported judgment titled *Taimoor Khalid v. Muhammad Azeem* (civil appeal No.337 of 2018, decided on 14.02.2019), same proposition came under consideration of this Court, wherein, it has been held that:-

“Before appreciating this crucial point, we deem it proper to observe here that in view of the settled principle of law the doctrine of *laches* would be attracted where the party invoking writ jurisdiction by his conduct has waived his right or on account of his negligence the other party would be put in a situation of disadvantage if the remedy is allowed to such person at a belated stage. Keeping in mind this principle of law, we have examined the record to appreciate the point of *laches*. The perusal of the record shows that the respondent challenged the validity of the selection process conducted and

completed by PSC on 16.03.2016, after a period of more than 10 months by filing writ petition before the High Court. The explanation offered by the respondent, in respect of the delay caused in filing the writ petition, is that he moved an application before the Chairman PSC for redressal of his grievance and after awaiting its disposal he filed the writ petition. The record shows that PSC not only disallowed the respondent to participate in the interview rather amongst appellant, herein some other candidates were also made affected by the same decision of PSC. The other candidates filed writ petitions before the High Court which were accepted on 20.01.2017 and admittedly in the light of the direction issued by the High Court, the candidates have finally been selected. The respondent remained mum for a considerable time and after the decision made by the High Court in favour of the appellant and others, he approached the High Court by filing writ petition and tried to get the relief as was granted to the others. According to the respondent's own version, taken in ground No.12, of the memo of writ petition, at the time of filing application before the Chairman PSC, he was informed by PSC that decision on his application shall be made within a period of one month; but even after lapse of the specific period the respondent remained silent and

no plausible justification in this regard has come on the record. The case of the respondent when adjudged on the touchstone of the principle of law, discussed hereinabove, it postulates that the doctrine of *laches* was fully attracted as the negligence on the part of the respondent is evident, moreover, by lapse of time, due to the negligence of the respondent, a valuable right was accrued to the appellant as he has finally been selected, therefore, in such a situation, the writ was liable to be dismissed on the sole point of *laches*."

6. The argument of the learned counsel for the appellant that the learned High Court after allowing the amendment in respect of impleadment of necessary party, could not dismiss the writ petition on the point of *laches* as when an amendment is incorporated in the pleadings with the permission of the Court, that will take effect from the date of filing of original writ, has also no substance. In our view, when on filing of amended writ petition the respondents filed the amended written statements and took the stance that the

principle of *laches* is attracted in the case then it was enjoined upon the learned High Court to attend and resolve this point, moreover, under law where a new party is added after the institution of a *lis*, to the extent of that party, the *lis* will be deemed to have been instituted when such party was added. Reference may be made to a case reported as *Muhammad Iqbal v. Mirza Begum and others* [1992 SCR 190], wherein, it has been held that:-

“.....in proper cases, an amendment can be allowed at any stage of the proceedings with the exception that where a new plaintiff or defendant is added after the institution of the suit, the suit shall, as regards him be deemed to have been instituted when he was so made a party.”

Thus, the afore-discussed argument of the learned counsel for the appellant being not supported by law is hereby repelled. As we have reached the conclusion that in view of the peculiar facts of the instant case the principle of *laches* was fully attracted and the

learned High Court has rightly applied the same, therefore, there is no need to discuss the other points involved in the matter. The case law referred to by the learned counsel for the appellant involving different propositions is not applicable in the case in hand.

In view of the above, this appeal being devoid of any force is hereby dismissed with no order as to costs.

Mirpur,  
.....03.2019

**JUDGE**

**CHIEF JUSTICE**

Tanvir Tahir v. Azad Govt. & others

**ORDER:-**

The judgment has been signed. The same shall be announced by the Addl. Registrar after notifying the counsel for the parties.

Mirpur,  
20.03.2019

**CHIEF JUSTICE**

**JUDGE**