

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	23.01.2017	<p align="center"><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p align="center">Appeal No. 106/2014</p> <p align="center">Bibi Ayesha Versus The Director of Education (FATA) FATA Secretariat Peshawar and others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for respondents present.</p> <p>2. Mst. Bibi Aisha D/O Hamid Gul hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 11.07.2011 vide which appointment order of the appellant was cancelled and Mst. Bibi Safia (private respondent No. 4) was appointed in her place.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was appointed as Caller (BPS-2) vide order dated 15.09.2007 at Government Girls Higher Secondary School No. 2 Sadda Kurram Agency which order was cancelled vide impugned order dated 11.07.2011 and private respondent No. 4 was appointed in her place vide order dated 06.08.2011 where-against departmental representation of the appellant dated 10.10.2013 was not responded and hence the instant service appeal on 22.01.2014.</p>

A
23-01-17

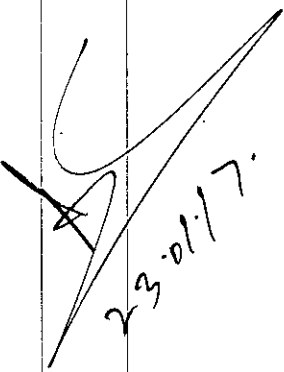
4. Learned counsel for the appellant argued that the impugned order is against facts and law as the private respondent No. 4 was appointed as Land Owner of the land granted to the said school which practice was condemned by the superior courts. Placed reliance on case law reported as 1999-SCMR-2308 and 2007-SCMR-296. That the point of limitation would not come in the way of the appellant as the impugned order is void. He further argued that no opportunity of hearing was afforded to the appellant which is the fundamental right of each and every individual including the appellant.

5. Learned Government Pleader has argued that the appeal was not preferred within time and as such the same was not entertainable. Reliance was place on case law reported as 2011-SCMR-676.

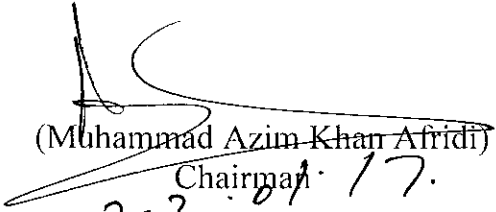
6. We have heard arguments of learned counsel for the parties and perused the record.

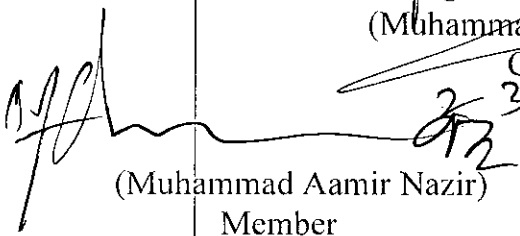
7. We do not deem appropriate to go deep into merit of the case as it may prejudice the stance of either of the parties as we are of the view that before passing the impugned orders the respondents were obliged to have afforded an opportunity of hearing to the appellant. The appellant was not treated in accordance with law and the impugned order is prima-facie violative of the rules including the principles of justice and fair play and, therefore, void.

8. For the foregoing reasons we accept the present appeal set

A handwritten signature in black ink, followed by the date '23-01-17' written vertically.

aside the impugned order dated 11.09.2011, reinstate the appellant in service with directions to the competent authority to first afford opportunity of hearing to the appellant and thereafter pass orders deemed appropriate and in accordance with law within a period of 2 months from the date of receipt of this judgment. The issue of entitlement of appellant to service benefits shall be subject to order of the competent authority. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Azim Khan Afridi)
Chairman


(Muhammad Aamir Nazir)
Member

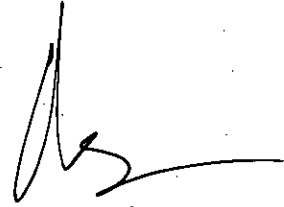
ANNOUNCED
23.01.2017

23.09.2016

Clerk to counsel for the appellant and Mr. Daud Jan, Supdt
alongwith Mr. Ziaullah, GP for respondents present. Arguments
could not be heard due to general strike of the Bar. To come up for
arguments on 23.01.2017.



Member



Member

10

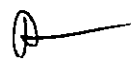
13.08.2015

Counsel for the appellant and Assistant A. G for official respondents present. The Learned Assistant A.G relies on the written reply already submitted by respondents No. 1 and 2 on behalf of respondent No. 3 while none present for private respondent No. 4 nor written statement submitted. Proceeded ex-parte. The appeal is assigned to D.B for rejoinder and final hearing for 3.12.2015.


Chairman

03.12.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted copy of which is placed on file. To come up for arguments on 11.5.2016.


Member


Member

11.05.2016

Counsel for the appellant and Mr. Usman Ghani, Sr. GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted the case. To come up for arguments on 23.9.2016.


Member


Member

21.11.2014

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 24.02.2015.


Reader

8 24.02.2015

Counsel for the appellant and Mr. Sohbat Khan, AEO Sadda alongwith Addl: A.G for official respondents No. 1 to 3 present. Waklat Nama on behalf of private respondent No. 4 by Muhammad Nasir Alizai, Advocate submitted. To come up for written reply/comments before S.B on 26.05.2015.


Chairman

9 26.05.2015

Agent of counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for official respondents present. None present for private respondent No. 4 due to strike of the Bar. Comments on behalf of official respondents No. 1 and 2 submitted, while learned Addl: A.G requested for further time on behalf of respondents No. 3. To come up for written reply/comments on behalf of remaining official respondent No. 3 and private respondent No. 4 on 13.8.2015.


Chairman

Appeal No. 106/2014
Mst. Bibi Ayesha:

6. 15.07.2014

Counsel for the appellant and Mr. Ziaullah, GP for the

respondents present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 06.08.2011, she filed departmental appeal on 10.10.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 22.01.2014. He further contended that the appointment order of the appellant has been cancelled by Political Agent, Kurram Agency (respondent No.3) is not a competent authority.

The learned Government Pleader while assisting the Tribunal was of the view that the instant appeal is time barred and not maintainable in its present form, therefore, it is requested that the instant appeal may be dismissed.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 21.10.2014.

Appellant Deposited
Security & Process Fee
Rs. 350/- Bank
Receipt is Attached with File.

Member

7. 15.07.2014

This case be put before the Final Bench I for further proceedings.

Chairman

21-10-14


The Hon'ble Bench is on Ben,
Therefore, case is adjourned to 21-11-14

Reside

3,
13.03.2014

Counsel for the appellant and requested for adjournment.

Pre-admission notice also be issued to the GP to assist the
Tribunal on the point of limitation. To come up for preliminary ^{hearing} on
28.04.2014.


Member

4
28.04.2014

Clerk of counsel for the appellant and Mr. Ziaullah, GP for
the respondents present. Clerk of counsel for the appellant
requested for adjournment. Request accepted. To come up for
preliminary hearing on 28.05.2014.


Member

5
28.05.2014



Clerk of counsel for the appellant and Mr. Ziaullah, GP for
the respondents present. Clerk of counsel for the appellant
requested for adjournment as counsel for the appellant was busy
in the Peshawar High Court Peshawar. Request accepted. To
come up for preliminary hearing on 15.07.2014:


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 106/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22/01/2014	<p>The appeal of Mst. Bibi Ayesha presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	27-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-3-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. 106 /2014

Bibi Ayesha.

VS

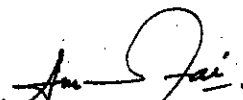
Education Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Domicile Certificate	- A -	04
3.	Copy of Appointment Order (15.09.2007)	- B -	05
4.	Copy of Letter dated 11.7.2011	- C -	06
5.	Copy of Order dated 6.8.2011	- D -	07
6.	Appeal.	E	08
7.	Vakalat nama	---	09

APPELLANT
Mst. Bibi Ayesha

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. 106 /2014

Mst. Bibi Ayesha D/O Hamid Gul,
R/O Shamkai Central, Kurram Agency.

K.W.P. Peshawar
103
22/10/2014

PETITIONER

VERSUS

1. The Director of Education, (FATA), FATA Secretariat Warsak Road, Peshawar.
2. The Agency Education Officer, Kurram Agency, Parachinar.
3. The Political Agent, Kurram Agency at Parachinar.
4. Mst. Bibi Safia D/O Noor Gul. GGPS No.2, Sadda *Kurram Agency*

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE CANCELATION OF APPOINTMENT OF THE PETITIONER DATED 11.09.2011 WHEREBY THE APPELLANT'S APPOINTMENT ORDER WAS CANCELLED AND THE RESPONDENT NO.4 RECOMMENDED FOR APPOINTMENT, WHICH IS ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, UNCONSTITUTIONAL AND INEFFECTIVE UPON THE RIGHT OF THE APPELLANT AND NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

22/11/2014

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 11.09.2011 MAY BE SET ASIDE AND THE RESPONDENT MAY BE DIRECTED TO RESTORE THE APPOINTMENT ORDER OF THE APPELLANT AS CALLER WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

.....

RESPECTFULLY SHEWETH:

FACTS

1. That the appellant is the citizen of Pakistan and belong to Kurram Agency, Parachinar. Moreover being the Pakistani citizen, the appellant has every legal right duly protected by the Constitution of Pakistan. Copy of Domicile is attached as Annexure –A
2. That the appellant was appointed as caller by the competent authority vide order dated 15.9.2007 at GGPS No. 2 Sadda, Kurram Agency (Lower). The appellant's performance since then was upto the entire satisfaction of her superior and there were no complaints against the appellant. Copy of the order is attached as Annexure-B.
3. That all of sudden on 11.9.2011, the Political Agent, Kurram Agency issued a letter to AEO (Respondent No.2) where in the cancellation of appointment order of the appellant and appointment of Respondent No.4 was recommended. Copy of letter is attached as Annexure-C.
4. That in pursuance to the above mentioned letter of Respondent No. 3, the Respondent No.2 cancelled the appointment order of the appellant and appointed the Respondent No.4 in an arbitrary manner. Copy of the Order is attaché as Annexure-D.
5. That the appellant also filed appeal before the authority but the same met dead response, Hence the present appeal on the following grounds amongst the others.

GROUND:

- A) That the cancellation of appointment order of the appellant is against the law facts, norms of justice and material on record, therefore, not tenable.
- B) That the appellant has been condemned unheard and without providing a chance of defence to the appellant, her appointment order was cancelled. Thus, the principle of Audi Ateram Partem is violation.
- C) That the appellant was working as Caller since 15.09.2007 and such valuable rights were accrued to the appellant Thus,

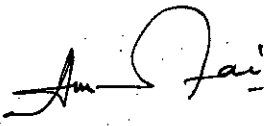
under the principles of Locus Poenitentiae, the appellant's appointment could not be cancelled unilaterally.

- D) That the action of the respondents is without lawful authority and illegal, because removing an employee in such arbitrary manner is not sustainable in the eyes of law.
- E) That the appellant's appointment order was cancelled on the basis of "Land Grant" which the Honourable Supreme Court has held as "Sale of Public Office" in many cases. Thus, the cancellation order is totally the violation of the Supreme Court's Judgment.
- F) That the appellant has not been treated according to law and rules. Thus, the cancellation order of the appellant is against the norms of justice and various Articles of the Constitution.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.


APPELLANT
Mst. Bibi Ayesha

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

A

(b)

(4)

No 659 Ag, Dated Parachinar the 20-01-2011

OFFICE OF THE POLITICAL AGENT KURRAM AGENCY

ATTESTED

[Signature]

Political Naib Tehsildar
Central Kurram
13-01-2011



Certified that Mr. / Mrs. BIBI AISHA
Son/daughter of Mr. HAMID GUL Belongs
to a recognized Tribe of ALI SHER ZAI Section MASARKHEC
Sub Section MADIR KHAN NAWAS and his/her father is/was a permanent
bonafide resident of village SHAMIKAI CENTRAL Kurram Agency.

He/She is an eligible candidate to avail himself/herself of the seats reserved for
Tribal Areas Kohat Division Kohat Backward Area Kurram Agency.

[Signature]
Tehsildar M. J. Alizai
Political Naib Tehsildar
Central Kurram
PNT/CK
13-01-2011

[Signature]
Assistant Political Agent
ASSISTANT POLITICAL AGENT,
Central Kurram Saddle

[Signature]
Political Agent
Political Agent, Kurram



Office Seal

Asstt. Agency Education Officer
Lower Kurram

ATTESTED

2008 B
B/S

APPOINTMENT

Consequent upon the approval/Corrigendum by the Political Agent Kurram Agency vide his approval No.2912-13/AG/Appt/LK dated 6.9.07, Mst Bibi Ayesha W/O Ghulji Gul caste Alisherzai r/o Sadda is hereby appointed as Caller in Govt.Girls Primary School Sadda Lower Kurram Agency against at newly created post in BPS No. (2) plus usual allowances as admissible under the rules, with effect from the date of her taking over charge.

Note: -

1. She is directed to produce her Medical Certificates from the Medical Superintendent A.H.Q. Hospital Parachinar.
2. Her age should be between 18-40 years.
3. Her appointment are purely made on temporary basis and liable to termination at any time without assigning any notice, in case they wants to resign their post, they will have to give one month prior notice or forfeit one month pay in lieu thereof.
4. Charge report should be submitted to this office in duplicate.
5. His services will be considered regular but without pension/gratuity in terms of section 19 of the NWFP Civil servants Act,1973 as amended vide NWFP Civil Servant amendment Act 2005 but will be entitled to contributory provident Fund at such rate as may be prescribed by the Govt.

(S.Younas Ali Shah)
Agency Education Officer
Kurram Agency Parachinar

Wd No. 9606-11 /Edu Dated 15/09 /2007.
Copy to the:-

1. Political Agent Kurram Agency w/r to his No. and date cited above for information please.
2. Agency Accounts Officer Kurram Agency at Parachinar.
3. Accountant Local Office.
4. A.A.E.O concerned.
5. Candidates concerned
6. Office file.

ATTESTED

Agency Education Officer
Kurram Agency Parachinar

OFFICE OF THE
POLITICAL AGENT, KURRAM

No: 3488-89/PAK/AG/Apptt: (UK)
Dated Parachinar the 11/07/2011

To

The Agency Education Officer,
Kurram.

Subject: NOMINATION OF CALLER FOR GOVT: GIRLS PRIMARY SCHOOL-2
SADDA

MEMORANDUM

Consequent upon the recommendation made by Assistant Political Agent, Lower Kurram Sadda vide his memo: No:688/APA(LK) dated 05.04.2011, as per Government policy in vogue, regarding entitlement of land owner to avail the privileges of Class-IV the nomination order No: 2912-13/AG, dated 06.09.2007 (Serial No:2) is hereby cancelled. Mst: Bibi Safia daughter of Haji Noor Gul caste Paracha of Sadda, who have provided land for construction of Govt: Girls Primary School No:2 Khan Baba is hereby nominated for appointment as caller in the said School.

Mahabadi
Political Agent, Kurram

No: and date even

Copy forwarded to the Assistant Political Agent, Lower Kurram Sadda with reference to his Memo: No:688/APA(LK) dated 05.04.2011.

Political Agent. Kurram.

ATTESTED
A

اپر: 05.04.2011
نہجی کلاک کورم

Attention Dawood litigation

D
 (7) (9)

OFFICE OF THE AGENCY EDUCATION OFFICER, KURRAM AGENCY.

Appointment

Cosequent upon the cancellation of appointment in respect of Mst: Bibi Ayesha Caller GGPS Sadda No.2 lower Kurram Agency vide PA Kurram No.3488-89/PAK/AG?Apptt:/UK dated 11-07-2011; Mst: Bibi Sofia D/O Haji Noor Gul resident of village Sadda caste Paracha is hereby appointed as Caller in GGPS Sadda No.2 lower Kurram due to land owner in BPS-01 plus usual allowanees as admissible under the rules purely on contract basis with effect from the date of her taking over charge:

TERMS/ CONDITIONS.

1. She is directed to produce her Medical certificate from the Medical Supdt: A.H.Q.Hospital Parachinar.
2. Her appointment is purely made on temporary basis and liable to Termination at any time without assigning any notice, In case She wants to resign her post, she will have to give one month prior notice or forfeit one month pay in lieu thereof.
3. Her age should be between 18-45 years.
4. Her appointment will be considered as regular but without pension/Gratuity in terms of section -5 of K.P.K. civil servants amendment Act:2005 but will be entitled to contributory provident fund at such rate as may be prescribed by the Government.
5. She is also directed to provide her CNIC attested copy.
6. Charge report should be submitted to all concerned.

Alau
 (Sayed Abbas Ali Shah Kazmi)
 Agency Education Officer
 Kurram Agency Parachinar.

Endst No. 2373-76 /Edu: Dated 6/8 /2011.

Copy forwarded for information to the:-

1. Political Agent Kurram Agency .
2. Additional A.E.O. Lower/Central Kurram at Sadda.
3. Agency Accounts Officer Kurram Agency.
4. Candidate Concerned.
5. Office File.

Alau
 Agency Education Officer
 Kurram Agency Parachinar.

Received on 4/1/12

Handled over by Ahmed Gul CNIC No 21307-6863898-5

4/1/12

*high
 04/01/12*

ATTESTED

(Signature)

حکومت صاحب ڈائری صاحب
حکومت تعلیم (فاٹا) صدر ضلع ٹوبہ ٹیکسٹائل
صاحب عالی

موجودہ گڈ آرڈر ہے۔ کہ فروم کو گڈ آرڈر گزرتا ہے اس کے سکول
کے بارے میں محنت کا لکڑی کو 11891APA مورخہ 14/6/2007
تا غیر تسلیم کیا۔ فروم نیابت خوش اسلوبی اور ایسا نڈاری کا
سہارا ہے اس فراخ دلی سے فراخ جام دے دیں کہ سید اجا نیک
کے بارے میں وہ ایسا نڈاری کا فروم کا سرویس فرم لکڑی کے اہتمام
سہارا ہے۔ اور تھوڑے سے حقیر فروم کا قوی دوسرا
سید درویش اہل نیابت ہے۔ سید اجا نیک صاحبان کے خدمت
کے بارے میں اہتمام فراخ جام دے دیں کہ سید اجا نیک
فروم کے معاشی مسائل اور ذہنی پریشانی سے بچے۔
مورخہ 10/10/2013

سید درویش صاحب

حکومت تعلیم (فاٹا) صدر ضلع ٹوبہ ٹیکسٹائل

ATTESTED

(Signature)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Bibi Ayesha (Appellant)
(Petitioner)
(Plaintiff)

VERSUS


Education Dept. (Respondent)
(Defendant)

I/We Bibi Ayesha (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 21-1-2014

[Signature]
(CLIENT) 

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 106/2014

Mst. Bibi Aisha D/O Hamid Gul R/O Shamkai Central Kurram AgencyAppellant

.....VERSUS.....

1. Director Education FATA, FATA Secretariat Peshawar.
2. The Agency Education Officer Kurram Agency Parachinar.
3. The Political Agent Kurram Agency at Parachinar.
4. Mst. Bibi Safia D/O Noor Gul GGPS No. 2 Sadda.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 AND 2 IN APPEAL NO. 106/2014.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action/locus standi to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed materials facts from this Honorable Tribunal.
4. That the appeal is not maintainable in its present form.
5. That the appeal is bad due to non-joinder and mis-joinder of necessary parties.
6. That the appellant is estopped by his own conduct to bring the present appeal.

Reply on facts.


1. No Comments pertains to record.
2. No Comments pertains to record.
3. Incorrect. The Competent Authority recommended the R.No. 4 for appointment on the basis of land donor as she has provided land for the construction of Govt Girls Primary School No.2 Khan Baba Kurram Agency (copy is attached as Annexure-A).
4. Incorrect. As R.No. 4 is the land donor therefore the Competent Authority recommend him for appointment in the interest of Public Service.
5. The appellant has got no cause of action to file instant appeal.

Grounds.

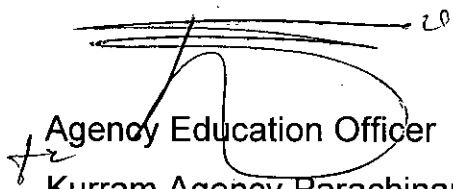
- A. Incorrect. The cancellation order of the appellant is according to law and norm of justice as she is not land donor/owner of the land.
- B. Incorrect. It has been mentioned in the appointment order of R NO.4 that the appellant is not land donor.
- C. Incorrect. As explained in Para-B above.
- D. Incorrect. The respondents have acted according to law.
- E. Incorrect. Each & every case has its own merit and circumstances.
- F. Incorrect. The Competent Authority cancelled the appointment order of the appellant as she was not land donor and has not provided land for the continuation of the school.
- G. The respondents also seeks permission to advance other grounds at the time arguments.

In the light of above facts it is most humbly prayed that the appeal may be dismissed in favor of the respondents with cost throughout.

Respondent No.1


Director Education (FATA)
FATA Secretariat Peshawar


Respondent No.2


Agency Education Officer
Kurram Agency Parachinar

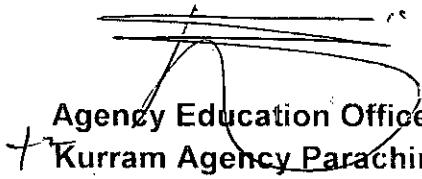
AFFIDAVIT

We, the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our knowledge and belief that nothing has been concealed from this Hon'ble Tribunal.

Respondent No1.


Director Education (FATA)
FATA Secretariat Peshawar

Respondent No.2


Agency Education Officer
Kurram Agency Parachinar

Attention Dawood litigation

(A)

D
② (1)

OFFICE OF THE AGENCY EDUCATION OFFICER, KURRAM AGENCY.

Appointment

Consequent upon the cancellation of appointment in respect of Mst: Bibi Ayesha Caller GGPS Sadda No.2 lower Kurram Agency vide PA Kurram No.3488-89/PAK/AG?Apptt:/JK dated 11-07-2011; Mst: Bibi Sofia D/O Haji Nour Gul resident of village Sadda caste Paracha is hereby appointed as Caller in GGPS Sadda No.2 lower Kurram due to land owner in BPS-01 plus usual allowances as admissible under the rules purely on contract basis with effect from the date of her taking over charge:

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1. She is directed to produce her Medical certificate from the Medical Supdt: A.H.Q.Hospital Parachinar.
2. Her appointment is purely made on temporary basis and liable to Termination at any time without assigning any notice, In case She wants to resign her post, she will have to give one month prior notice or forfeit one month pay in lieu thereof.
3. Her age should be between 18-45 years.
4. Her appointment will be considered as regular but without pension/Gratuity in terms of section -5 of K.P.K. civil servants amendment Act:2005 but will be entitled to contributory provident fund at such rate as may be prescribed by the Government.
5. She is also directed to provide her CNIC attested copy.
6. Charge report should be submitted to all concerned.

A. Ali
(Sayed Abbas Ali Shah Kazmi)
Agency Education Officer
Kurram Agency Parachinar.

Endst No. 2373-76 /Edu: Dated 6/8 /2011.

Copy forwarded for information to the:-

1. Political Agent Kurram Agency.
2. Additional A.E.O. Lower/Central Kurram at Sadda.
3. Agency Accounts Officer Kurram Agency.
4. Candidate Concerned.
5. Office File.

A. Ali
Agency Education Officer
Kurram Agency Parachinar.

Received on 4/1/12

Handled over by Amir Gul CNIC No 71302-6863898-5

Amir Gul
4/1/12

Wish
24/01/12

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service appeal No.106/2014

Bibi Ayesha vs Education Deptt:

REJOINDER ON BEHALF OF APPELANT

RESPECTFULLY SHEWETH:

Preliminary Objection:

(1-6) All objections raised by the respondents are incorrect and Baseless. Rather the respondents are estopped to raise any Objection due to their own conduct.

FACTS

1. No comments endorsed by respondent's department, which means they have admitted Para-1 of Appeal as correct. The record has already been attached to the main Appeal as Annexure-A.
2. No comments endorsed by respondent's department, which means they have admitted Para-2 of Appeal as correct. The record has already been attached to the main Appeal as Annexure-b.
3. Incorrect. The contents of Para-3 of Appeal are correct. Moreover, that the appellant's appointment order was cancelled on the basis of "Land Grant" which the Honorable Supreme Court has held as "Sale of Public Official" in many cases. Thus, the cancellation order is totally the violation of the Supreme Court's Judgment.
4. Incorrect. The contents of Para-4 of Appeal are correct. Moreover, that the appellant's appointment order was cancelled on the basis of "Land Grant" which the Honorable Supreme Court has held as "Sale of Public Official" in many cases. Thus, the cancellation order is totally the violation of the Supreme Court's Judgment.

5. Incorrect. Not replied as per contents of this Para of Appeal. Moreover, Para-5 of Appeal is correct.

GROUNDS

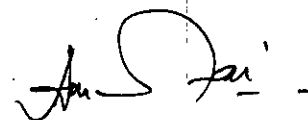
- A) Incorrect. The impugned order has been passed against the law, norms of justice and supreme court judgment, where in such acts have been condemned being amounted to sale of public office and rules.
- B) Incorrect. The Appellant has not been dealt in accordance with law. Para-B of Appeal is correct. Moreover, that the appellant's appointment order was cancelled on the basis of "Land Grant" which the Honorable Supreme Court has held as "Sale of Public Official" in many cases. Thus, the cancellation order is totally the violation of the Supreme court's Judgment
- C) Incorrect. Not replied as per contents of this Para of Appeal. Moreover, Para-C of Appeal is correct.
- D) Incorrect. The contents of Para-D of Appeal are correct.
- E) Incorrect. The contents of the Para – E of the Appeal is correct. Because Supreme Court's Judgment has a value of precedent and binding effect on whole country.
- F) Incorrect. The contents of Para-F of Appeal are correct.
- G) Legal.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

MST. BIBI AYESHA

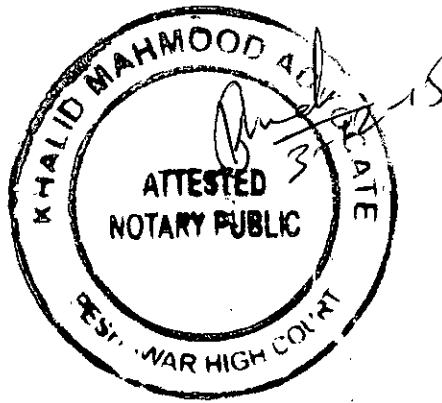
THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed that the contents of Appeal and rejoinder are true and correct to best of my knowledge.



[Handwritten Signature]
Deponent

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service appeal No.106/2014

Bibi Ayesha vs Education Deptt:

REJOINDER ON BEHALF OF APPELANT

RESPECTFULLY SHEWETH:

Preliminary Objection:

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5. Incorrect: Not replied as per contents of this Para of Appeal. Moreover, Para-5 of Appeal is correct.

GROUNDS

- A) Incorrect. The impugned order has been passed against the law, norms of justice and supreme court judgment, where in such acts have been condemned being amounted to sale of public office and rules.
- B) Incorrect. The Appellant has not been dealt in accordance with law. Para-B of Appeal is correct. Moreover, that the appellant's appointment order was cancelled on the basis of "Land Grant" which the Honorable Supreme Court has held as "Sale of Public Official" in many cases. Thus, the cancellation order is totally the violation of the Supreme court's Judgment
- C) Incorrect. Not replied as per contents of this Para of Appeal. Moreover, Para-C of Appeal is correct.
- D) Incorrect. The contents of Para-D of Appeal are correct.
- E) Incorrect. The contents of the Para – E of the Appeal is correct. Because Supreme Court's Judgment has a value of precedent and binding effect on whole country.
- F) Incorrect. The contents of Para-F of Appeal are correct.
- G) Legal.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

MST. BIBI AYESHA

THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed that the contents of Appeal and rejoinder are true and correct to best of my knowledge.

Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 217 /ST

Dated 25 / 1 / 2017

To

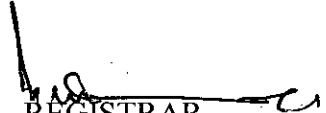
The Political Agent,
Government of Khyber Pakhtunkhwa,
Kurram Agency at Parachinar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 23.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

2007 S C M R 296

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ

UMER SAID and others----Petitioners

Versus

DISTRICT EDUCATION OFFICER (FEMALE) and others----Respondent

Civil Petitions Nos.563-P, 564-P, 565-P of 2004, decided on 16th August, 2006.

(On appeal from the judgment, dated 18-5-2004 of the N.-W.F.P. Service Tribunal, Peshawar passed in Appeals Nos.2460, 2461 and 2462 of 1997).

North West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Reinstatement without back-benefits---Appointment against land grants---Civil servants were class-IV employees in education department and their services were terminated for the reason that they did not donate lands to the department---Service Tribunal set aside the termination orders of civil servants and directed the authorities to adjust them as and when vacancy would exist---Plea raised by civil servants was that after setting aside of termination order, they should have been reinstated with back-benefits---Validity---Policy of making appointments against land grants was tantamount to sale of public office for property---Such appointments were not only against the Constitution but also were not conducive to public interest and were void ab initio--Once it was held that termination of civil servants was void ab initio, they became entitled to reinstatement with back-benefits and could not, despite such decree, be left at the mercy of department for adjustment, which might or might not occur or which might or might not be possible---Conclusion arrived at by Service Tribunal was unlawful and amounted to giving no relief to successful civil servants---Supreme Court converted petition for leave to appeal into appeal and set aside the judgment passed by Service Tribunal---Supreme Court reinstated the civil servants with effect from the date of their removal with back-benefits---Appeal was allowed.

1993 SCMR 1287 fol.

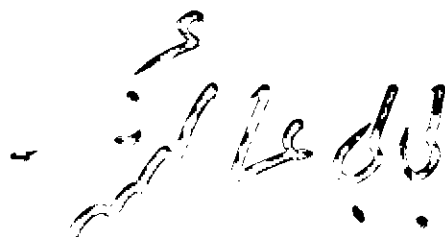
Afridi Khan, Advocate Supreme Court with Mir Adam Khan, Advocate-on-Record for Petitioners (in all cases).

Khushdil Khan, Additional Advocate-General, N.-W.F.P. for Respondents (in all cases).

Date of hearing: 16th August, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Umer Said, Yousaf Khan and Ali Akhtar having been appointed as Class-IV employees in the Education Department on 1-9-1995, 15-6-1993 and 17-4-1993 respectively, their services were terminated on 19-7-1997 on the only ground that they were not the donors of land to the department. Through the impugned judgment dated 18-5-2004, the learned N.-W.F.P. Service Tribunal Peshawar accepted their appeals against such termination but directed the department to adjust the appellants against Class IV vacancies, as and when occur.



2. The department has not challenged the judgment aforesaid but present appellants have come to this Court seeking leave to appeal on the simple ground that once their terminations were declared void ab initio, they were bound to be reinstated with all back-benefits.

3. The learned Additional Advocate-General informed that the petitioners have accordingly been adjusted with effect from 18-10-2004. Be that as it may, the fact remains that their readjustment was a fresh appointment for all intents and purposes, having not accounted for the period between 1997 to 2004.

4. This Court in 1993 SCMR 1287 has categorically observed that the policy of making appointments against land grants is tantamount to the sale of public office for property, and further, that it was not only against the Constitution but also not conducive to public interest. We reiterate that such appointments are void ab initio. Amazingly, in the instant cases, the competent authority has, in flagrant disregard of the aforesaid verdict of this Court, had terminated the services of the petitioners because they could not donate lands to procure the job.

5. Once it is held that the termination of an employee, is void ab initio, they become entitled to reinstatement with back-benefits and cannot, despite such decree, be left at the mercy of the department for adjustment, which may or may not occur or which may or may not be possible. The conclusion arrived at by the learned Tribunal was, therefore, unlawful and amounted to giving no relief to the successful appellants. Consequently, the petitions in hand, after conversion into appeals, are hereby accepted and the petitioners are reinstated with effect from the date of their removal, with back-benefits.

M.H./U-5/SC

Appeal allowed.

2015 P L C (C.S) 151

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Khilji Arif Hussain and Amir Hani Muslim, JJ

PROVINCE OF SINDH and others

Versus

GHULAM FAREED and others

Civil Appeals Nos.207-K to 249-K of 2013, decided on 7th February, 2014.

(Against judgments dated 1-8-2013 passed by the Sindh Service Tribunal at Karachi in Appeals Nos. 271 to 275 of 2012, 1 to 8, 27 to 42, 45 to 52 of 2013 and judgment dated 17-9-2013 passed by Sindh Service Tribunal in Appeals Nos. 75 to 80 of 2013)

(a) Sindh Service Tribunal Act (XV of 1973)---

---S. 6-A---Limitation Act (IX of 1908), S. 3---Appeal against termination order filed before Sindh Service Tribunal---Limitation---Termination order passed by an officer not competent in law to pass such an order---Effect---Such termination order would be void and without lawful authority---Consequently neither bar of limitation would be attracted nor period of limitation would run against such order---Appeal was dismissed accordingly.

Furqan Habib and others v. Government of Pakistan and others 2006 SCMR 460 distinguished.

(b) Sindh Civil Servants Act (XIV of 1973)---

---S. 9---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 8-A---Appointment of a civil servant on a higher grade on "Own Pay and Scale Basis" (OPS)---Legality---Sindh Civil Servants Act, 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 did not contain any provision which could authorize the Government or competent authority to appoint any officer on a higher grade on OPS basis---Any appointment of such nature, that too of a junior officer would cause heart burning of senior officers within the cadre and/or department---Practice of appointment on OPS basis had always been discouraged by the Supreme Court, as it did not have any sanction of law, besides it impinged the self-respect and dignity of civil servants who were forced to work under their rapidly and unduly appointed fellow junior officers---Allowing such discretion to be vested in the competent authority would offend valuable rights of meritorious civil servants besides blocking promotions of deserving officers.

(c) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 8-A---Appointment to higher grade on acting charge basis---Nature and scope---Appointment of an officer of a lower scale on a higher post on current charge basis was made as a stop-gap arrangement and should not under any circumstance, last for more than 6 months---Acting charge appointment could neither be construed to be an appointment by promotion on regular basis for any purpose including seniority, nor it conferred any vested right for regular appointment---Appointment on current charge basis was purely temporary in nature or a stop-gap arrangement, which remained operative for short duration until regular appointment was made against the post.

بابی

Muhammad Sawar Khan, A.A.-G. Sindh, Adnan Karim Additional A.-G. Sindh, Jalaluddin Additional Secretary, Education and Abdul Saeed Khan Ghouri, Advocate-on-Record for Appellants.

Respondents in person

Ghulam Fareed (in C. A. No.207-K of 2013).

Shakeel Ahmed (in C. A. No.208-K of 2013).

Waqar Ahmed (in C. A. No.210-K of 2013).

Ghulam Ali (in C. A. No.211-K of 2013).

Atta Muhammad (in C. A. No.212-K of 2013).

Khalil Ahmed (in C. A. No.213-K of 2013).

Ghulam Mustafa (in C. A. No.214-K of 2013).

Imdad Ali (in C. A. No.215-K of 2013).

Saphio (in C. A. No.216-K of 2013).

Abdul Majeed (in C. A. No.217-K of 2013).

Wali Muhammad (in C. A. No.218-K of 2013).

Wajid Ali (in C. A. No.219-K of 2013).

Hussain Bahleem (in C. A. No.220-K of 2013).

Sajjid Ali (in C. A. No.221-K of 2013).

Anwar Ali (in C. A. No.222-K of 2013).

Feroz Ahmed (in C. A. No.223-K of 2013).

Ayaz Ali (in C. A. No.224-K of 2013).

Zakir Hussain Sahito (in C. A. No.225-K of 2013).

Muhammad Hayat (in C. A. No.226-K of 2013).

Shakil Ahmed Khauharo (in C. A. No.230-K of 2013).

Fakir Muhammad (in C. A. No.231-K of 2013).

Afzal Ali Pathan (in C. A. No.232-K of 2013).

Qamber Ali Jamro (in C. A. No.233-K of 2013).

Nisar Ahmed (in C. A. No.234-K of 2013).

Syed Morial Shah (in C. A. No.235-K of 2013).

Ahmed Ali (in C. A. No.236-K of 2013).

Roshan Ali (in C. A. No.237-K of 2013).

Muhammad Ali (in C. A. No.240-K of 2013).

Abdul Qadir (in C. A. No.241-K of 2013).

Izhar Ali (in C. A. No.243-K of 2013).

Shabir Ahmed (in C. A. No.244-K of 2013).

Ashique Hussain (in C. A. No.245-K of 2013).

Haq Nawaz (in C. A. No.247-K of 2013).

Date of hearing: 7th February, 2014.

ORDER

AMIR HANI MUSLIM, J.--- These appeals, by leave of the Court, are directed against the judgments dated 1-8-2013 and 17-9-2013 of the learned Sindh Service Tribunal at Karachi whereby the Service Appeals filed by the respondents were allowed.

2. Facts material for the disposal of the present proceedings are that on 24-4-2008 several vacancies in the Education and Literacy Department, Government of Sindh were advertised in Daily Kawish, Hyderabad. Pursuant to such advertisement, the respondents submitted their applications for appointment and after fulfillment of codal formalities, the E.D.O., who was the competent Authority, in the month of May 2009, issued appointment letters and after completion of formalities, they were appointed.

3. The respondents despite joining of their duties, were not paid salaries, therefore, the respondents filed a Constitutional Petition on 6th July, 2009. Upon service of notice of the Petition the EDO issued back dated Termination Orders, whereby service of all the "appointees, including the respondents were terminated w.e.f. 6th June, 2009. Against the said Termination Orders, the respondents and others filed Constitutional Petition bearing No. D-1759/2009 in the High Court of Sindh, Sukkur Bench. The Petitions were allowed and the Termination Orders were set aside. After the judgment of the learned Sindh High Court (Sukkur Bench), after issuance of the fresh show-cause notices to the respondents and other appointees, the same EDO again terminated the services of the respondents and other appointees in pursuance of the show-cause notices which, according to the respondents, were never served upon them. According to the respondents, the show-cause notices were issued on 19-1-2010 and the Termination Orders were issued on 3-5-2010.

4. Against their terminations, the respondents preferred C.P. No.221 of 2010 before the learned High Court of Sindh, Sukkur Bench, whereby the order in nature of quo warranto was prayed. It was contended before the learned High Court that the office of EDO (Education) Khairpur fell vacant on or about 3-6-2009. The District Co-ordination Officer, Khairpur by an order dated 5-6-2009 allowed Amanullah Bhayo to look after the charge of EDO (Education) Khairpur in addition to his own duties

- with immediate effect till posting of some other officer by the Government of Sindh. Since then Amanullah Bhayo continued to hold the charge of EDO (Education) Khairpur. It was pleaded before the learned High Court that District Co-ordination Officer did not have the authority to appoint any person either to hold office of EDO (Education) or to discharge the functions of that office, therefore, Amanullah Bhayo was holding office of the EDO without lawful authority. The respondents in the Petition prayed for a writ of quo warranto seeking declaration that the office of EDO (Education) Khairpur was vacant and further prayed that all the acts done and orders passed by Amanullah Bhayo as EDO (Khairpur) be declared void ab initio.

5. The learned High Court, after hearing the parties reserved judgment on 12-4-2010 and on 27-4-2010 had announced the judgment reaching the following conclusion:--

"In view of what has been stated in the foregoing we are of the opinion that a case was made out for issuing a writ of quo warranto. We hold that the Impugned order of the DCO, Khairpur dated 5-6-2009 whereby additional charge of the office of EDO (Education) was given to the respondent, No.3 was without lawful authority. This would ordinarily have led to the petition being accepted, and a declaration that the said office was vacant. However, certain developments have been brought to our attention since we heard the matter and reserved judgment on 12-4-2010. While reserving judgment, we had also directed that the competent authority be asked to take immediate steps to appoint a permanent incumbent to the said office. On 27-4-2010, the learned AAG placed on record certain documents with reference to this part of our order of 12-4-2010. There is firstly a letter dated 14-4-2010 by means of which the respondent No.3 relinquished charge of the office of EDO (Education). There is then a notification dated 15-4-2010 issued under the hand of the Chief Secretary to the Provincial Government by means of which the respondent No.3 was transferred and posted with immediate effect as EDO (Education) in his own pay and scale. Finally there is a "resumption report" dated 19-4-2010 by means of which the respondent No. 3 has confirmed taking charge of the office of EDO (Education) in terms of the notification of 15-4-2010."

6. The learned High Court for the aforesaid reasoning did not issue writ of quo warranto, inter alia, on the ground that Amanullah Bhayo vide Notification dated 15-4-2010 issued by the Competent Authority was assigned charge of EDO (Education) on OPS basis. The said officer on assuming the charge by virtue of the Notification dated 15-4-2010, on 3-5-2010 issued Termination Orders of the respondents. The respondents preferred Departmental Appeals before the Secretary Education and Literacy Department, but the same were not decided and in the meanwhile respondents preferred C.P.No.D-1(sic.) of 2010 before the learned Sindh High Court challenging their Termination Orders of 3-5-2010. On 18-3-2011, the learned High Court allowed the said Constitutional Petition, which judgment of the learned High Court was challenged before this Court. This Court on 2-12-2011 with the consent of the parties, set aside the judgment of the learned High Court and remanded the matter to the learned High Court to decide the issue of maintainability of the Petition. On remand the learned High Court dismissed the Petition of the respondents, inter alia, on the ground that the Petition was barred under Article 212 of the Constitution. On 21-12-2012, the respondents preferred Service Appeals before the Service Tribunal at Karachi, which appeals were heard and allowed vide impugned Judgments dated 1-8-2013 and 17-9-2013. The appellants being aggrieved have preferred these appeals, by leave of the Court.

7. It is contended by the learned Additional Advocate-General Sindh that the learned Sindh Service Tribunal has no powers to condone the delay in filing of the time barred Appeals of the respondents. He further contended that the provisions of sections 5 and 14 of the Limitation Act are inapplicable to the Service Tribunal and in support of his contention has relied upon the judgment of this Court in the case of Furqan Habib and others v. Government of Pakistan and others (2006 SCMR 460) in which it was held that limitation in time-barred Appeals cannot be condoned by the Service Tribunal by resorting to the provisions of Section 14. He further contended that the order

terminating the services of the respondents was passed on 3-5-2010 whereas, on 21-12-2012, the Appeals were filed before the learned Service Tribunal, which appeals on the face of it were barred by time. The learned Service Tribunal overlooking the judgment of this Court, referred to hereinabove, has entertained these appeals and condoned the unexplained delay, which alone is sufficient ground to set aside the impugned judgments.

8. The learned Assistant Advocate-General next contended that Amanullah Bhayo was posted by the D.C.O as E.D.O. in his own pay and scale (OPS) and his posting was challenged but in the intervening period the defect was cured and on 15-4-2010 he was appointed as E.D.O on O.P.S basis by the Competent Authority. According to the learned Law Officer, the objection in regard to the appointment of Amanullah Bhayo as E.D.O. was cured on 15-4-2010. Therefore, on 3-5-2010 he being E.D.O. was competent to issue the Termination Orders of the respondents.

9. We have heard the learned Law Officers and have perused the record. The learned Service Tribunal has not condoned the delay in filing of the time barred Appeals by resorting to the provisions of section 5 and or section 14 of the Limitation Act, on the contrary the Tribunal has taken a view that Termination Orders were issued by Amanullah Bhayo, who was not the competent Authority on 3-5-2010, as he was in BS-19 and was posted as E.D.O on O.P.S basis. The Tribunal has proceeded on the premise that since the Termination Orders were issued by an Officer who was in BS-19 and not by an officer of BS-20, therefore, it declared the Termination Orders of the respondents as void and without lawful authority. Consequently, neither bar of limitation would be attracted nor period of limitation would run against such orders. We endorse this view of the learned Service Tribunal.

10. We have also examined the view taken by this Court in the case of Furqan Habib relied upon by the learned Law Officer, which judgment is distinguishable on facts. In the first place, section 6-A of the Sindh Service Tribunals Act, 1973 permits the application of the provisions of sections 5 and 14 of the Limitation Act to the appeals preferred before the Sindh Service Tribunal. Secondly in case of Furqan Habib the original order challenged before the Tribunal was neither a void order nor an order without jurisdiction, therefore, the bar of limitation was applicable in such cases whereas in the case in hand as noticed in the preceding para the termination orders having been issued by an officer not competent in law, therefore, such orders being void, would not attract the bar of limitation.

11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which could authorize the Government or Competent Authority to appointment any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in the Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers.

12. At times officers possessing requisite experience to qualify for regular appointment may not be available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting

charge and current charge basis. It provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule (4) of the aforementioned Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting charge basis can be made, subject to conditions contained in the Rules.

13. We, in the circumstances, hold that Amanullah Bhayo, who was a junior officer of BS-19 amongst his colleagues, as it appears from the record, was not competent even in exigency to be appointed in BS-20 as, E.D.O. on OPS basis, nor was he otherwise competent being an officer working on OPS basis to exercise powers of BS-20 officer as E.D.O. to issue termination orders of the respondents. The Government cannot confer powers of Competent Authority to Amanullah Bhayo, who was not eligible for promotion and otherwise junior amongst the officers of his scale and cadre working in the department.

14. The above are the reasons for our short order dated 7-2-2014, which reads as under:--

"Heard learned Additional Advocate-General Sindh on behalf of the appellants. For the reasons to be recorded separately, the connected appeals are dismissed, however, with the observations that since the respondents have not performed any duty during the intervening period they will not be entitled for the back benefits from the date of their appointment letters till the judgment of the Tribunal dated 1-8-2013. In addition, it is left open for the appellants that they may take fresh appropriate action against the respondents, if they so chose, but strictly in accordance with law and for this purpose impugned judgment of the Tribunal will not come in their way."

MWA/P-5/SC

Appeals dismissed.

1999 S C M R 2308

[Supreme Court of Pakistan]

Present: Ajmal Mian, C. J., Sh. Riaz Ahmed and Ch. Muhammad Arif, JJ

GHAZI---Appellant

versus

M. ABDUL KHALIQ and others---Respondents

Civil Appeal No. 716 of 1995, decided on 12th March, 1999.

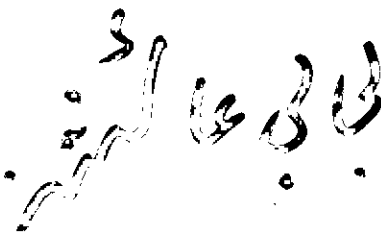
(On appeal from the judgment/order of the N.-W.F.P. Service Tribunal, N.-W. F. P., Peshawar, dated 28-9-1994 in Appeal No. 176 of 1993).

North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Constitution of Pakistan (1973), Arts. 2-A, 27, 38 & 212--- Appointment made on recommendation of Member, Provincial Assembly--Appointments made against the mechanism for appointments provided by law--Legality---Appointment of a person as Laboratory Attendant in a school in B.P.S. 1 on the recommendation of M.P.A. was challenged by another person (appellant) who claimed preferential right for appointment on that post on recommendation of his uncle who allegedly had donated land for the construction of said school--Representation of other person (appellant) was accepted and appointee's services were terminated and said other person (appellant) was appointed in his place---Appointee after availing Departmental remedy approached Service Tribunal, which ordered his reinstatement--Validity ---Ministers, Members of National and Provincial Assemblies, all were under an oath to discharge their duties in accordance with Constitution of Pakistan and law---Service laws had provided mechanism for appointments which should be transparent, fair and just providing equal opportunity to all on basis of merits---Allocation of quotas to Ministers, M.N.As./M.P.As. and appointments made thereunder were illegal ab initio---Appointment on basis of recommendation of M.P.A. was illegal and other person also had no vested right to claim his appointment against post of Laboratory Attendant in the School simply on the basis of being nominee of donor of land for the school---Judgment of Service Tribunal was set aside with direction that appointment against the post be made on merits in open competition.

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Abdur Rashid v. Riazuddin 1995 SCMR 999; Said Badshah v. Government of N.-W.F.P. PLD 1995 Pesh. 164 and Mushtaq Ahmad Mohal v. Honourable Lahore High Court 1997 SCMR 1043 ref.

Qazi Muhammad Anwar, Advocate Supreme Court and Muhammad



Zahoor Qureshi, Advocate-on-Record (absent) for Appellant.

Respondent No. 1 in person (absent).

Ijaz M. Khan, Additional Advocate-General, N.-W.F.P. for Respondents Nos.2 to 4.

Date of hearing: 12th March, 1999.

JUDGMENT

AJMAL MIAN, C.J.---This is an appeal with the leave of this Court against the judgment, dated 28-9-1994, passed by the learned N.-W.F.P. Service Tribunal, Peshawar (hereinafter referred to as the Tribunal), in Appeal No. 176 of 1993 filed by respondent No. 1 against termination of his service with effect from 23-2-1993, allowing the same and reinstating him in service.

The brief facts are that respondent No. 1, on the recommendations of an M.P.A., was appointed as Laboratory Attendant in BPS-1 Government High School Himat, Tehsil and District D.I. Khan by order dated 24-12-1992. The appellant claimed that one Allah Bakhsh, his uncle, had given six Kanals of land for the construction of the School building and nominated him for service. He, therefore, filed a representation against the appointment of respondent No. 1 claiming preferential right for appointment on the recommendation of the donor of the land. The above representation was allowed and in consequence respondent No. 1's services were terminated w.e.f. 23-2-1993 and the appellant was appointed in his place. Respondent No. 1 being aggrieved by the above order, after availing of the departmental remedy, approached the Tribunal by way of above appeal which was allowed. Thereupon, the appellant filed the petition for leave to appeal which was granted to consider as to whether in view of the judgment of this Court in the case of *Munawar Khan v. Niaz Muhammad* (1993 SCMR 1287 relevant at 1287), respondent No.1 could have been reinstated as admittedly he was appointed on the recommendation of the M.P. A. Reliance was also placed on the case of *Abdur Rashid v. Riazuddin* (1995 SCMR 999).

None has appeared for respondent No. 1 though he has been served. Whereas Mr. Ijaz M. Khan, learned Additional Advocate-General, N.W.F.P., represented official respondents 2 to 4.

Mr. Ijaz M. Khan's submission was that even the appellant has no preferential right to claim the appointment against the above post on the basis of being nominee of the donor of the land. In this regard he has invited our attention to para. 7 of the above judgment in the case of *Murtawar Khan v. Niaz Muhammad* (supra). He has relied upon the following observation in the judgment of a learned Single Judge of the Peshawar High Court in the case of *Said Badshah v. Government of N.W.F.P.*, (PLD 1995 Peshawar 164):---

"8. Before parting with the judgment I may add that Government

appointments should always be made on the basis of merits considering it as a sacred trust of the public. Any deviation from the rules of appointments can result in chaos and as such no discipline can be maintained. "

Qazi Muhammad Anwar, learned counsel for the appellant, in support of his submission, has referred to the following portion from the above judgment in the case of *Munawar Khan v. Niaz Muhammad* (supra):----

"8. As regards the allocation of quota of posts to the local M.P.As or M.N.As for recruitment to the post, we find it offensive to the Constitution and the law on the subject. The Ministers, the Members of National and Provincial Assemblies, all are under an oath to discharge their duties in accordance with the Constitution and the law. The service laws designate, in case of all appointments, a departmental authority competent to make such appointments. His judgment and discretion is to be exercised honestly and objectively in the public interest and cannot be influenced or subordinated to the judgment of anyone else including his superior. In the circumstances, allocation of such quotas to the Ministers/M.N.As/M.P.As, and appointments made thereunder are all illegal ab initio and have to be held so by all Courts, Tribunals and authorities.

He has also referred to the case of *Abdur Rashid v. Riazuddin* (supra) in which the law enunciated in the case of *Munawar Khan v. Niaz Muhammad* (supra) was reiterated.

The law enunciated by this Court in the case of *Munawar Khan v. Niaz Muhammad* (supra) seems to be in consonance with clause (1) of Article 27 of the Constitution read with Para. (b) of Article 38 of the Constitution. It may be observed that clause (1) of Article 27, inter alia, provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. Whereas Para. (b) of Article 38 (which Article is a part of the chapter relating to the Principles of Policy) lays down that the State shall provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure. The above provisions are to be read in conjunction with Article 2A which, inter alia, provides that sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him, is a sacred trust. Viewing the above case in the above Constitutional background, it becomes apparent that the Ministers, the Members of National and Provincial Assemblies, all are under an oath to discharge their duties in accordance with the Constitution and law. The service laws provide the mechanism for appointments which should be transparent, fair and just, providing equal opportunity to all on the basis of merit. The allocation of quotas to the Ministers/M.N.As/M.P.As and appointments made thereunder are illegal ab initio and have to be held so by all Courts as was held by this Court in the case of

Munawar Khan . Niaz Muhammad (supra).

It will not be out of context to mention that the question as to how appointments are to be made by the State functionaries including Judiciary has been recently dilated upon with reference to Article 27 of the Constitution in the case of Mushtaq Ahmad Mohal v. Honourable Lahore High Court (1997 SCMR 1043). It may be pertinent to reproduce paragraphs 20 and 26 of the above judgment, which read as follows:

"20. We may observe that Article 27 of the Constitution is to be read in conjunction with inter alia Articles 2A, 18 and 25 of the Constitution. Aforesaid Articles 2A and 18 of the Constitution have already been referred to hereinabove. Whereas above Article 25 of the Constitution guarantees that all citizens are equal before law and are entitled to equal protection and that they shall not be discriminated on the basis of sex alone. Inter alia the above Articles of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice.

We may state that in view of the above factual position, namely, that the period of twenty years mentioned in proviso 1 to clause (1) of Article 27 had expired on 13-8-1993, the High Court could not have invited applications for the above 14 additional vacancies for the posts of Civil Judges-cum-Judicial Magistrates on zonal basis as it would have been violative of aforesaid clause (1) of Article 27 of the Constitution."

"26. The abovequoted paras. of the aforesaid judgment of the Federal Shariat Court are apt to the controversy in issue. It is manifest that the Holy Qur'an inter alia enjoins that there is no difference between the individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah. The fittest person who is strong and trustworthy is to be employed. It is evident that the concept of zone or quota system runs counter not only to the above clause (1) of Article 27 read with Article 2A and Article 25 of the Constitution, but also to the Commandment of Allah as ordained in the Holy Qur'an. We may observe that the quota system has not served Pakistan interest but on the contrary, it has generated parochial and class feelings resulting into disunity."

The appointment of respondent No.1 on the basis of the recommendation of an M.P.A. is also violative of the law enunciated in the case of Mushtaq Ahmad Mohal v. Honourable Lahore High Court (supra)

The upshot of the above discussion is that neither respondent No. 1 nor the appellant had any vested right to claim appointment against the above post of Laboratory Attendant. The judgment of the Tribunal is set aside and the department is directed to make appointment against the above post on merit in open competition.

H.B.T./G-39/S
accordingly.

Order

2015 S C M R 795

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ

FAZLI HAKEEM and another---Petitioners

versus

**SECRETARY STATE AND FRONTIER REGIONS DIVISION ISLAMABAD and others---
Respondents**

Civil Petitions Nos. 418 and 707 of 2012, decided on 8th February, 2013.

(On appeal against the judgment dated 19-1-2012 passed by Federal Service Tribunal, Islamabad in Appeals Nos.766(P)CS/2010 and 814(P)CS/2010)

(a) Service Tribunals Act (LXX of 1973)---

---S. 5(1)---Limitation Act (IX of 1908), S. 3---Constitution of Pakistan, Art. 185(3)---Federal Service Tribunal, order of--- Order not passed in accordance with law---Void order, limitation against---Scope---Promotion---Temporary employee promoted in preference to regular employees against the law---Contention of respondent that present petition should be dismissed on the grounds of limitation---Validity---Respondent was a temporary contract employee and he was working as such at the time he was promoted---Question as to how could the respondent rank senior and how he could be given preference over the employees who were regularized much earlier were questions which had not been answered either in the impugned judgment of the Service Tribunal or by the respondent---Present case was not a case where the matter could be set at rest by invoking the provisions regulating limitation---Courts of law were not supposed to perpetuate what was unjust and unfair by exploring explanation for an act which was prima facie against law and thus void---Courts should rather explore ways and means for undoing what was unfair and unjust---Even where the question of limitation, if at all, created any impediment in the fair adjudication of the case, it had to be looked from such angle of vision---Controversy urged before the Service Tribunal in the present case had not been considered and decided in its correct perspective---Remand of the present case was inevitable---Supreme Court, thus, converted petition for leave to appeal into an appeal, set aside the impugned judgment of Service Tribunal and sent the case back to the Service Tribunal for decision afresh in accordance with law.

Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others PLD 1987 SC 447 ref.

(b) Administration of justice---

---Person/institution exercising executive, judicial or quasi-judicial power---Order of---Order not passed in accordance with law---Non est order--- Scope---Repository of executive, judicial or quasi-judicial power was required to act in accordance with law---For the very condition for the conferment of such power was that such repository had to act in accordance with law---If and when such repository would go wrong in law it would go outside its jurisdiction, and order thus passed would be non est---Such order could not be protected simply because the repository of such power, had the power to pass such order.

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"Discipline of law" by Lord Denning pages 74 and 76 ref.

Abdur Rehman Siddiqui, Advocate Supreme Court for Petitioners (in C.P. 418 of 2012).

Shoaib Shaheen, Advocate Supreme Court for Petitioners (in C.P. 707 of 2012).

Ejaz Anwar, Advocate Supreme Court for Respondents Nos.2, 3 and 4 (in C.P. 418 of 2012).

M.S. Khattak, Advocate-on-Record for Respondents Nos.1 to 4 and 6 (in C.P. 707 of 2012).

Syed Arshad Hussain Shah, Additional A.-G. Khyber Pakhtunkhwa for Khyber Pakhtunkhwa on Court's Notice.

Date of hearing: 8th February, 2013.

JUDGMENT

EJAZ AFZAL KHAN, J.---These petitions for leave to appeal have arisen out of the judgment dated 19-1-2012 of the learned Federal Service Tribunal, Islamabad, whereby it dismissed the appeals filed by the petitioners.

2. Learned counsel appearing on behalf of the petitioners contended that the learned Service Tribunal while disposing of the appeals filed by the petitioners did not consider the entire spectrum of the controversy and as such has failed to deliver a fair and just finding in this case. The learned counsel next contended that when the respondent was admittedly a temporary employee, he could not have been promoted to the next higher scale particularly when the petitioners being eligible by all means were side tracked by brushing aside all the recognized canons of law and propriety. A finding thus handed down, the learned counsel added, cannot be maintained.

3. We have gone through the entire record carefully and considered the submissions of the learned counsel for the parties.

4. The record reveals that respondent was a temporary employee and he was working as such at the time he was promoted. Though his services were ex-post facto regularized on 25-9-2008, yet at the relevant time he was an employee on contract to all intents and purposes. How could he rank senior and how he could be given preference over the employees who were regularized much earlier are the questions which have not been answered either in the impugned judgment or by the learned counsel for the respondents.

5. The learned AAG sought the dismissal of these petitions mainly on the ground of limitation but to our mind, it is not a case where the matter can be set at rest by invoking the provisions regulating the limitation. Whether the order promoting respondent No.4 to the next higher scale could be held to be free from the traits and trappings of a void order is a question which has deep bearing on the fate of the case. The learned Service Tribunal has not examined this question in its correct perspective. It has tried to draw a distinction between an illegal and void order but it appears to have taken too myopic a view of the subject. It cannot be ignored altogether that a repository of executive, judicial or quasi judicial power is required to act in accordance with law. For the very condition for the conferment of such power is that it has to act in accordance with law. If and when it would go wrong in law it would go outside its jurisdiction. An order thus passed would be non-est. Such order cannot be protected simply because the repository of such power, has the power to pass such order. Lord Denning in his well known book the Discipline of law, while commenting on orders of this nature at page 74; observed as under:--

"This brings me to the latest case. In it I ventured to suggest that whenever a tribunal goes wrong in law, it goes outside the jurisdiction conferred on it and its decision is void, because Parliament only conferred jurisdiction on the tribunal on condition that it decided in accordance with the law".

Another paragraph of this book at page 76 also merits a keen look which reads as under:--

"I would suggest that this distinction should now be discarded. The High Court has, and should have, jurisdiction to control the proceedings of inferior courts and tribunals by way of judicial review. When they go wrong in law, the High Court should have power to put them right. Not only in the instant case to do justice to the complainant. But also so as to secure that all courts and tribunals, when faced with the same point of law, should decide it in the same way. It is intolerable that a citizen's rights in point of law should depend on which judge tries his case, or in what court it is heard. The way to get things right is to hold thus: No court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it."

6. In the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others (PLD 1987 SC 447), the Hon'ble Supreme Court held as under:--

"It is not right to say that the Tribunal, which is invested with the jurisdiction to decide a particular matter, has the jurisdiction to decide it "rightly or wrongly" because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly. Accordingly, when the tribunal makes an error of law in deciding the matter before it, it goes outside its jurisdiction and, therefore, a determination of the Tribunal which is shown to be erroneous on a point of law can be quashed under the writ jurisdiction on the ground that it is in excess of its jurisdiction."

7. Even otherwise, the Courts of law are not supposed to perpetuate what is unjust and unfair by exploring explanation for an act which is prima facie against law and thus void. They should rather explore ways and means for undoing what is unfair and unjust. Even the question of limitation, if at all, created any impediment in the fair adjudication of the case, has to be looked from such angle of vision. When considered in this background, we are constrained to hold that the controversy urged before the Service Tribunal has not been considered and decided in its correct perspective. Remand of the case would thus be inevitable. We, therefore, convert these petitions into appeals, set-aside the impugned judgment and send the case back to the learned Service Tribunal for decision afresh in accordance with law.

MWA/F-3/SC

Case remanded.

2016 S C M R 460**[Supreme Court of Pakistan]****Present: Ijaz Ahmed Chaudhry and Mushir Alam, JJ****SENATE through Chairman---Petitioner****Versus****SHAHIQ AHMED KHAN---Respondent**

Civil Petition No. 2515 of 2015, decided on 17th November, 2015.

(Against judgment dated 11-6-2015 of Federal Service Tribunal, Lahore, passed in Appeal No. 238(L)/CS of 2013)

(a) Civil service---

---Deputationist, absorption of---Pensionary benefits---Unlawful notification---Employee of statutory body [National Construction Limited (NCL)] not having the status of "civil servant" sent on deputation to Senate Secretariat---Notification for permanent absorption of such deputationist in Senate Secretariat issued without approval from competent authority/Chairman Senate---Such notification was unlawful and void ab initio---Further, deputationist was not entitled to pensionary benefits because deputationist's parent department (NCL) was not a pensionable organization, and thus his services in parent department (NCL) could not be counted towards his pension with respect to Senate Secretariat, and because he had also been compensated in terms of advance increments to protect him from any loss arising due to disentitlement from pensionary benefits---Case was remanded to Service Tribunal for decision afresh.

Respondent, who was working as Director, National Construction Limited (NCL) was inducted in the Senate Secretariat in BS-20. Subsequently, a summary was got prepared and also put up, ordaining that "his services in his parent department will count towards his seniority in the Senate from the date of promotion to Director Grade equivalent to BS-20 of Government scales". Said notification was issued despite the fact that summary moved in such regard was not approved by the competent authority/Chairman Senate. Significantly respondent was working as Acting Secretary Senate, and without formal approval of the Chairman Senate/competent authority, the notification for permanent absorption of the respondent in Senate Secretariat in BS-20 and for counting of his service in the parent department was issued. Notification in question was thus issued unlawfully and was void ab initio.

Perusal of U.O. No.F.4(1)R-2/2006-527, dated 03.11.2006, showed that NCL was a company having its own pay scale and service rules and its employees were not civil servants and their pay on appointment to a civil post under the Government was not protectable under the prescribed policy of Government, circulated vide Finance Division's O.M. dated 12.08.2002 and also that NCL was not a pensionable organization having Contributory Provident Fund Scheme for its retiring employees, therefore, the service rendered in NCL by respondent could not be counted towards his pension [in terms of Article 361 of Civil Service Regulations (CSR)]. To protect the respondent from loss due to disentitlement of pensionary benefits, the Finance Division recommended that the respondent be compensated through grant of six advance increments. Chairman Senate accordingly approved six premature increments to the respondent. Question then arose that when the respondent had been

- compensated by means of six premature increments, how pensionary benefits could be awarded to him. Furthermore, the (unlawful) notification for respondent's permanent absorption did not mention anything about his pensionary benefits.

Supreme Court remanded the case to Service Tribunal for decision afresh.

(b) Civil service---

---Void notification---Not enforceable.

(c) Civil service---

---Void order/notification---No limitation was prescribed to competently and successfully challenged such an order/notification.

(d) Locus poenitentiae, principle of---

---Scope and application---Fraud---Principle of locus poenitentiae was meant to condone a bona fide mistake and could not be pressed into service for reaping the benefit of any fraud or to camouflage the same.

Sajid Ilyas Bhatti, DAG and Rana Mazharul Haq, Dy. Secy. for Petitioner.

Aftab Alam Rana, Advocate Supreme Court for Respondent.

Date of hearing: 17th November, 2015.

ORDER

IJAZ AHMED CHAUDHRY, J.---Through this petition, the petitioner-Senate of Pakistan has sought leave to appeal against judgment dated 11.06.2015 whereby the Federal Service Tribunal, Lahore, while allowing the Appeal No.238(L)/CS of 2013, filed by the respondent Shahiq Ahmad Khan, set at naught the Notification and order of Appellate Authority dated 10.03.2011 and 26.07.2013, respectively and also directed the petitioned to grant pensionary benefits to the respondent, in accordance with the notification dated 20.10.2004.

2. The terse details of the facts obtaining between the parties, are that the respondent was working as Director in National Construction Limited (Public Limited Company and hereinafter to be referred as NCL) under the administrative control of Ministry of Housing and Works, Government of Pakistan, Islamabad. His services were requisitioned by the petitioner for appointment, on deputation, as Director General, Public Relations (BS-20) in the Senate Secretariat, Islamabad. The respondent accordingly joined the aforesaid position and subsequently vide notification dated 18.10.2003, he was permanently absorbed in BS-20 in the Senate Secretariat w.e.f. 29.09.2003. Thereafter, another notification was issued on 20.10.2004, whereby the competent authority directed that "services of the respondent in his parent department will count towards his seniority in the Senate". On 18.11.2005, the respondent was appointed as Additional Secretary Senate (BS-21) and superannuated on 21.10.2010.

3. The respondent deposited Rs.2,80,897/- on account of over payment of salaries to him and then he was directed to deposit Rs.3,97,814/- in the office of AGPR on account of G.P. Fund and Rs.4,50,555/- in the State Bank on account of pension contribution. The respondent filed a writ petition before learned Islamabad High Court, Islamabad, which was dismissed on 25.11.2008. In order to assail the said order, the respondent filed CPLA No.173/2009 before this court, which was

disposed of, vide order dated 27.10.2009, diverting the Respondent to approach Federal Services Tribunal for remedy. The respondent filed Appeal No.13(R)CS of 2010 in Federal Service Tribunal, Islamabad. It was decided on 24.11.2010 and the matter was remanded to petitioner/Chairman Senate for deciding the status of the respondent and his claim to seniority in presence of the notification of 20.10.2004. The petitioner issued another notification dated 10.03.2011 whereby the earlier notification of 20.10.2004 was withdrawn. The departmental appeal, filed by the respondent, was also rejected vide order dated 6.10.2013.

4. The respondent filed appeal before Federal Service Tribunal, Camp Office, Lahore, which was allowed vide judgment dated 11.06.2015 and the notification of 10.03.2011 and order of the Appellate Authority dated 26.07.2013 were set aside and the petitioner/Chairman Senate of Pakistan was directed to grant the pensionary benefits to the respondent in accordance with notification of 20.10.2004. The petitioner felt aggrieved therefrom and has brought this petition, seeking leave to appeal.

5. Mr. Sajid Ilyas Bhatti, learned DAG contends that the respondent was not a civil servant at the time, when his services were requisitioned from NCL. He could not have been inducted as such in the Senate Secretariat, Islamabad. He was not working on a pensionable post. After absorption, his previous service would not have been counted under the law and he was also not entitled to claim seniority on account of his previous service in NCL. It is further submitted that the respondent was working as Acting Secretary in the Senate Secretariat, when he got prepared a summary for his absorption in the Senate Secretariat, per paras Nos. 32, 33 and 65, but the then Chairman Senate did not approve the summary and para No.67 shows that he posted a query "why this, pl. discuss". Learned DAG maintained that despite the development, the respondent managed to get issued direction for issuance of revised notification as per para 68 of the summary, without any approval of the Chairman Senate/Competent Authority. It is submitted that the previous service of the appellant in NCL could not be reckoned for the purpose of seniority and pensionary benefits. The notification and order of the Appellate Authority issued on 10.03.2011 and 06.07.2013 were passed after observing lawful procedure. No illegality has been committed by the petitioner.

6. The learned DAG has raised serious objections on the judgment of the Federal Service Tribunal, passed on 11.06.2015 and stated that the observations, recorded by FST that proper opportunity of hearing was not afforded to the respondent before issuance of the notification and order of the Appellate Authority and that such stance is not supported from the record, as the respondent was heard in person by the Acting Chairman Senate on 22.07.2013, before passing the order on 26.07.2013. It was in compliance with the order dated 18.12.2012, passed by the learned Lahore High Court, in Writ Petition No.31121/2012. It is submitted that Federal Services Tribunal, while setting aside the order and notification mentioned above, did not take into consideration the facts available on the record and erroneously recorded its finding to blame the petitioner for not providing the opportunity of hearing to the respondent and that even if it is presumed that the respondent was not heard prior to the disposal of his departmental appeal, Federal Service Tribunal was not justified in passing an order for grant of pensionary benefit to the respondent and to restore the notification dated 20.10.2004. At the worst, it could remand the matter to the petitioner for a fresh decision on merits. That, Federal Service Tribunal showed colourful exercise of power. That the notification dated 20.10.2004 was void and had been manipulated by the respondent, therefore, had to be withdrawn and the judgment of the Federal Service Tribunal is meriting to be set aside.

7. The learned counsel for the respondent contended that the petitioner has twisted the facts. In fact, no, opportunity of hearing was provided to the respondent before passing the order dated 10.03.2011. Similarly, the notification of 20.10.2004 was defended, as the same had been issued to reflect the order of the Competent Authority. The petitioner did not initiate any measures during the past so many years and the respondent has been targeted in the backdrop of some personal grudges,

but only after his superannuation. The learned counsel added that no proceedings could have been initiated against the respondent, in view of the bar, contained in section 54-A of the Fundamental Rules. Reliance has been placed on the judgment of this Court reported as 2000 SCMR 1864 whereby it was pronounced that the services rendered in statutory body can be taken into consideration for the grant of pensionary benefits. That the whole proceedings, prior to the notification and order dated 10.03.2011 and 26.07.2013, respectively had been solemnized in a lawful manner and the petitioner was divested of any legal justification to pass an order on 26.07.2013 for withdrawal of the notification dated 20.10.2004. It was prayed that the leave may not be granted as the judgment of the learned Federal Service Tribunal is impregnable on any legal ground.

8. We have heard the learned counsel for the parties and also had the opportunity of appraising the record. The respondent was inducted in the Senate Secretariat in BS-20, vide notification dated 18.10.2003. A few months later, a summary was got prepared and also put up, ordaining that "his services in his parent department will count towards his seniority in the Senate from the date of promotion to Director Grade equivalent to BS-20 of Government scales". Needless to state that in the said notification of 20.10.2004, there is absolutely no mentioning of the pensionary benefits. The version of the petitioner is that the said notification of 20.10.2004 was without any lawful basis. The summary was moved to this effect, but it did not fancy the Chairman Senate and he had posted a query "why this, pl. discuss", meaning thereby that the summary had not been approved by the Competent Authority which was none other than the Chairman Senate. It is also significant that the respondent was working as Acting Secretary Senate, during those days and without formal approval of the Chairman Senate/Competent Authority, the notification for permanent absorption of the respondent in Senate Secretariat in BS-20 and for counting of his service in the Parent Department was issued. The crux of the controversy lies in the legal status of this notification. The cardinal question, cropping up in this case, was that whether notification dated 20.10.2004 had been issued lawfully. Incidentally the answer is in the negative. Without approval of the Competent Authority, the respondent could neither be permanently absorbed in Senate Secretariat nor his previous service, counted for the purpose of seniority. It is manifest in the circumstances that the notification dated 20.10.2004 was void ab initio as the same had been issued without any legal authority and the beneficiary was none other than the respondent who was working as Acting Secretary Senate during those days.

9. We have also noticed that the Office Memorandum was issued by the Finance Division, Government of Pakistan on 22.10.1985, wherein the guidelines have been provided to meet such eventualities, as had arisen in this case. The contents of the same are available in para No.1(iii) of said O.M. It is to be read in juxtaposition with U.O. No.F.4(1)R-2/2006-527, dated 03.11.2006, whereby it was observed that NCL is a company registered in the Security and Exchange Commission of Pakistan under the Companies Law, having its own pay scale and services rules and its employees were not civil servants and their pay on appointment to a civil post under the Government is not protectable under the prescribed policy of Government, circulated vide Finance Division's O.M. dated 12.08.2002 and also that NCL is not a pensionable organization having Contributory Provident Fund Scheme for its retiring employees. Therefore, the service rendered in NCL could not be counted towards pension in terms of Article 361 of Civil Service Regulations (CSR) and that the respondent was of the view that he should not sustain a loss on account of his basic pay and in this backdrop, the Finance Division recommended that the respondent be compensated through grant of six advance increments in the light of F/R 27. The Chairman Senate approved six premature increments to the respondent w.e.f. 29.09.2003. The question arises that when the respondent had been compensated by means of six premature increments, how the pensionary benefits could be awarded? It is evident from the above reference that the advance increments were sanctioned in favour of the respondent w.e.f. 29.09.2003, keeping in view the facts that he was disentitled for pensionary benefits. Furthermore, the grant of pensionary benefits could

not be envisioned from the notification of 20.10.2004.

10. We have perused the impugned judgment dated 11.06.2015, passed by Federal Service Tribunal, Lahore, carefully. In para 8, the Members of Federal Service Tribunal conceded that there was factual and legal controversy about the notification of 20.10.2004. Though there is some confusion of the date apparently in the minds of the members, who cited the date as 10.03.2011, whereas it was to be 20.10.2004 and observed that no regular inquiry had been conducted, which, in fact, was needed. The question falls for determination that when the very basis of the notification is in controversy, how the same could be sustained on legal premises. It was ineluctable course, in the circumstances, for the Federal Service Tribunal to precisely determine the sanctity of the notification of 20.10.2004 before taking pains to crucify the notification of 10.03.2011 which was meant for the withdrawal of the notification of 20.10.2004. A void notification cannot be enforced, From the facts and circumstances of this case, the allegation of forgery is also made out, to which the petitioner did not advert, for unknown reasons. The respondent appears to be beneficiary of notification of 20.10.2004 and could have been dealt with accordingly.

11. This Court has held repeatedly that no limitation is prescribed to competently and successfully challenged a void order/notification. We are also astonished to note that the Federal Service Tribunal passed a direction to the petitioner to grant pensionary benefits to the respondent in accordance with the notification dated 20.10.2004. In fact, there was no reference of any pensionary benefits in the notification of 20.10.2004. Such observations by Federal Service Tribunal are perverse and based on misreading of the record. Wrong mentioning of the dates in paras Nos. 8 and 11 apart, there was absolutely no justification for such decision, which was passed in an arbitrary and capricious manner. It demonstrates colourful exercise of power and is shorn of any judicial acumen.

12. In the impugned judgment, there was import of the principle of locus poenitentiae to rescue the respondent. We are constrained to observe that the principle is meant to condone a bona fide mistake and not to be pressed into service for reaping the benefit of any fraud or to camouflage the same. The members of the Federal Service Tribunal were not justified in the circumstances to invoke the principle of locus poenitentiae, in the fact and circumstances of this case.

13. Besides the legal status of the notification of 20.10.2004, some other controversies like the status of the respondent as civil servant while serving in NCL, right of pensionary benefits as such and the reckoning of his service in NCL for the purpose of seniority in the Senate Secretariat are also involved, which have not been comprehensively adverted to in the impugned judgment, passed by the Members of Federal Service Tribunal on 11.06.2015 in a perfunctory manner and their judicial approach is leaving much to be desired. Keeping in view the observations recorded hereinabove; the listed petition is converted into appeal and allowed. Consequently, the impugned judgment passed on 11.06.2015 by Members of Federal Service Tribunal is set aside. The Appeal No.238(L)/CS/2013 is remanded with the direction that the learned Chairman Federal Service Tribunal will entrust this Appeal to a Bench at Islamabad for decision within a period of three months, in accordance with law and keeping in view the above observations.

14. However, it is directed that the observations made hereinabove regarding the conduct of the Members of the Service Tribunal, who have passed the impugned judgment, dated 11.06.2015, will be transmitted to the concerned quarters for necessary action, in accordance with law. The same will also be placed before the Hon'ble Chief Justice of Pakistan for perusal and necessary action.

MWA/S-2/SC

Case remanded.

2011 SCMR 676

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J. Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ

RAJA KHAN---Petitioner

Versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY COMPANY (WAPDA) and others---Respondents

Void order will not circumvent limitation

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009 passed by the Federal Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal for being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as well as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court could not compromise on limitation---Petitioner during four years of service had been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment of compulsory retirement by getting his pension claim and monthly pension regularly---Supreme Court refused to grant leave to appeal in circumstances.

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) Constitution of Pakistan---

---Art. 212(3)---Service Tribunal, finding of---Validity---Such finding being finding of fact would not call for interference by Supreme Court.

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) Constitution of Pakistan---

---Art. 212(3)---Concurrent findings of fact by Appellate Authority and Service Tribunal---Validity---Supreme Court would not interfere with such findings.

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) Service Tribunals Act (LXX of 1973)---

appellant has challenged the same in due course of time. The earlier Notification varying the terms and conditions of service of the appellant, was never communicated to the appellant nor appellant was aware of it either, therefore, the same was not challenged. The reservation of the post only for Civil Engineers is squarely discriminatory and malafide to deprive the appellant being senior-most and eligible for promotion to the next higher grade, therefore, impugned Notification is violative of the law and thus not sustainable.

5. Incorrect. As explained above, however, the appeal of the appellant was well within time and has wrongly been rejected.
6. Incorrect. The Representation of appellant was rejected in violation of the law.
7. Incorrect.

Grounds:

- A. misconceived. Appellant has not been treated in accordance with law.
- B. Being not replied hence admitted.
- C. Misconceived. PHE equally and invariably requires the expert hands of both Engineers and for that reasons in the earlier rules both were equally eligible for promotion but the impugned Notification was issued malafide which has

4---Departmental appeal being time-barred---Effect---Appeal before Service Tribunal would not be competent.

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) Limitation---

---Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed.

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) Constitution of Pakistan---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the Constitution---Discretionary in character.

(g) Constitution of Pakistan---

---Arts. 185(3) & 212(3)---Grant of leave to , appeal by Supreme Court---Discretionary.

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

(h) Constitution of Pakistan---

---Arts. 199 & 212(3)---Void order---Constitutional jurisdiction of High Court and Supreme Court---Scope---Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order.

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:--

3. Correct to the extent that Mr. Sikandar Khan has been promoted to the post of Chief Engineer (BPS-20), the appellant is the next senior most officer, however, being Mechanical Engineer, he is not eligible for promotion to the post of Chief Engineer (BPS-20) as per existing Service Rules of PHE Department. It may be noted that the PHE, being Civil oriented Department, requires the effective knowledge of Civil Engineers for key positions.
4. Incorrect. The Service Rules of PHE Department were reframed in 2007 in the merged Works & Services Department on the basis of its requirements wherein only Civil Engineers were declared eligible for promotion to various positions in its hierarchical structure. However, special amendments in the Services Rules were made vide Notification dated 06-12-2010, wherein against Serial No.2 and 3, in Column No.5, the word and brackets, "(Civil)" were deleted and thus the appellant, being the Mechanical Engineer, was granted access for promotion to the post of Superintending Engineer (BPS-19). It may be noted that in order to avail the benefits from the said Rules for promotion from BPS 17-19, the appellant remained silent and has now challenged the same so that the rules could be twisted for his personal benefits. The post of Chief Engineer (BPS-20), being the controlling officer for execution, supervision, maintenance and operation of Water Supply Schemes across the Province, was purely reserved for promotion of Civil Engineers in the best public interest. The appointment rules in vogue make only Civil Engineers eligible for appointments in PHE Department which further nullify the standpoint of the appellant.
5. Incorrect. The Services Rules were reframed in 2007 wherein the Mechanical Engineering Degree Holders were barred from promotion. The appellant was serving in the department and had better knowledge of the new Service Rules. However, he did not agitate / resist against these Rules. On bifurcation of Works & Services Department into C&W & PHE Departments, the Service Rules of 2007 were re-notified for the newly established PHE Department known as PHE Department's (Recruitment & Appointments) Rules 2010. Against these rules, the appellant filed appeal to the Chief Secretary Khyber Pakhtunkhwa. This appeal of the appellant was time barred. However, the competent authority, after thorough consideration, rejected the appeal of the appellant. The appellant was informed accordingly.

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence to offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was' absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 .was passed by incompetent authority, therefore, the same was coram non iudice and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal within

prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:--

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See Iftikhar Ahmed Malik case (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See Chairman PIA and others v. Nasim Malik (PLD 1990 SC 951) and Muhammad Aslam v. WAPDA and others (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan (PLD 1985 SC 309). The relevant observation is as follows:--

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation.....The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:--

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in Khan Sahib Slier Muhammad Mir's case (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs.155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principle of "approbate and reprobate." See Haji Ghulam Rasul's case (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well known principle of estoppel keeping in view subsequent events. See Mst. Amina Begum's case (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See Ghulam Qadir Khan's case (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rashid's case (1969 SCMR 141)

Wali Muhammad case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in Nawab Syed Raunaq Ali's case (PLD 1973 SC 216).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the

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IRRIGATION AND PUBLIC HEALTH ENGINEERING DEPARTMENT
PUBLIC HEALTH ENGINEERING DEPARTMENT (RECRUITMENT AND
APPOINTMENT) RULES, 1979.

SCHEDULE

Irrigation and Public Health Engineering Department,

Sl. No.	Nomenclature of post.	Minimum qualification for appointment, by special recruitment or by promotion, or by transfer.	Age for initial recruitment.		Method of recruitment.
			Min. (Male)	Min. (F)	
1			2	3	

NOTE COMMON TO IRRIGATION AND PUBLIC HEALTH ENGG. DEPARTMENT

1. Chief Engineer.

2. Superintending Engineer.

3. Executive Engineer.

Degree in engineering from a recognized University.

By selection on merit from amongst four senior most officers in case of Irrigation Department and three in case of Public Health Engrg. Deptt. with at least seventeen years experience as Government servant, seniority being considered only in the case of officers of practically the same standard of merit.

By selection on merit from amongst the Executive Engineers or holders of equivalent posts in the Department concerned, in which the vacancy occurs, with at least twelve years service in grade 17 and 18, seniority being considered only in case of officers of practically the same standard of merit.

By selection on merit with regard to seniority from amongst the Executive Engineers of the Department in which the vacancy occurs, with at least six years

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