Service Appeal No.1427/2017 titled "Dr. Robina Javed Khattak Vs. Government of Khyber Pakhtunkhwa through Secretary Health Peshawar and others" decided on 13.06.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Fareeha Paul, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.1427/2017

Date of presentation of Appeal.....29.12.2017
Date of Hearing.....13.06.2023
Date of Decision.....13.06.2023

Dr. Robina Javed Khattak, Ex-Gynecologist, DHQ Hospital Hangu, District Hangu.
.....*Appellant*

Versus

1. **The Government** of Khyber Pakhtunkhwa through Secretary health Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director General** Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Medical Superintendent,** DHQ Hospital, Kohat.
4. **The Medical Superintendent,** DHQ Hospital, Hangu.
.....(*Respondents*)

Present:

Mr. Munfat Ali Yousafzai, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney .....For respondents.

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.04.2008 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 27.01.2011 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED ON NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was initially appointed as Women Medical Officer (BPS-17); that the appellant submitted her arrival report and started performing duties quite

efficiently and to the entire satisfaction of her high ups; that the appellant was promoted to the post of Gynecologist (BPS-18); that during service the appellant was transferred from the DHQ Hospital Kohat to the DHQ Hospital Hangu vide notification dated 12.09.2006; that the appellant applied for leave which was allowed and sanctioned till 31.08.2006; that after completion of the said leave the appellant applied for further extension of five years; that after coming back from abroad, it came to the knowledge of appellant that she had been removed from service by the competent authority vide impugned order dated 03.04.2008; that feeling aggrieved, the appellant filed departmental on 20.01.2011, which was rejected on 27.01.2011; hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

04. Learned counsel for appellant argued that the impugned order dated 03.04.2008 and 27.01.2011 issued by the respondents were against the law, facts and norms of natural justice, hence, not tenable and liable to be set aside. He further argued that neither charge sheet and statement of allegation had been served upon the appellant nor show cause notice and personal hearing had been provided to the appellant, hence, he was condemned unheard. He requested that the appeal might be accepted.

05. Learned District Attorney controverted the arguments advanced by the learned counsel for the appellant and stated that the appellant did not resume her duty in the DHQ Hospital Hangu after expiry of leave and remained absent. She was served with absence notices at her home address vide letter dated 18.11.2006. She was also served with a final notice through press on 28.06.2017 directing her to resume duty but she did not resume her duty and remained absent. Again notices were published in the Urdu Daily Mashriq and Daily Ilhaq on 02.01.2008 but she again failed to resume her duty. Consequently she was removed from service. He added that the appellant had applied for 730 days earned leave w.e.f. 01.10.2005 through the EDO Health Kohat vide letter No. 481/E-1 dated 29.08.2008, which was rejected vide letter No. 39151-E-1 dated 24.09.2005. Learned District Attorney further argued that disciplinary action, for her absence from duty was initiated and a reasonable period was given to her to resume duty and to explain her absence from duty but she totally failed. He requested that the instant appeal might be dismissed.

06. The appellant was removed from service vide order dated 03.04.2008 bearing Endst No.11249-54/E-I dated 17.04.2008 and she filed departmental appeal on 20.01.2011, which was rejected on 27.01.2011 holding the same to be time barred, while the appellant filed this appeal on 29.12.2017, which is apparently hopelessly barred by time. There is an application for condonation of delay but on the grounds that valuable rights of the appellant were involved in the matter; that the appellant served the department for more than 20 years and that the law required decision of cases on merits and

not on technicalities. During the course of arguments, the learned counsel for the appellant has though claimed that the impugned order was void yet there was nothing said as to how that was void. The grounds taken in the application for condonation of delay are not convincing, therefore, are not considered. Even with regard to claiming condonation of delay to challenge a void, the Supreme Court of Pakistan in a case reported as 2023 SCMR 291 titled "*Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others*", has that such a plea would be available in appropriate cases where the appellant has vigilantly pursued the cause and not in all cases. The Supreme Court of Pakistan was pleased to have found as under:

> *"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of*

limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation

> *requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."*

07. In this case the appellant could not explain as to where was she after 27.01.2011 when her departmental appeal was rejected till filing the appeal on 29.12.2017 nor could she place on record any document that before filing of this appeal she had been vigilantly pursuing her cause. The upshot of the above discussion is that this appeal is barred by time and is accordingly dismissed. We direct that the costs of the appeal shall abide by the result. Consign.

08. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of June, 2023.***

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Adnan Shah, P.A