



ORDER  
06.09.2023

Appellant alongwith his counsel present. Mr. Sifatullah, Assistant alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed being not maintainable. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
06.09.2023


  
(Fareeha Paul)  
Member (Executive)


  
(Salah-Ud-Din)  
Member (Judicial)

when an appeal is liable to be dismissed on the ground of limitation, its merits need not to be discussed.

8. As a sequel to the above discussion, the appeal in hand stands dismissed being not maintainable. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
06.09.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

*\*Naeem Amin\**

removal by way of filing Writ Petition before the Hon'ble Peshawar High Court, which was dismissed in limine vide order dated 10.10.2013 on the ground of lack of jurisdiction. The appellant then kept mum and filed departmental appeal after a considerable delay on 23.02.2018. The appellant was required to have challenged the order of his removal from service within a period of one month, however he remained indolent and filed departmental appeal on 23.02.2018 i.e after a lapse of more than six years. The departmental appeal of the appellant was thus badly time barred. The appellant has though submitted an application for condonation of delay, wherein he has taken the stance that he was pursuing his remedy before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat by way of filing Writ Petition. The ground so taken by the appellant could not be considered for condonation of delay as there are numerous judgments of worthy apex court, wherein it has been held that time spent in pursuing remedy before wrong forum is not condonable. Reliance in this respect is placed on PLD 2016 Supreme Court page 872.

7. Worthy apex court in its judgments reported as 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 SC 951 has held that when appeal of an employèe was barred by time before the appellate Authority, then the appeal before the Tribunal was not competent. Moreover, it has also been held by August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 that

too, law favours adjudication on merit by avoiding technical knockouts; that the impugned order is wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.


4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was conditionally appointed on leave vacancy post and on expiry of extra-ordinary leave of Mr. Iltaf-ul-Haq Junior Clerk, the appellant was legally removed from service; that the appellant was appointed against leave vacancy post and he was thus having no vested right to remain regularly posted on the said post; that Mr. Iltaf-ul-Haq Junior Clerk was though later on appointed as Accountant in the office of Immigration and Passport Islamabad, however the vacancy created due to such appointment of Mr. Iltaf-ul-Haq was to be filled through adopting of proper legal procedure for appointment of Junior Clerk on the said post; that the departmental appeal of the appellant was badly barred by time and in view of verdict of worthy apex court, the appeal in hand is not maintainable and is liable to be dismissed.

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

6. The appellant was removed from service vide the impugned order dated 08.09.2011 passed by Executive District Officer Elementary & Secondary Education Chitral. The appellant instead of filing departmental appeal, challenged the order of his

appellant was dismissed in limine vide order dated 10.10.2013 with the observations that he was a civil servant and can approach the competent forum, if he so desires. The appellant then filed departmental appeal on 23.02.2018, however the same was not responded within the statutory period, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents No. 1 to 5 contested the appeal by way of filing reply/comments, however vide order dated 10.05.2023 private respondents No. 6 & 7 were deleted from the panel of respondents on the request of learned counsel for the appellant as they were neither proper nor necessary parties.



3. Learned counsel for the appellant contended that the appellant was appointed as Junior Clerk on leave vacancy post vacated due to extra-ordinary leave of one Iltaf-ul-Haq, who was later on appointed as Accountant in the office of Director General Immigration and Passport Office Islamabad; that it has wrongly been mentioned in the impugned removal order of the appellant that the said Iltaf-ul-Haq had arrived back for resuming the charge of his post; that the departmental appeal of the appellant was filed beyond the prescribed period of limitation, however the appellant was pursuing his remedy before the Hon'ble Peshawar High Court by way of filing Writ Petition, therefore, the delay in filing of departmental appeal is condonable and otherwise

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 813/2018

Date of Institution ... 22.06.2018

Date of Decision... 06.09.2023

Nisar Ahmad S/O Noor Muhammad, R/O Village Muzdah, PO Kosht Tehsil Mastuj District Chitral.

... (Appellant)

**VERSUS**

Secretary Elementary and Secondary Education Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar and 06 others.

... (Respondents)

-----  
SYED GHUFRAN ULLAH SHAH.

Advocate

--- For appellant.

MR. ASAD ALI KHAN,  
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN  
FAREEHA PAUL,

---

---

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Brief facts forming the background of the instant appeal are that vide order dated 25.11.2010, the appellant was appointed as Junior Clerk (BPS-07) in the office of Deputy District Officer (Female) Booni Chitral against leave vacancy post, which was vacant on account of availing of extra-ordinary leave by one Mr. Iltaf-ul-Haq. According to office order dated 08.09.2011, the appellant was removed from service on the ground of arrival of permanent incumbent, constraining the appellant to file Writ Petition No. 369-M of 2013 before the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. The Writ Petition of the

