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REGISTERED
No. C.P. 467-P/2021 AND
C.M.A. 789-P/2021 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 11-09 2023

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: **CIVIL PETITION 467-P/2021 AND C.M.A. 789-P/2021**

Chief Minister Khyber Pakhtunkhwa through its Principal Secretary and
others

(in C.P.467-P/2021)
(in C.M.A.789-P/2021)

Versus

Abid Hussain

(in C.P.467-P/2021)
(in C.M.A.789-P/2021)

**On appeal from the Order/Judgment of the Khyber Pakhtunkhwa
Service Tribunal, Peshawar dated 22/06/2021 in Appeal-948/2019**

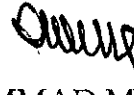
Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment
of this Court dated 03/08/2023 disposing of the above cited cases with observations for
information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order/Judgment:

Yours faithfully,



(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

Civil Petition No.467-P of 2021

Against the judgment dated 22.06.2021 passed
by K.P.K. Service Tribunal, Peshawar, in Appeal
No.948/2019

AND C.M.A.789-P/2021

(Stay application)

Chief Minister Khyber Pakhtunkhwa through its
Principal Secretary and others

...Petitioners

Versus

Abid Hussain

...Respondent

For the Petitioners:

Mr. Sultan Mazhar Sher Khan, Addl. AG
KPK

For the Respondent:

In Person

Date of Hearing:

03.08.2023

ORDER

Muhammad Ali Mazhar, J. Through the instant petition for leave to appeal, the petitioners have assailed the judgment dated 22.06.2021 passed by Khyber Pakhtunkhwa Service Tribunal, Peshawar (**'the Tribunal'**), in Appeal No.948/2019, whereby respondent's appeal was accepted and his increment was restored with back benefits.

2. Learned Additional Advocate General Khyber Pakhtunkhwa at the very outset points out that the departmental appeal on the face of it was barred by time, which fact was not considered by the Tribunal. He further points out the second last paragraph of the impugned judgment in which the Tribunal observed that the minor punishment of withholding of two increments of the respondent was a continuing cause of action, therefore, no limitation runs against the said order.

3. We are not satisfied with the aforesaid observation of the learned Tribunal. When a specific period of limitation is provided under Rule 17 of the Efficiency and Discipline Rules that the departmental appeal should be preferred within a period of thirty days from receiving the

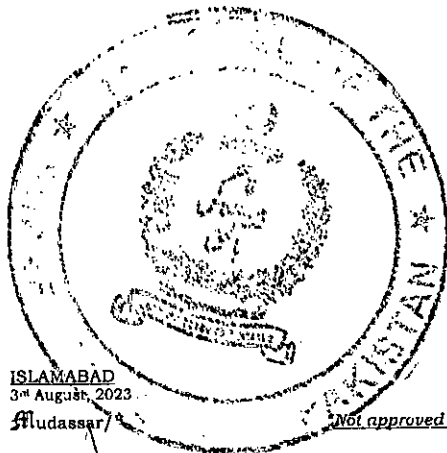
ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

impugned order of the department that cannot be extended on the plea of continuing cause of action and if such findings are accepted, then the entire purpose of prescribing limitation would become futile. Upon our query whether the respondent is in job, the learned Additional Advocate General informed us that on attaining the age of superannuation the respondent has already been retired from service.

4. Accordingly, for all intent and purposes, this petition has become infructuous, as the penalty imposed was withholding of two increments for two years in 2019, despite its continuation at present it would have already been served out its purpose and the increments were to be restored after two years. No doubt this petition has become infructuous after the retirement of the respondent but the observation made by the learned Tribunal with regard to the time barred departmental appeal shall not be treated as a precedent, which is not a correct exposition of law. In view of the above, this petition is disposed of.

Sd/-
Sd/-
Sd/-



ISLAMABAD
3rd August, 2023
Aludassar

Not approved for reporting

Amel
24/8/23

Certified to be True Copy

[Signature]

Court Associate
Supreme Court of Pakistan
Islamabad