

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Reply in Execution 15/2017
In
Service Appeal No. 1109/2012

GOVT OF KPK & OTHERS VS RUBINA SHAHEEN

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RESPONDENT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Reply of Objection Petition No. _____/2022

In Execution Petition No.15/2017

in Service Appeal No: 1109/2012

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8159

Dated 06-10-23

1. The Provincial Government through Chief Secretary, Govt of KP, Peshawar.
2. Secretary Social Welfare, Special Education & Women Empowerment Department, KP, Peshawar Near Islamia College Jamrud Road, Peshawar.
3. Director Social Welfare, Special Education and Women Empowerment Department, KP, Peshawar Near Islamia College Jamrud Road, Peshawar.
4. District Officer, Special Education and Women Empowerment Department, KP, Peshawar.
5. Secretary Finance Department, Govt of KP, Peshawar.

.....**Petitioners**

VERSUS

Robina Shaheen (Late) Junior Special Education Teacher (BS-16), Govt Institute for Blind (Girls), Peshawar.

.....**Respondent**

REPLY TO THE OBJECTION PETITION ON BEHALF OF RESPONDENT.

Respectfully Sheweth:

Preliminary Objections:

- A. Instant objection petition is not maintainable in its present form.
- B. Petitioners have got no cause of action to file the objection petition.
- C. Objection Petition of the petitioners is based on malafide, false and frivolous, therefore liable to be set aside.

ON FACTS:

1. Para No: 01 of the objection Petition is incorrect, hence denied. Similar nature cases has already been implemented by the petitioners herein (the respondent Department) rather those employees who also filed

service appeal along with respondent herein, and this August Tribunal through consolidated Judgment allowing appeals of the respondent herein including those who file appeals with the respondent. That The Judgment of this august Tribunal has been implemented in favour of the respondent's colleagues (i.e., Humaira Taimoor, Fazal Ellahi Munj, and Shazia Rauf Munj), and the department has totally ignored the respondent without any reason and rhyme.

2. Para No: 02 of the objection Petition is incorrect, hence denied. According to the recent precedent/Judgment of the apex court reported in 2023 SCMR 46, wherein its was held that Legal representatives can pursue even a service appeal after the death of the Civil Servant.

(Copy of the Judgment is annexure as A)

3. Para No: 03 of the objection Petition is incorrect, hence denied. Detailed reply has been given in the above paras.
4. Para No: 04 of the objection Petition is incorrect, hence denied. Detailed reply has been given in the above paras.

It is, therefore, most humbly prayed that the objection petition may kindly be dismissed with special compensatory cost.

Respondents LR's

Through:

Noor Muhammad Khattak

Advocate Supreme Court

Affidavit: As per instruction of my client the contents of this reply to objection petition are true and correct, and nothing has been concealed from this Hon'ble Tribunal.

Advocate

2023 S C M R 46

[Supreme Court of Pakistan]

Present: Sardar Tariq Masood, Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ

AZRA BIBI---Petitioner

Versus

GENERAL MANAGER, PERSONNEL (CPO), PAKISTAN RAILWAYS HQ, LAHORE
and others---Respondents

Civil Petition No. 2628 of 2019, decided on 10th October, 2022.

(Against the judgment dated 27.05.2019 passed by Federal Service Tribunal, Islamabad in Appeal No. 2054(R)CS/2018)

Civil Servants Act (LXXI of 1973)---

----S. 2(b)---Service Tribunals Act (LXX of 1973), Ss. 2(a) & 4---Appeal filed by legal heirs of deceased civil servant---Maintainability---Perusal of Civil Servants Act, 1973 and Service Tribunals Act, 1973 showed that there is no scope or prospect for filing any appeal before the Service Tribunal other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant---Any relief which is personal to the deceased civil servant cannot be granted after his death but the Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc., if permissible and applicable under the law and rules to the deceased.

Record showed that the deceased civil servant died on 30.07.2017, and the first application/representation was moved before the department by his widow/petitioner on 21.05.2018, which was obviously after the demise of her husband. Nothing was placed on record to show that the deceased, ever challenged his regularization with immediate effect, rather than from the date of his initial appointment. The claim of regularization, rightly or wrongly, from the date of initial appointment was a cause of action that could only be agitated by the deceased in his lifetime, but no such claim or legal proceedings were set into motion by him which showed that the deceased was satisfied and not interested in lodging any such claim and after his death.

There is no scope or prospect for filing any appeal before the Service Tribunal under section 4 of the Service Tribunals Act, 1973 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.

In the present case had the appeal been filed by the deceased and during its pendency he passed away, then subject to the Tribunal first deciding the question whether the cause of action did survive despite death, the widow/petitioner could have moved the application for impleadment in the Tribunal as if the Tribunal had not become functus officio.

Any relief which is personal to the deceased civil servant cannot be granted after his death but the Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits,

gratuity or provident fund etc. if permissible and applicable under the law and rules to the deceased. However, the facts of the present case are quite distinguishable and the Tribunal could not entertain the appeal which was originally filed by the widow herself after the death of civil servant and it was not a case of impleading the legal heirs in any pending appeal to ensure the payment of full and final settlement of dues. Petition for leave to appeal was dismissed and leave was refused.

Muhammad Sharif Janjua, Advocate-on-Record for Petitioner along with Mrs. Azra Bibi in person.

Nemo for the Respondents.

Date of hearing: 10th October, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---This Civil Petition for leave to appeal is brought to challenge the judgment passed by the learned Federal Service Tribunal, Islamabad ("Tribunal") on 27.05.2019 in Service Appeal No.2054(R)CS/2018, whereby the appeal filed by the petitioner was dismissed.

2. To put it in a nutshell, the petitioner, being the widow of Fateh Khan, approached the learned Tribunal by means of the aforesaid appeal with the grievance that her husband joined Pakistan Railways as Gangman on 04.10.1990, and was regularized in service on 14.01.2000 with immediate effect. She prayed to the department, as well as the learned Tribunal that the services of her deceased husband be regularized with retrospective effect from the date of his initial appointment i.e. on 04.10.1990. The record reflects that the husband of the petitioner died on 30.07.2017, and the first application/representation was moved before the department by the petitioner on 21.05.2018, which is obviously after the demise of her husband. Nothing was placed on record to show that the deceased, Fateh Khan, ever challenged his regularization with immediate effect, rather than from the date of his initial appointment.

3. All the more so, the claim of regularization, rightly or wrongly, from the date of initial appointment was a cause of action that could only be agitated by the deceased husband in his lifetime, but no such claim or legal proceedings were set into motion by him which shows that the deceased was satisfied and not interested in lodging any such claim and after his death, this cause of action does not survive to be agitated by his legal heirs. According to section 2(b) (Definitions clause) of the Civil Servants Act, 1973, a "civil servant" means a person who is a member of All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does include (i) a person who is on deputation to the Federation from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934, or the Workman's Compensation Act, 1923. Whereas under section 2(a) of the Service Tribunals Act, 1973, a "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. The provision for filing an appeal to the Tribunal is provided under section 4 of the Service Tribunals Act, 1973 by means of which civil servants aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order, file an appeal to the Tribunal. The above provisions unequivocally interpret and elucidate that there is no scope or prospect for filing any appeal before the Service Tribunal under section 4 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.

4. We are sanguine to the legal maxim "actio personalis moritur cum persona" which is a legal turn of phrase of Latin origin. In the well-read literary

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personal right to an action dies with the person. There are certain categories of legal proceedings or lawsuits in which the right to sue is personal and does not survive to the legal representatives and, as a consequence thereof, the proceedings are abated. In case of survival of the cause of action, according to the genres of the lis, the legal representatives may be impleaded to continue the suit or other legal proceedings for which relevant provisions are mentioned under Order XXII, Rule 1, C.P.C. that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives and further modalities are mentioned in succeeding rules, how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant.

5. The petitioner in this case did not apply to the learned Tribunal for impleading legal heirs on the notion that cause of action survives despite death, rather the appeal was filed much after the death of her husband who did not opt to initiate any legal proceedings within his lifetime. Had the appeal been filed by the husband and during pendency he passed away, then subject to first deciding an elementary question by the Tribunal in the set of circumstances of the case whether the cause of action does survive despite death, then unambiguously, the petitioner could have moved the application for impleadment in the Tribunal as if the Tribunal had not become functus officio. For instance, if the service appeal is filed against the dismissal of service or for compulsory retirement, and death of petitioner occurred during the pendency of appeal, then obviously the main relief of reinstatement in service, which was personal to the appellant cannot be granted after his death but the learned Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc. if permissible and applicable under the law and rules to the deceased appellant. However, the facts of the present case are quite distinguishable wherein the Tribunal could not entertain the appeal which was originally filed by the widow herself after the death of civil servant and it was not a case of impleading the legal heirs in any pending appeal to ensure the payment of full and final settlement of dues.

6. The learned Tribunal has already considered all legal and factual aspects in the impugned judgment and to some extent also considered the representation of the petitioner being time barred, obviously for the reason that act of regularization was done in the year 2000 but no departmental appeal was filed within the specified period of limitation, and even the departmental appeal was filed by the widow and not by her husband during his lifetime.

ATTESTED

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7. As a result of the above discussion, the civil petition is dismissed and leave to appeal is refused.

MWA/A-47/SC
dismissed.

Petiti.

~~ATTESTED~~