KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 223/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER(E)

Saleem Shah S/O Mian Muhammad Shah, GPS, Shamilat Mardan.
.... (*Appellant*)

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Peshawar.
2. District Education Officer (M), Mardan.
3. Decorator, Elementary and Secondary Education, Peshawar.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Habib Anwar
Additional Advocate General ... For respondents

Date of Institution.....25.01.2023
Date of Hearing.....04.01.2024
Date of Decision.....04.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

> **"On acceptance of this appeal, the impugned order date d03.12.2015 and 07.05.2015 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits."**

2. Through this judgement we intend to dispose of instant service appeal as well as connected service appeal No.224/2023 titled "Saleem Shah Vs.

Education Department" as in both the appeals common question of law and facts are involved.

3. Brief facts leading to filing of the instant appeals are that the appellants (brothers) were serving as PSTs in the Education Department. That on 12.06.2013, FIR No.387 was lodged against them under section 489F PPC at PS Saddar Mardan, due to which they were not able to attend the duties and accordingly, were suspended. That on 12.06.2015, they were acquitted by the Court of Law. That they submitted applications for leave but on completion of the leave sought for, they failed to attend the duties. Therefore, they were removed from service vide impugned orders dated 07.05.2015 (of Saleem Shah) and 09.01.2015 (of Yousaf Shah). Feeling aggrieved, they filed departmental appeals, which were rejected vide order dated 03.12.2015, hence, these appeals.

4. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that the impugned orders were against law and facts, hence, not maintainable. He submitted that the whole process had been conducted in the absence of appellants and no inquiry was conducted and statement of allegations as well as charge sheet had been served upon the appellant. Further submitted that the appellants had been condemned unheard and no opportunity of personal hearing had been provided to them which were the requirements of law and justice; that due to fear of enemies, the appellants were unable to attend the duties. Lastly, he submitted that brother of the appellants had filed appeal before this Tribunal which was also on the same footings and the same was allowed on 10.10.2022 and their brother was reinstated in service,

therefore, he requested that the appellants might also be reinstated in service with all back benefits.

6. Conversely, learned Additional Advocate General contended that the removal orders of the appellants were in accordance with law and rules. He submitted that proper notices for resuming of duties had been served upon the appellants but the appellants had failed to appear before the authority; that proper show cause notices had been served upon the appellants. Lastly, he submitted that after fulfillment of all codal formalities, the appellants had been removed from service and their appeals were also time barred, therefore, he requested for dismissal of the instant service appeals.

7. From the record, it is evident that appellants were appointed as PSTs in the Education Department. An FIR was lodged against them, due to which they absented from duties. Resultantly, Saleem Shah was removed from service on 07.05.2015 and he submitted departmental appeal on 19.08.2015 (after passage of 104 days) and Yousaf Shah was removed on 09.01.2015 and he submitted departmental appeal on 02.03.2015 (after passage of 52 days). While Section-4 of the Service Tribunal Act, 1974 gives the period for filing departmental appeal as thirty days. The same is reproduced below:

> ***4. Appeal to Tribunals.***--- *Any civil servant 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 to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter.*

Therefore, the departmental appeals of the appellants are barred by time and it is a well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman& others reported in 2004 SCMR 1426.

8. Besides, the departmental appeals of the appellants were rejected on 03.12.2015 while they have filed these appeals on 25.01.2023 (after a lapse of seven years) which are hopelessly barred by time. Although, there are applications for condonation of delay but with no good ground as the entire stress in the applications was made on two points. First, the impugned order was void ab initio and no limitation runs against the void order and second that the cases should be decided on merit. We, in this respect, rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 – titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

> *"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."

9. In the above judgment, the august Supreme Court of Pakistan found that there was no relaxation available in the law to approach the Court after deep slumber or inordinate delay under the garb of labeling an order or action void with the articulation that no limitation ran against the void order. The august Court went on saying that if such tendency was not deprecated and a party was 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 could not be achieved and everyone would move the court at any point and time with the plea of void order. The Hon'ble Court further said that even if the order was considered void, the aggrieved person should act more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which did not provide any premium of extending limitation period as a vested right or an inflexible rule. Same is the case in these two appeals.

10. Therefore, the instant service appeal as well as connected service appeal, being hopelessly time barred, are hereby dismissed. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of January, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

ORDER

04.01. 2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the instant service appeal as well as connected service appeal, being hopelessly time barred, are hereby dismissed. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of January, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah