

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.892/2023

Date of presentation of Appeal.....04.04.2023
Date of Hearing.....03.07.2024
Date of Decision.....03.07.2024

Bacha Khitab S/O Sardar Khitab (Ex-Chowkidar Government Primary School Miagano Cham Gujar Garhi Mardan) Resident of Mohallah Miagano Cham Gujar Garhi, Mardan.....(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (Male) Mardan.**
4. **The Sub Divisional Education Officer (Male) Mardan.....(Respondents)**

Present:

Mr. Mehmood Jan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney...For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF THE DEO (M)/RESPONDENT NO.3 CONTAINED IN ENDST NO.9724-26/PF DATED 05.10.2013, WHEREBY THE APPELLANT IS AWARDED THE PUNISHMENT OF REMOVAL FROM SERVICE AND APPEAL THERE-AGAINST IS REJECTED RETURNED VIDE ENDST: NO.1399 DATED 15.02.2023 DIRECTING THE APPELLANT TO APPROACH THE PROPER FORUM.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case, as per averments of appeal, in brief is that he was appointed as Chowkidar on contract basis, whose services were regularized vide Notification dated 30.07.2008; that FIR No.273 was registered against him under Section-302/324/34 PPC dated 30.04.2013 of PS Saddar Mardan; that after trial of the criminal case, appellant was acquitted by the Additional Sessions Judge-VI Mardan vide judgment dated 10.01.2023; that after acquittal, the appellant approached the Department, however, he was informed that he had been removed from service vide order dated 05.10.2013; that feeling aggrieved, he filed representation to the DEO on 17.01.2023 which was rejected on 15.02.2023, hence, the instant 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 appellant and learned Deputy District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney assisted by learned counsel for private respondents, controverted the same by supporting the impugned order(s).

05. From the record, it is evident that appellants was appointed as Chowkidar in the Education Department. An FIR was lodged against him, due to which he absented from duties. Resultantly, he was removed from service on 05.10.2013 and submitted departmental appeal on 17.01.2023 (after passing 9 years and three months). 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.

06. Therefore, the departmental appeal of the appellant is barred by time and it is engrained 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.

07. Besides, the departmental appeal of the appellant was rejected on 15.02.2023 while he has filed this appeal on 04.04.2023 (after a lapse of one month and 19 days) which is also barred by time. 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 (GEPSCO), 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."

08. 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 and order or action vide 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 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 this appeal.

09. Therefore, the instant service appeal, being hopelessly time barred, is hereby dismissed with costs. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)