

Service Appeal No.4896/2021 titled "Mst. Fehmeeda Jan (widow of Faqir Gul, deceased civil servant) Vs. Government of Khyber Pakhtunkhwa"

ORDER

26th July. 2024

Kalim Arshad Khan, Chairman: Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for the respondents present.

2. Brief facts of the case, as reflected from the record, are that appellant is a widow of deceased civil servant namely Faqir Gul who was serving in the Public Health Engineering Department and was dismissed from service vide order dated 24.05.2012; that feeling aggrieved of the said dismissal order, widow the said civil servant filed departmental appeal on 14.12.2020 but the same was not responded, hence, the instant service appeal.

3. Arguments heard. Record perused.

4. Perusal of record reveals that appellant is a widow of Faqir Gul and her husband (civil servant) was murdered on 08.06.2009 in Peshawar. During absconsion of the civil servant (Faqir Gul) and after his dismissal, he had never made any representation during his lifetime for his reinstatement. The appellant (widow of Faqir Gul) who had for the first time made representation on 09.12.2020.

5. In a quite similar case reported as 2023 SCMR 46 titled "Azra Bibi Vs General Manager, Personnel (CPO), Pakistan Railways HQ, Lahore and others" the Supreme Court of Pakistan has held that:



"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 aside into motion by that 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-charge 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 Tribunal 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 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 an 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 "action personalis moritur cum persona" which is a legal turn of phrase of Latin origin. In the well-read literary connotation, it means that the 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 CPC. 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

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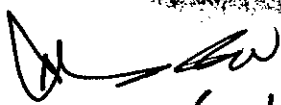
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succeeding rules, how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant.

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 not survive despite death, then ambiguously, 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 the 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 survive 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 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 had already considered all legal and factual aspects in the impugned judgment and 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 filed by the widow and not by her husband during his life time."


6. In this case also, the appellant is widow of the civil servant. The civil servant had never challenged the impugned order during his lifetime, while the widow, for the first time,

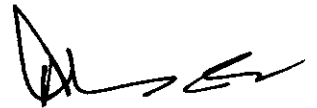

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filed application on 09.12.2020 i.e. much after the death of her husband (civil servant).

7. In the light of above, we hold that the appellant has no *locus standi*, therefore, he could not have filed this appeal, which is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 26th day of July, 2024.*


(Aurangzeb Khattak)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah