

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

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

Service Appeal No.2493/2023

Date of presentation of appeal.....30.11.2023
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Muhammad Ishaq Mohallah Mir Khela Banar Mingora Swat (Ex-STT GHS Mingora No.1, Swat).....(*Appellant*)

Versus

1. **Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer Male**, Swat.
4. **Principal** Government High School No.1 Mingora...(*Respondents*)

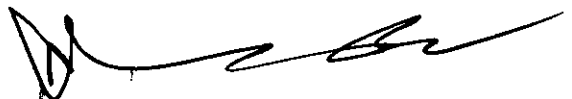
Present:

Mr. Umar Khitab, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENT NO.3, IMPUGNED ORDER NO.1708-15 DATED 03.05.2023.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was appointed as Theology Teacher in the Elementary & Secondary Education vide order dated 27.10.2014; that due to psychological issues, he was admitted in a rehabilitation center for 65 days, which period was sanctioned by the respondent No.3 as leave without pay; that he was



again admitted in rehabilitation center, for which, his brother submitted leave application but the same was not acceded to and vide impugned order dated 03.05.2023, he was removed from service; that feeling aggrieved, he filed departmental appeal, but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General, for respondents, controverted the same by supporting the impugned order.

5. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, it appears to us that appellant was serving as Theology Teacher since 27.10.2014 in the Education Department. Due to psychological issues, he remained admitted in some hospital initially for 65 days and after that, he was again allegedly admitted in a rehabilitation center. For the said reason of being habitually absent from duty, the respondents ordered for his removal from service on 03.05.2023. For the purpose of his reinstatement in



service, he filed departmental appeal on 22.08.2023. When no response was made by the respondents, he approached this Tribunal on 30.11.2023.

6. The impugned order of his removal was passed on 03.05.2023, while the appellant has filed departmental appeal 22.08.2023 (after passage of more than three months).

7. This case has to face the issue of limitation for the reason that he has filed departmental appeal at a belated stage i.e. beyond the period provided for filing departmental appeal before the appellate authority.

8. Therefore, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Apex Court has held that:

"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."

9. Furthermore, Section-4 of the Service Tribunal Act, 1974 also 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."

10. Besides, 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."

11. In view of the above situation, instant service appeal, being barred by time, is dismissed with costs. Consign.

12. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*


KALIM ARSHAD KHAN
Chairman
Camp Court, Swat


RASHIDA BANO
Member (Judicial)
Camp Court, Swat

Mutazem Shah

S.A #.2493/2023

ORDER

2nd Sep. 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.
3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*



(Rashida Bano)
Member (J)
Camp Court, Swat




(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shah

04th March, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Para-wise comments on behalf of respondents have been received through office, which are found place on file. To come up for arguments on 03.06.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Kalim Arshad Khan)
Chairman
Camp Court Swat


Nacem Amin

03rd June, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Hussain Ali, ADO for the respondents present.
2. Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments on 02.09.2024 before the D.B at camp court Swat. P.P given to the parties.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)
Camp Court Swat

Kamranullah