

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.6611/2021

Date of presentation of appeal.....26.11.2021
Dates of Hearing.....01.10.2024
Date of Decision.....01.10.2024

Mst. Bilqees Kausar daughter of Stana Mir resident of Village Brij Killi P.O Jamrud, Tehsil Jamrud, District Khyber(***Appellant***)

Versus

1. **Director** Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. **District Education Officer (Female)** District Khyber.
3. **Accountant General** Khyber Pakhtunkhwa, Peshawar.
.....(***Respondents***)

Present:

Mr. Aman Ullah Marwat, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate Genera.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST INACTION OF RESPONDENT BY NOT REINSTATEMENT OF THE APPELLANT AGAINST THE POST OF GOVERNMENT GIRLS PRIMARY SCHOOL IN TERMS OF INQUIRY DATED 15.11.2018 WHEREBY PETITIONER WAS RECOMMENDED FOR REINSTATEMENT IN SERVICE ALONGWITH ALL BACK BENEFITS I.E. SALARY, SENIORITY ETC. BY THE INQUIRY COMMITTEE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief, as per averment of appeal, is that she was appointed as Primary School Teacher vide order dated 14.10.2006; that upon visit of Agency Education Officer, she was found absent and

resultantly, was removed from service vide order dated 25.05.2014; that an inquiry was ordered by the Agency Education Officer and issued Notification whereby salaries of other 101 teachers were stopped; that the inquiry committee recommended her for reinstatement with certain other recommendation in her favor but the department did not act upon the said report; that she had filed departmental appeal against the order dated 24.04.2014, on 26.02.2021 but the same remained unresponded, 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 Assistant Advocate General for the respondents.

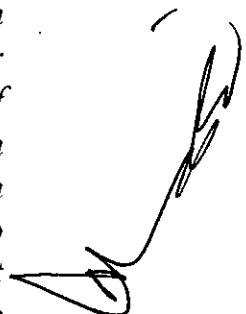
04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

05. Perusal of record shows that the impugned order of removal of the appellant was passed on 24.04.2014 against which the appellant filed departmental appeal on 26.02.2021 i.e. after passage of more than six years. While the instant appeal has also

been filed beyond the statutory period of 90 days, after filing of departmental appeal.

06. The departmental appeal of the appellant as well as service appeal of the appellant were barred by time as he did not file the same during the prescribed period. 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."

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

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 1st day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

S.A #.6611/2024

ORDER

1st Oct. 2024

1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, Assistant 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 Peshawar and given under our hands and the seal of the Tribunal on this 1st day of October, 2024.*



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah