

05<sup>th</sup> Sept, 2024

Learned counsel for the appellant present. Mr. Muhammad Sohrab, Lecturer alongwith Mr. Naseer-ur-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant wants to submit a copy of appointment letter of the appellant. He may do so within a fortnight. To come up for arguments on 07/10/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

(Muhammad Akbar Khan)  
Member (Executive)

(Aurangzeb Khattak)  
Member (Judicial)

\*Naeem Amin\*

S.A #.560/2022

**ORDER**

7<sup>th</sup> Oct. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our consolidated order of today, 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 7<sup>th</sup> day of October, 2024.*

(Farzeha Paul)  
Member (E)


(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

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

09. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 7<sup>th</sup> day of October, 2024.*

  
**KALIM ARSHAD KHAN**  
Chairman

  
**FAREEHA PAUL**  
Member (Executive)

*\*Muazem Shah\**

*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*

06. The original order of the authority had passed on 26.04.2012 against which he filed departmental representation on 24.11.2021 (after passage of more than nine years), which was badly barred by time.

07. The departmental appeal of the appellant was 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*

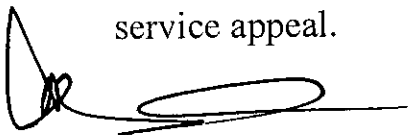
24.11.2021 which was rejected on 03.12.2021, hence, the instant service appeal.

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 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 District Attorney controverted the same by supporting the impugned order(s).

05. In the present case, the appellant, an Associate Professor, applied for Ex-Pakistan Leave in order to get admission in the Ph.D Program at China. The said leave was granted for two years while the Ph.D Program had to take three years in its completion. Therefore, the appellant remained in China for three years and after return to Pakistan, he approached the respondent department and after re-adjustment in the department, he tried to regularize his one year leave without pay into study leave. He did not succeed, therefore, filed representation, but the same was regretted, hence, he approached this Tribunal by filing the instant service appeal.



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Appellant's case in brief, as per averments of appeal, is that he was appointed as Lecturer (BPS-17) in the respondent department on 20.08.2002 and was promoted to the post of Associate Professor; that he was offered admission in Ph.D Program in China through Scholarship in the year 2008 and after getting NOC for studying in Jilin University, China he applied for NOC for study in China and study leave w.e.f September 2008 to July 2011 on which, NOC was allegedly granted to him on 02.09.2008; that as a result of correspondence between the respondents, 730 days Ex-Pakistan leave, w.e.f 05.09.2008 to 04.09.2010, without pay was granted to him vide Notification dated 07.11.2008; that the authority had allowed 730 days (two years) leave while the Ph.D Program was three years, for which the appellant requested however, his request was turned down on 13.01.2011; that upon arrival to Pakistan, he approached the respondent department for his adjustment and regularization of the period w.e.f 05.09.2010 to 12.07.2011 into leave period in order to resume his service again, on which, correspondence was made between the respondents and lastly, the competent authority accorded sanction to the grant of Extraordinary Leave (without pay) in respect of appellant vide Notification dated 26.04.2012; that after joining the duty, he filed applications for conversion of his leave without pay into study leave, but in vain; that he filed a departmental appeal on



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**  
**FAREEHA PAUL ...MEMBER (Executive)**

*Service Appeal No.560/2022*

Date of presentation of appeal.....12.04.2022  
Dates of Hearing.....07.10.2024  
Date of Decision.....07.10.2024

**Dr. Gul Nabi**, Associate Professor of Chemistry (BPS-19),  
Government Post Graduate College, Charsadda  
.....(*Appellant*)

Versus

1. **The Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary Higher Education, Archives & Libraries Department**, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Finance Department**, Khyber Pakhtunkhwa, Peshawar.
4. **The Director Higher Education**, Khyber Pakhtunkhwa, Peshawar.  
.....(*Respondents*)

Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE MEMO/ORDER DATED 03.12.2021 COMMUNICATED TO THE APPELLANT ON 28.03.2022, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR CONVERSION OF LEAVE WITHOUT PAY INTO STUDY LEAVE FOR THE PERIOD W.E.F 05.09.2008 TO 11.07.2011 AND FOR RESTORATION OF ANNUAL INCREMENTS OF THE YEAR OF 2009, 2010 AND 2011 "FOR THE PERIOD WHEREBY THE APPELLANT WAS DOING HIS PHD DEGREE IN THE CHINA" HAS BEEN REJECTED WITHOUT GIVING ANY REASON.**

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