

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

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

*Service Appeal No.876/2023*

Date of presentation of Appeal.....14.09.2023  
Date of Hearing.....29.10.2024  
Date of Decision.....29.10.2024

**Arif Khan, Driver, Assistant to Commissioner Office,**  
**Abbottabad.....(Appellant)**

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs and Human Rights Department, Peshawar.**
2. **Commissioner Hazara Division, Abbottabad.**
3. **District Accounts Officer, Abbottabad.....(Respondents)**

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS APPOINTED AS DRIVER ON 15.07.1996 AND WAS TERMINATED FROM SERVICE ON 19.05.1997. THE APPELLANT WAS APPOINTED VIDE APPOINTMENT ORDER DATED 22.08.2018 IN THE LIGHT OF SACKED EMPLOYEES APPOINTMENT ACT, 2012 AS WELL AS IN THE LIGHT OF JUDGMENT OF THIS COURT DATED 24.05.2016. THAT THE APPELLANT HAS GONE SUPERANNUATED FROM SERVICE ON 02.05.2022. THE APPELLANT FILED W.P & REVISION PETITION BEFORE THE HIGH COURT BENCH ABBOTTABAD FOR COUNTING OF FORMER SERVICE TOWARDS LENGTH OF HIS SERVICE FOR CALCULATION OF PENSION. RESPONDENTS COUNTED PROTECTED PERIOD OF SERVICE FOR QUALIFYING SERVICE FOR PENSION W.E.F 20.09.2012 TO 21.02.2018 BUT THE PERIOD OF SERVICE W.E.F 15.07.1996 TO**

**19.05.1997 HAS NOT BEEN COUNTED TOWARDS QUALIFYING SERVICE OF PENSION OF THE APPELLANT, WHICH IS PERVERSE, DISCRIMINATORY AGAINST THE LAW AND RESPONDENTS DEPARTMENT IS BOUND TO COUNT SERVICE PERIOD RENDERED B THE APPELLANT W.E.F 15.007.1996 TO 19.05.1997 TOWARDS HIS CALCULATION OF PENSION AND COMMUTATION.**

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**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case, as per averments of the appeal, are that appellant was appointed as Driver on 15.07.1996 and his services were terminated on 19.05.1997; that the Government of Khyber Pakhtunkhwa passed Sacked Employees Appointment Act, 2012, under which he was allegedly rightful to be reinstated but was not; that he approached the Hon'ble Peshawar High Court by filing Writ Petition No.546/2013 for his reinstatement; that the Hon'ble Peshawar High Court vide its judgment dated 24.05.2016 ordered for his reinstatement into service; that accordingly, was appointed as Driver on 02.02.2018; that in the light of judgment of the august Supreme Court of Pakistan dated 27.03.2020, he filed review petition before the Hon'ble Peshawar High Court, Abbottabad Bench through which the respondents were directed to decide the appellant's case in accordance with law within a month; that his service w.e.f 20.09.2012 to 21.02.2018 was counted, however the period w.e.f 15.09.1996 to 19.05.1997 was not counted; 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 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.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

5. In this case, the appellant, who was appointed as a Driver on July 15, 1996, had his employment terminated on May 19, 1997. Following the enactment of the Sacked Employees Appointment Act, 2012, he asserted his right to reinstatement but was not rehired. He subsequently filed Writ Petition No. 546/2013 with the Peshawar High Court, which ruled in his favor on May 24, 2016, ordering his reinstatement. The appellant was appointed again as Driver on February 2, 2018. Pursuant to a Supreme Court ruling on March 27, 2020, he filed a review petition, leading to a directive for the respondents to resolve his case within a month. While his service period from September 20, 2012, to February 21, 2018, was acknowledged, the period from July 15, 1996, to May 19, 1997, was excluded from his service record. Dissatisfied with the lack of



response to his departmental appeal regarding this exclusion, the appellant filed the current service appeal.

6. The order regarding his reinstatement into service, from which he was aggrieved was passed on 21.02.2018 while the appellant filed departmental appeal on 22.02.2021 which is 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 Ifkhar 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

*Service Appeal No.876.2023 titled "Arif Khan versus Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs and Human Rights Department, Peshawar and others", decided on 29.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad*

*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."*

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

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29<sup>th</sup> day of October, 2024.*

  
**KALIM ARSHAD KHAN**  
Chairman



  
**RASHIDA BANO**  
Member (Judicial)

\*Mutazem Shah\*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.876 of 2023

Arif Khan versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-10 29 <sup>th</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Muhammad Arshad Khan Tanoli, Advocate on behalf of appellant.</li><li>2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents</li></ol> <p><b><u>Kalim Arshad Khan, Chairman:</u></b> Vide our detailed judgment of today, placed on file instant service appeal, being barred by time, is dismissed with costs. Consign.</p> <p>2. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29<sup>th</sup> day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Attaazem Shah*</small></p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.876/2023**

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**PRESENT**

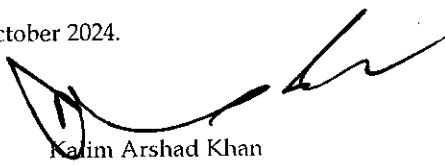
1. Mr. Tauqir Ahmad, Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 29<sup>th</sup> day of October 2024.

  
Rashida Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman