BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No._____/2024
In
Appeal No.6876/2020

Mr. Zahid Ali, Senior Clerk,
Special Branch, Peshawar.....**PETITIONER**

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2- The Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

OBJECTIONS ON BEHALF OF THE PETITIONER IN RESPECT OF IMPLEMENTATION REPORT DATED 06.09.2024 SUBMITTED BY THE RESPONDENTS

R/SHEWETH:
BRIEF FACTS:

1- That the petitioner is the employee of the respondent department and is serving as Senior Clerk (BPS-14) at O/O the District Police Officer, District Tank quite efficiently and upto the entire satisfaction of his superiors.

2- That the petitioner while performing his duty at Special Branch, Peshawar was charged in criminal offence Under Sections 460/452/302 PPC of Police Station Mathra, Peshawar vide dated 24.05.2017 and as such the petitioner himself called to the local police on the spot and surrendered himself on the day of occurrence.

3- That the petitioner was released on bail and later faced trial in the above criminal case and as such was honorably acquitted from the charges leveled against him. That after acquittal the appellant also re-instated by this august Tribunal in appeal No.6876/2020 vide its judgment dated 08.01.2024 with all back benefits.

4- That after obtaining attested copy of the judgment dated 08.01.2024 the petitioner submitted the same before the respondents for implementation but the respondents were not willing to obey the judgment of this august Tribunal, therefore, the petitioner submitted the above mentioned execution petition for implementation of the said judgment and as such the respondents submitted implementation report dated 06.09.2024 by re-instating the

petitioner into service but with immediate effect by wrongly interpreting the judgment of this august Tribunal.

OBJECTIONS:

1- That in Para No.4 of the order dated 06.09.2024 it has been mentioned by the respondents that ***"The Hon'ble Supreme Court of Pakistan in numerous cases wherein the Government servants were re-instated with all back benefits by the Service Tribunal denied back benefits on the basis of "No work no pay".***

That as per law and rules every case has its own facts and circumstances and as such in the present case the petitioner was made his arrest on the day of occurrence whereby later on he was released on bail. That as per Rule-8 of the Efficiency & Disciplinary Rules, 2011 ***"an employee could not be dismissed or removed from his service until his conviction in criminal"*** while the petitioner was released on bail and later on honorably acquitted in the charges leveled against him. ***It is further added that the respondent department has not been challenged the judgment dated 08.01.2024 passed by the august Tribunal before the Hon'ble Supreme Court of Pakistan, therefore, the judgment of this august Court has got finality and liable to be implemented in letter and spirit.***

That the respondents relied upon the judgments of the Apex Court mention in the order dated 06.09.2024 are not relevant to the case of petitioner.

2- That in Para No.5 of the order dated 06.09.2024 the respondents misinterpreted the judgment of this august Tribunal dated 08.01.2024 by re-instating the petitioner with immediate effect rather than retrospective effect. That it is further clarified that the respondents applied FR-54 (b) in the case of the petitioner which is not relevant, while in the case of petitioner **FR-54(a)** is applicable rule because the petitioner was made his arrest on the day of occurrence and was sent behind the bar as well as after released on bail the petitioner faced trial before the competent Court of law and has honorably acquitted in the same criminal offence, therefore, the petitioner is fully entitled for the grant of full benefits w.e.f his dismissal i.e. 19.01.2018 till 06.09.2024. **Copy of the relevant rules are attached.**

It is further clarified that as per Section-38 of Civil Procedure Code-1908 ***"that the executing Court must execute the decree in accordance with its terms"*** and as such the Hon'ble Supreme declared the same its judgment reported in **"2002 SCMR 122". Copy of the judgment is attached.**

It is therefore, most humbly requested that the respondents may please be directed to implement the judgment of this august Tribunal dated 08.01.2024 in letter and spirit.

Dated: 24.10.2024.

PETITIONER

THROUGH:
MIR ZAMAN SAFI
ADVOCATE

COMPILATION OF FUNDAMENTAL RULES & SUPPLEMENTAR Y RULES

[FR&SR VOL. I & II]

By

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[1][(b) In the case of a Government servant under suspension, other than the specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provide to him under the contract of service, during the period of his suspension.]

Government decision.--

It has been decided that the rate of the subsistence grant payable to suspended Government servants governed by F.R. 53(b) shall be enhanced from one-third to one-half of the pay of the suspended Government servant.

A doubt has been raised as to whether, in the case of a Government servant who has been suspended while on leave the subsistence grant should be calculated with reference to his leave salary or with reference to his pay. Attention in his connection is invited to F.R. 55, which prohibits grant of leave to Government servants under suspension. Such a Government servant, therefore ceases to be on leave as soon as he is placed under suspension, and the subsistence grant in his case also has to be calculated with reference to the pay which was admissible to him on the eve of the commencement of the leave.

These orders, take effect from the 1st of December, 1969.

[G.P., M.F., No. F. 12 (32)-R3/70, dated the 14th February, 1970.]

[2][**F.R. 54.** Where a Government servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty,--

(a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, and allowance of which he was in receipt prior to his dismissal removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.

If a case falling under clause (a), the period of absence from duty will be treated as period spent on duty.

In a case under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

Explanation. In this rule, "revising authority" means the "authority" or

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2002 SCMR 122

[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui and Javed Iqbal, JJ
Sardar AHMED YAR KHAN JOGEZAI and 2 others—Appellants

Versus

PROVINCE OF BALOCHISTAN through Secretary,
C&W Department—Respondent

Civil Appeals Nos.747 to 750 of 1995, decided on 8th October, 2001.

(On appeal from the judgment of the High Court of Balochistan, Quetta, dated 13-6-1995 passed in C.M. Appeals Nos.21, 22, 23 and 24 of 1989).

(a) Civil Procedure Code (V of 1908)---

----S.38 read with O.XXI---Decree---Rectification by Executing Court--Validity---Judgment and decree passed by High Court, duly concurred by Supreme Court and after attaining finality cannot be modified, changed and no deletion, insertion or addition can be made by the Executing Court.

(b) Civil Procedure Code (V of 1908)—

----S. 38 read with O.XXI---Decree, execution of---Modification of decree--Jurisdiction of Executing Court---Judgment and decree passed in favour of the respondent had attained finality---Executing Court at the time of execution of the decree, modified the decree' by changing the rate of interest specified in the decree---Validity---Substitution or amendment could not have been made by the Executing Court as the same amounted to an attempt to frustrate the object-of the judgment and decree which had already attained finality---Such order passed by the Executing Court was arbitrary, capricious and coram non judice---Executing Court could not go behind the decree--When decree passed attained finality, it had got to be executed even if it was erroneously passed---Executing Court could not rectify any mistake in decree which would tantamount to going behind the decree---High Court had rightly set aside the order passed by the Executing Court.

Messrs Haji Ahmed & Co. v. Muhammad Siddique and others PLD 1965 Kar. 293; Ghanaya Lal and others v. Punjab National Bank Ltd., Lahore AIR 1932 Lah. 534 and Abdul Khaliq v. Haji PLD 1983 Lah. 445 and Topanmal v. Kundomal Gangaram AIR 1960 SC 388 ref.

(c) Limitation Act (IX of 1908)——

----S.5---Civil Procedure Code (V of 1908), S.38 read with O.XXI--Condonation of delay---Order passed in abuse of power and authority--Appeal---Modification of decree by Executing Court---Validity---Where order passed by Court was coram non judice, capricious, passed in abuse of power and authority, delay of 45 days in filing of appeal was rightly condoned---Under the garb of limitation blanket authority could not be given to Executing Courts to modify the decree passed by the Appellate Courts which would not only be contemptuous but would also amount to misconduct.

(d) Limitation—

---- Bar of limitation---Applicability---Where essential feature for assumption of jurisdiction is contravened or forum exercises powers not vested in it, or exceeds authority beyond limits prescribed

by law, the judgment is rendered coram non judice and inoperative---Question regarding bar of limitation in such exceptional cases loses significance.

Atta Muhammad Qureshi v. The Settlement Commissioner and others PLD 1971 SC 61; Mrs. Zubalda Begum v. Mrs. S.T. Naqvi 1986 SCMR 261; Malik Khawaja Muhammad and others v. Marduman Babar Kahol and others 1987 SCMR 1543 and Haji Muhammad Moosa and another v. Provincial Government of Balochistan through Collector Khuzdar 1986 CLC 2951 ref.

Nemo for Appellants.

Muhammad Ashraf Tanoli, Advocate-General, Balochistan, Dil Muhammad Tarar, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Respondent.

Date of hearing: 8th October, 2001.

JUDGMENT

JAVED IQBAL, J.---By this common judgment we propose to dispose of Civil Appeals Nos.747 to 750 of 1995 having arisen out of the common.

2. Briefly stated the facts of the case are that appellants obtained contract work from Communication and Works Department which was completed in 1960. As a result of some differences/controversy regarding payment the learned District Judge appointed a sole-arbitrator by means of order, dated 18-6-1974 who filed his award which was made rule of the Court vide order, dated 23-3-1977. Being aggrieved the appellants challenged the same before High Court but appeals were dismissed subject to some modification and simple interest at the rate of 6% per annum from the date of decrees was also awarded. The appellants approached this Court but met the same fate and leave to' appeal was refused by means of order, dated 5-5-1986 and consequently the judgment/decree of learned High Court dated 4-11-1985 attained finality. The appellants, however, filed execution proceedings before learned Civil Judge, Quetta and meanwhile the Provincial Government paid the principal amount and simple interest at the rate of 6% per annum as determined by the learned High Court by means of judgment/decree, dated 4-: i-1985. The said judgment of High Court was, however, disputed and a controversy was raised regarding its interpretation which was decided on 6-10-1991 and it was held by the executing Court that the appellants were entitled to simple interest at the rate of 6% per annum on the principal amount from the date of decree. The appellants once again approached the learned High Court of Balochistan by means of Civil Revisions bearing Nos.19 to 22 of 1988 which were accepted on.13-6-1988 and the matter was sent to newly created District of Loralai which ultimately was decided on 13-4-1989 by the learned District Judge by whom the judgment/decree dated 4-11-1985 passed by learned High Court and attained finality was modified substantially. The Province of Balochistan through Secretary Communication and Works Department, Quetta, (respondent) preferred appeals by assailing the order dated 13-4-1989 of learned District Judge, Loralai which were accepted by means of impugned judgment, hence these appeals.

3. Mr. M. Riaz Ahmed, learned Advocate-on-Record on behalf of petitioner remained absent and no intimation whatsoever was received but instead dismissing the appeals in default we intend to dispose of them on merits as it would be in the interest of justice.

4. Heard Mr. Muhammad Ashraf Tanoli, learned Advocate-General, Balochistan on behalf of respondent at length. We have also carefully examined the contentions as mentioned in the memo. of appeals: The entire record has been thrashed out with eminent assistance of learned Advocate-General, Balochistan. The judgments dated 4-11-1985 passed by learned High Court of Balochistan, order of this Court dated 5-5-1986 and the order, dated 13-4-1989 of District Judge, Loralai were perused with care and caution. After having gone through the entire record the pivotal question which needs determination is as to whether a judgment and decree passed by the High Court duly concurred by this Court and after attaining finality can be modified, changed or any deletion, insertion or addition can be made by the learned executing Court? The said question can only be answered in negative. It is an admitted feature of the case that the learned High Court of Balochistan had rejected the appeals preferred by the appellants by means of judgment/decree dated 4-11-1985 and relevant portion whereof is reproduced hereinbelow for the sake of convenience:--

> "Respectfully following the law laid down by the Supreme Court I find no substance in the contention raised by the counsel for the appellants. The respondents money remained blocked for so many years and as the value of money has considerably gone down they deserve to the compensated in .all fairness. I would accordingly allow simple interest at the rate of 6% per annum from the date of the decrees in question and such amount shall be calculated and added to the decretal amounts. The decrees shall accordingly be modified to this extent."

5. It is also an admitted feature of the case that petitions for leave to appeal were preferred by the appellants but with no avail and rejected by means of order, dated 5-5-1986 and the operative portion whereof is .as follows:--

> "4. We have examined the above contention alongwith those enumerated in the aforementioned petitions and find that none of those contentions had been set up in his defence, nor raised before the first appellate Court. The petitioners themselves have submitted to the arbitration by not producing any evidence. Thus, we find no substance in these petitions. There is no reason to interfere with the impugned order. Leave refused and all the four Civil Petitions for Leave to Appeal Nos.6 to 9/Q of 1986 are dismissed."

6. An indepth scrutiny of the entire record would reveal that judgment/decree passed by learned High Court on 4-11-1985 had attained finality and furthermore the modification as allowed vide said judgment/decree was free from any ambiguity and accordingly the question of any clarification by the executing Court does not arise. The learned executing Court has modified the decree which had already attained finality by means of order, dated 13-4-1989 which is reproduced herein before for ready reference:--

"11. Any how the decree holders have been paid some amounts during the proceedings of the execution which fact is not to be treated as an estoppel, claiming his rights which has been persistently persued being the amount of interest during the execution proceedings.

12. I may safely hold that decree holders are entitled to the awarded amount-work plus interest awarded added thereto from 1960 to the date of application with the rate of interest given in the award and till the date of the decrees dated 21-5-1977 and thereafter till the realization of the whole decretal amount at 6% per annum with simple interest. The objections of the judgment-debtor and the application of the

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decree holder in this behalf are disposed of and be consigned to record."

A bare perusal would reveal that "simple interest at the rate of 6% per annum from the date of decrees" as awarded by learned High Court vide judgment/decree dated 4-I1-19.85 was substituted by holding that "the decree holders are entitled to the awarded amount, work plus interest awarded added thereto from 1960 to the date of application with the rate of interest given in the award and till the date of the decrees dated 21-5-1977 and thereafter till the realization of the whole decretal amount at 6% per annum with simple interest." The said substitution or drastic amendment could not have been made by the learned executing Court which in fact amounts to a futile attempt to frustrate the object of judgment and decree dated 4-11-1985 which had already attained finality and thus the order, dated 13-4-1989 passed by the learned District Judge Loralai (executing Court) is arbitrary, capricious and coram non judice. It worth mentioning that executing Court could not go beyond the decree. It is well-settled by now that "when decree passed attained finality it had got to be executed even if it was erroneously passed. Executing Court cannot rectify any mistake in decree which. would tantamount to going behind decree." (Messrs Haji Ahmed &. Co. v. Muhammad Siddique and others (PLD 1965 Kar. 293, Ghanaya Lal and others v. Punjab National Bank Ltd., Lahore AIR 1932 Lah. 534 and Abdul Khatiq v. Haji PLD 1983 Lahore 445). A similar proposition was discussed in case titled Topanmal v. Kundomal Gangaram (AIR 1960 Supreme Court 388) that "the executing Court could not go behind the decree and given relief to the plaintiff which was expressly denied to him in the suit. A Court executing a decree cannot go behind the decree; it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit". In fact the original judgment/decree, dated 21-5-1977 was passed by the same District Judge in the capacity as Civil Judge and, therefore, the controversy should not have been resolved by him which aspect of the matter has been ignored for the reason best known to the learned District Judge himself.

7. Admittedly the appeals were filed with a delay of 45 days but in view of the chequered history of the case and order of the executing Court which is not only coram non judice but nullity in the eyes of law and thus, the delay has rightly been condoned because under the garb of limitation blanket authority cannot be given to executing Courts to modify the decrees passed by the appellate Courts which would not only be contemptuous but amounts to misconduct. The order of learned District Judge Loralai being coram non judice, capricious passed in abuse of power and authority has rightly been set aside by the learned High Court after having taken into consideration all the relevant factors. The conclusion as arrived at by the learned High Court being unexceptionable hardly calls for any interference. It has rightly been observed by the learned High Court that "nevertheless for appreciating crucial point of limitation, it needs to ascertain whether impugned judgment of the executing Court (District Judge, Loralai) dated 13-4-1989 is in-consonance with or deviates from above referred judgment of High Court dated 4-11-1985. It may be seen that High Court while modifying the decree passed by the trial Court had observed that respondent/decree holder would be entitled to the interest at the rate of 6 per cent. per annum from the date of decree in question, and such amount shall be calculated and added to decretal amount. Factually award dated 6-6-1975 proposed payment of amount against work done and interest from year 1960 at 6% per annum with six monthly rests to the date of application. The trial Court rejected objections raised by appellant and made said "Award" rule of the Court. Additionally respondent was granted interest at 6 % per annum with quarterly rests from the date of application till realization of whole decretal amount. Whereas said decree was expressly modified by High Court vide judgment dated 4-11-1985 awarding merely simple interest at the

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rate of 6% per annum from the date of decree in question which was obviously passed in May/July, 1977. The amount of interest on calculation was to be added to decretal amount. Consequently it is apparent that on modifying the decree, not only rate of interest has been charged, but period for which interest was payable is specified from date of decree onwards. In this respect obviously the executing Court had exceeded its authority and gone beyond the decree which stood modified by judgment of High Court dated 4-11-1985." It was further observed that "void orders need to be challenged within prescribed period of limitation, unless extraordinary exceptional position is reflected from proven facts. Nevertheless it would be obligatory to ensure that judgment dated 4-11-1985 passed by High Court and upheld by the Supreme Court, which is factually being executed may not be rendered nugatory by any subordinate forum in the garb of interpretation. The entitlement of respondent to receive principal amount and interest is explicity regulated by above-referred judgment whereby all previous decision of subordinate forums stand completely, merged into decree so modified. Therefore, in the peculiar special circumstances if purely hyper-technical view is taken, I am afraid basic judgment of High Court dated 4-11-1985, which undisputedly holds the fields would become ineffective and inoperative on account of impugned order passed by executing Court. Even otherwise glaring infirmity and blatant disregard manifested from impugned judgment of executing Court, cannot be conveniently ~ overlooked and permitted to perpetuate. Respondent/decree-holder himself claims implementation of judgment and decree, dated 4-11-1985 awarded by High Court. Therefore, by erroneous interpretation he cannot be granted payment beyond said decretal amount. It is well-settled that when essential features for assumption of jurisdiction are contravened or forum exercises powers not vested in it, or exceeds authority beyond limits prescribed by law, the judgment is rendered coram non-judice and inoperative. The question regarding bar of limitation in such exceptional cases loses significance. For authority reference can be made to the observation in cases:--

(i) Atta Muhammad Qureshi v. The Settlement Commissioner and others (PLD 1971 SC 61).
(ii) Mrs. Zubaida Begum v. Mrs. S.T. Naqvi (1986 SCMR 261).
(iii) Malik Khawaja Muhammad and others v. Marduman Babar Kahol and others (1987 SCMR 1543).
(iv) Haji Muhammad Moosa and another v. Provincial Government of Balochistan through Collector Khuzdar (1986 CLC 2951).

Since impugned decision of executing Court conflicts with judgment of High Court dated 4-11-1985 clearly contravening settled principles of justice and spirit of law, therefore, same is coram non judice and devoid of lawful authority. Thus, in the peculiar circumstances bar of limitation would not apply, and, delay in filing appeal for the above reasons is condonable. Accordingly I am inclined to exercise discretion in favour of appellants by granting request concerning condonation of delay"

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The observations as reproduced hereinabove are strictly in accordance with relevant provisions of law, settled norms of justice and precedented law which cannot be disturbed without any lawful justification which is altogether lacking in this case.

8. In the light of what has been discussed hereinabove these appeals devoid of merits are dismissed.

Q.M.H./M.A.K./A-170/L Appeal dismissed.