

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."

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

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 2024.



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

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

learned Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The impugned order was passed on 19.02.2013 when the appellant while he filed departmental appeal on 04.02.2022. The stance of appellant for delayed submission of departmental appeal is that he came to know regarding his dismissal in the Peshawar High Court in a Writ Petition filed in the year 2018. The stance of appellant is not acceptable as it is an admitted fact that when a person is disowned by the authority either dismiss or remove, salary of that official stops. The impugned order was passed on 19.02.2013, therefore, upon stoppage of his salary, he ought to have knocked at the door of proper. But the appellant was absconder at that time, therefore, nothing could be brought before the authorities, by him and after passage of five years, he approached the Hon'ble Peshawar High Court, that too, was not proper forum. Almost nine years were passed when the appellant filed a time barred departmental appeal which renders this appeal incompetent. Reliance can be placed 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

Chowkidar in GGHSS Shewa Tehsil Razzar, District Swabi, vide order dated 07.10.2006; that he was charged in FIR No.123 dated 01.02.2012; that on 02.02.2012, the appellant forwarded an application for leave through his father, however, the same was not entertained; that due to risk to his life, appellant remained absconder and vide order of learned Additional Sessions Judge-IV Swabi dated 25.03.2016, he was acquitted; that he approached the respondent department for joining his duties, however, he was allegedly told that his record was lying in the Directorate of E&SE; that he filed Writ Petition No.1513-P/2018 before the Peshawar High Court as he was neither dismissed nor was allowed to duties; that comments were called by the Hon'ble High Court, wherein, the respondents produced the order dated 19.02.2013 regarding his removal from service; that feeling aggrieved of the order dated 19.02.2013, he filed departmental appeal on 04.02.2022 which was rejected on 29.03.2022, 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 Assistant Advocate General 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

Service Appeal No.823/2022 titled "Muhammad Zakria versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", decided on 05.11.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.823/2022

Date of presentation of Appeal.....20.04.2022
Date of Hearing.....05.11.2024
Date of Decision.....05.11.2024

Muhammad Zakria S/O Muhammad Naeem R/O Mohallah
Sheikhan, Shewa Tehsil Razzar District Swabi
.....(**Appellant**)

Versus

1. **Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer, (Female)** Swabi.
4. **Assistant Director (Admn)**, Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Amjad Ali, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 19.02.2013 PASSED BY RESPONDENT NO.4 WHEREIN APPELLANT HAS BEEN REMOVED FROM SERVICE AND ORDER DATED 29.03.2022 PASSED BY RESPONDENTS WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED WHICH ARE ILLEGAL AGAINST LAW AND FACTS AND LIABLE TO BE SET ASIDE.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was appointed as

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.823/2022

Muhammad Zakria versus Government of Khyber Pakhtunkhwa

| S.No. of Order & Date of proceeding | Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary |
|---|--|
| Order-16 5 th November, 2024. | <p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Amjad Ali, Advocate, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General, on behalf of respondents.3. Vide our detailed judgment of today, placed on file, being barred by time, is dismissed with costs. Consign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 2024</i> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p> |