

Annex  
OFFICE OF THE EXECUTIVE ENGINEER  
HIGHWAY DIVISION KHYBER AGENCY

No. 532 /7-E(I)

Dated Jamrud the 11 /6/2012.

OFFICE ORDER

The following operational staff/Class-IV employees are hereby re-instated with immediate effect in the interest of Govt:

1. Mr. Shaheen Cooly S/O Jengez Khan.
2. Mr. Muhammad Perviz Cooly S/O Fazal Din.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber for information.

2. Sub Divisional Officer Highway Sub Division ~~Bara~~ Bara  
for information.

3. Official concerned.

Attested  
for  
xen Highway Khyber

EXECUTIVE ENGINEER

30



GOVERNMENT OF PAKISTAN  
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA  
DISTRICT khyber  
PAY ROLL SYSTEM

PAYMENT ADVICE

P. Sec: 001 Month: July 2013  
KH0014 - Executive Engineer Highway  
Min: Min. Of K.A & N.A & S.P.R  
NTN:  
GPF N:  
Old N:

Pers. N: 00649067 Buckle:  
Name: ASIF MEHMOOD  
Dsg: COOLI  
CHIC No. 1720121854969

GPF Interest Free  
GPF 02 - Active Temporary

DEPTT CODE - KH0014

PAYS AND ALLOWANCES:		
0001-Basic Pay		5,070.00
1000-House Rent Allowance		910.00
1210-Convey Allowance 2005		1,700.00
1300-Medical Allowance		1,000.00
1528-Unattractive Area Allow		1,000.00
1971-Adhoc Allowance 2011@ 15%		455.00
1973-Adhoc Allowance 2011@ 50%		1,517.00
2118-Adhoc Relief Allow (2012)		1,014.00
2151-Adhoc Allowance 2013 @10%		507.00
Gross Pay and Allowances		13,273.00
DEDUCTIONS:		
GPF Balance	373.00	
3701-Benevolent Fund(Exchange)		Subrc: 373.00
3704-Group Insurance(Exchange)		120.00
3711-Addl Group Insuranc(Exch)		58.00
		3.00
Total Deductions		554.00
	<b>NET AMOUNT PAYABLE</b>	<b>12,719.00</b>

QUALIFYING SERVICE  
YRS : MON  
01 Years 09 MOnths 021 Days

D. D. B  
20.01.1979  
Days

FF Quota:  
Payment through DDO.

*Attested*

At S.No 5

31



GOVERNMENT OF PAKISTAN  
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA  
DISTRICT khyber  
PAY ROLL SYSTEM

PAYMENT ADVICE

Pers #: 00647445 Buckle:  
Name: SHAHEEN KHAN  
Des: COOLI  
CNIC No. 2120284286929

P Sec: 001 Month: July 2013  
KH0014 Executive Engineer Highway  
Min. Of K.A & R.A & S.F.R  
NTH:  
GPF #:   
Old #:

DEPTT CODE KH0014	
0001-Basic Pay	4,950.00
1000-House Rent Allowance	851.00
1210-Convey Allowance 2005	1,700.00
1300-Medical Allowance	1,000.00
1528-Unattractive Area Allow	1,000.00
1973-Adhoc Allowance 2011@ 50%	1,000.00
2118-Adhoc Relief Allow (2012)	1,485.00
2151-Adhoc Allowance 2013 @10%	990.00
6156-Adj. E.E.F (Exchange)	495.00
Gross Pay and Allowances	100.00
	12,611.00
DEDUCTIONS:	
GPF Balance 212.00	
3701-Benevolent Fund(Exchange)	Subtr: 212.00
3704-Group Insurance(Exchange)	120.00
3711-Addl Group Insuranc(Exch)	58.00
	3.00
Total Deductions	
	393.00
	NET AMOUNT PAYABLE
	12,218.00

QUALIFYING SERVICE  
YRS MOH  
01 Years 10 Months 001

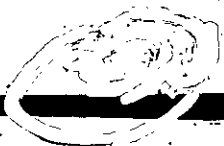
D.O.B  
01.07.1985  
Days

LFP Quota:  
Payment through DDO.

Accepted

Amir  
& GN

32



Sheet no: 1



GOVERNMENT OF PAKISTAN  
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA  
DISTRICT khyber  
PAY ROLL SYSTEM

**PAYMENT ADVICE**

P Sec: 001 Month: July 2013  
KH0014 - Executive Engineer High  
Min. Of K.A & N.A & S.F.R  
NTN:  
GPF #:   
Old #:

Pers #: 00647462 Buckle:  
Name: MUHAMMAD PERVEZ  
Dsg: COOLI  
CNIC No: 1730193148421

GPF Interest Free  
GPF 01 Active Temporary

DEPTT CODE KH0014

**PAYS AND ALLOWANCES:**

0001-Basic Pay	4,950.00
1000-House Rent Allowance	891.00
1210-Convey Allowance 2005	1,700.00
1300-Medical Allowance	1,000.00
1528-Unattractive Area Allow	1,000.00
2118-Adhoc Relief Allow (2012)	990.00
2151-Adhoc Allowance 2013 @10%	495.00
6156-Adj. E.E.F (Exchange)	100.00

Gross Pay and Allowances

11,126.00

**DEDUCTIONS:**

GPF Balance	212.00	Subrc:	212.00
3701-Benevolent Fund(Exchange)			120.00
3704-Group Insurance(Exchange)			58.00
3711-Addl Group Insuranc(Exch)			3.00

Total Deductions

393.00

**NET-AMOUNT PAYABLE**

10,733.00

**QUALIFYING SERVICE**

YRS: MON: 01 Years 09 Months 01

D. D. B  
01.09.1990  
Days

LFP Quota:  
Payment through DDO.

Attested

At Serial No. 11

33

Amna 9/11



OFFICE OF THE EXECUTIVE ENGINEER  
HIGHWAY DIVISION KHYBER AGENCY.

No. 334 17-E(1)

Dated: Jamrud the 26 / 11 / 2012

OFFICE ORDER

Mr. Itbar Gul S/O Dildar Gul is hereby appointed as Road Roller Cleaner BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.

1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
3. Any conduct of the employee violates of the provision the K.P.K Govt: servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned

*Assesed*

EXECUTIVE ENGINEER

*Green*

350

Amber  
23



OFFICE OF THE EXECUTIVE ENGINEER  
HIGHWAY DIVISION KHYBER AGENCY

No. 335 7-F(1)

Dated Jamrud the 6th 2012

OFFICE ORDER

Mr. Khurshid Khan S/O Israel Khan is hereby appointed as Road Roller Cleaner BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.

1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age & Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
4. Any conduct of the employee violates of the provision the K.P.K Govt. servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned

EXECUTIVE ENGINEER

Attested

Green

(35)

Amma 9/3

OFFICE OF THE EXECUTIVE ENGINEER  
HIGHWAY DIVISION KHYBER AGENCY.

No. 329 IT-E(I)  
Dated Jamrud the 26/4/2012.

OFFICE ORDER

The Office Order of Mr. Asif Mehmood S/O Muahmmad Younas

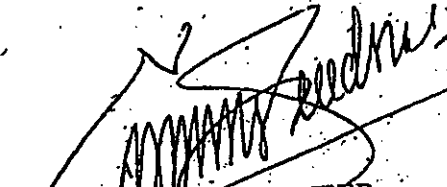
Mate issued vide this office No/304/7-E(i) dated 1.10.2011 is hereby restored with  
immediate effect in the interest of Govt:

EXECUTIVE ENGINEER

Copy to:-

1. P.S to Governor Khyber Pakhtunkhawa for information.
2. Agency Accounts Officer Khyber for information.
3. Sub Divisional Officer Highway Sub Division Bara for information.
4. Official concerned.

Attested  


  
EXECUTIVE ENGINEER

At Serial No. 5

بعدالت عنبر محمد انوار شروس ٹریبونل (سٹامپ)  
 لہ سادخا نام حکومت عنبر محمد انوار (وٹنہ)

منجانب اسپرائٹ دعویٰ اجرم شروس اسپل

تھانہ ایف آئی آر / تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیروی وجوہی ہا مقام کے لئے

ADN رجسٹرڈ

امین الرحمن یوسفزئی ایڈووکیٹ ہائی کورٹ، فیڈرل شریعت کورٹ آف پاکستان اینڈ آفاق عالم ایڈووکیٹ ہائی کورٹ،  
 کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رد و عدالت حاضر ہونا ہوگا۔ اور بوقت پکارے جانے مقدمہ  
 وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظهر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور  
 میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی  
 اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بذریعہ تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری  
 کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار  
 یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ  
 پرداختہ صاحب موصوف متین کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجرائے  
 ڈگری و نظر ثانی اپیل و گمرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کا  
 روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد تاشی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ  
 دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم استماعی یا قرتی یا گرفتاری تکن اذ اجراء  
 ڈگری بھی موصوف کو بشرط ادا سنگی علیحدہ مختار نامہ بیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ  
 مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرٹر کو بجائے اپنے یا اپنے ہمراہ  
 مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور  
 دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے  
 پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب  
 موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند سے مورخہ 2/5/2018 مضمون مختار نامہ سن لیا ہے اور  
 اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Amin ur Rehman Yousafzai  
 Advocate High Court,  
 & Federal Shariat Court  
 of Pakistan.

*(Signature)*

Sajjad Mehsud  
 Advocate

نورینا UG



**BEFORE THE SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO 604 /2018**

**Mr. Nushad**

**Petitioner**

**VS**

**Additional Chief Secretary (FATA) & 3 Others**

**Respondent**

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4)	Termination Order of Petitioner	D	11

**Respondents  
Through**

**Dated /11/2018**

  
**Sub Divisional Officer  
Highway Sub Divisional Landikotal**

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

In Re: Service Appeal No. 604 of 2018

Mr. Nushad \_\_\_\_\_ Appellant

Vs

Govt of Khyber Pakhtunkhwa and others \_\_\_\_\_ Respondents

WRITTEN REPLY TO THE SERVICE APPEAL ON

BEHALF OF RESPONDENTS NO. 1 TO 4.

Respectfully sheweth,

Preliminary objections:

1. That appeal of the appellant is not maintainable in its present form and the Hon'ble tribunal has got no jurisdiction to entertain the instant appeal.
2. That appellant has not come to this Honorable tribunal with clean hands.
3. That appellant has got no cause of action to file the instant appeal.
4. That the appeal of the appellant is badly time-barred, long and unexplained delay could not be condoned at this stage by any law, rules or by any stretch of imagination.
5. That the appeal is also not maintainable due to non-joinder of necessary parties.

ON FACTS:

1. In reply to para no. 1 of the appeal, it is submitted that the appellant along with others were appointed by Executive Engineer Highway Division, Khyber Agency against law, rules and regulation, because there was no vacant post in the Division, therefore, in these appointments gross illegalities and irregularities had been committed by the Ex- Executive Engineer. Since the appointments <sup>WCTE</sup> ~~was~~ totally illegal and without lawful authority therefore any fictitious process adopted by the Ex-

Executive Engineer becomes in-effective and irrelevant, further the appointments were made on the basis of malafide intentions and personal gains.

2. That in reply to para No.2 of the appeal of the appellant, it is submitted that, since the order of appointment of the appellant was irregular and illegal, therefore, duties (if any) performed by the appellant does not make him entitle for any right or benefit, further, as the appointment of the appellant was illegal, unlawful and without lawful authority, therefore, termination order passed by the competent authority to cure the illegality is in accordance with law, facts and circumstances of the case.
3. That in reply to para No.3 of the appeal, it is submitted that, the writ petition filed by the appellant in the Peshawar High Court, Peshawar was dismissed on 28.02.2018. The Honourable Court after perusal of the whole record of the case and going through the comments filed by the respondents/ department observed that the petitioner has not approached to the proper forum and the High Court has got no jurisdiction to entertain the writ petition filed by the appellant, no relief or beneficial order has been passed in favour of the appellant by the Honourable Peshawar High Court, Peshawar, further no condonation order in favor of the appellant or direction to the Services Tribunal KP Peshawar has been given by the Hon'ble Court which could help the appellant in filing the inordinate delayed appeal in the Services Tribunal.
4. That in reply to para No.4 of the appeal, it is submitted that, the order dated 09.03.2012 passed by competent authority is correct, in accordance with law, regulations, facts and circumstances of the case. Further, the judgment dated 28.02.2018 passed by Peshawar High Court does not give any favour or provide any relief to the appellant in the present circumstances of the case.

**Reply to Grounds:**

- A. In reply of the para "A" of the appeal it is submitted that the impugned order dated 09.03.2012 is in accordance with law, facts and circumstances of the case and is fully maintainable in the eyes of law.
- B. That para "B" of the appeal is incorrect, as explained in above paras, there was no vacant post available in the Division against

Which the appellant was to be appointed. The Ex- Executive Engineer had misused his authority, illegally stopping the salaries of other legal appointees ( 6 in numbers) , no violation has been made while passing termination order , the order was under the law and relevant rules, as there was no vacant post for them to be retained in the Division in Khyber Agency.

- C. That para "C" of the appeal is incorrect. The termination order is legal and according to law. and prevailing rules and circumstances of the case . All the codel formalities have been fulfilled while passing termination order. Further, being illegal appointee, therefore, having no right to appeal against termination order and the Honorable Tribunal has ceased the jurisdiction to entertain such a time -barred appeal along with other legal infirmities.
- D. That ground" D" of the appeal is incorrect. The appellant had no been discriminated.
- E. That ground "E" of the appeal is incorrect. The appellant was appointed illegally by the Ex- Executive Engineer , therefore, the termination order had rightly been passed by competent authority according to relevant law and rules on the subject.
- F. That ground" F" as drafted in appeal is totally incorrect and irrelevant , the writ petition of the appellant has already been dismissed by the Honorable Peshawar High Court, Peshawar .
- G. That the respondents seek permission to raise additional grounds at the time of arguments.

In view of the above , it is, therefore , prayed that appeal being without merit, not maintainable , time- barred and incompetent, may kindly be dismissed with costs.

Respondent No-1 Secretary Works & Services

Respondent No-2 Additional Chief Secretary (FATA)  
Addl: Chief Secretary  
FATA, Secretariat  
Peshawar

Respondent No-3 Chief Engineer C&W Department (FATA)  
Works & Services Dept: Peshawar

Respondent No-4 Executive Engineer Highway Division Khyber

Dated \_\_\_\_\_ / \_\_\_\_\_ / 2018.

EXECUTIVE ENGINEER  
HIGHWAY DIVISION TIRAH DISTRICT

BEFORE THE SERVICE TRIBUNAL PESHAWAR

✓ MR.DULAT KHAN APPEAL NO 618/2018  
MR.SIKANDAR ZEB APPEAL NO 617/2018  
MR.NUSHAD APPEAL NO 604/2018  
MR.TUFAIL APPEAL NO 616/2018  
MR.SAREER APPEAL NO 619/2018

PETITIONERS

VS

ADDITIONAL CHIEF SECRETARY (FATA) & 3 OTHERS

AFFIDAVIT

I Mr.Aurangzeb Sub Divisional Officer Highway Sub Division Landikotal do hereby solemnly affirm declare that the contents of the accompanying Para-wise comments submitted by respondents No1,2,3,&4 are true and correct to the best of my knowledge on behalf and nothing has been concealed from this Honour able Court.

  
DEPONENT

(Annexure - I)

**LIST OF EMPLOYEES WHOSE PAY WAS STOPPED BY MR. GOHAR ALI  
EX-EXECUTIVE ENGINEER HIGHWAY DIVISION KHYBER AGENCY.**

S#	Name	Personal No.	Designation	Appointment order No. & Date
1.	Said Akbar	00419060	Cooly	No.2550/7-E(i) dt: 27.8.90
2.	Aurangzeb	00419857	Cooly	No.859/7-E(i), dated 24.11.97 ✓
3.	Riwayat	00097089	Cooly	No.1685/7-E(i), dated 22.5.98
4.	Zahir Muhammad	00419869	Cooly	No.3406/7-E(i) dated 5.10.2005 ✓
5.	Naheed Baz	00415880	Cooly	No.524/7-E(i), dated 3.10.2006 ✓
6.	Zali.Khan	00488327	Cooly	No.5298/7-E(i) dated 10.11.09 ✓



AMENDMENT FORM  
SINGLE EMPLOYEE ENTRY

FORM: PAY02

OFFICE OF THE Executive Engineer - Highway Division Kalyan Agency  
FOR THE MONTH OF 11/2011 200

Date:

Page No.:

CEO Code (Cost Center) K110014 Description:

Personnel Number 00419060

Employee Name Mr. Said Akbar

National ID Card Number

Grade (Pay Scale Group) 02

Salary Status

Start  Stop

GENERAL DATA CHANGE			CHANGE IN PAYMENTS / DEDUCTIONS				Effective	Remarks
Info Type	How Contents	Wage Type	Amount					
			Rupees	Paise	Adj			
						11/2011	The official stop from 11/2011	

[Signature]  
Executive Engineer  
Highway Division  
Kalyan Agency

Audited/Checked By:

Entered/Verified By:

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11/20/11

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00419857

Executive Director, Holy Division, October 1977



PAYROLL  
ATTENDING  
SINGLE EMPLOYEE

OFFICE OF THE

*Executive Engineer Highway Division Khayber Agency*

POST

*12/2011*

Cost Center

*K/H/O/1/4*

Personnel Number

*60097089*

Grade (Pay Scale Group)

*02*

Name

*Muhammad Riwayat Khan*

Personal ID Card Number

Salary Status

Start

Stop

GENERAL DATA

QUALIFICATION PRODUCTIONS

Date	Row Contents	Work Type	PRODUCTIONS		Effective Date	Remarks
			Steps	Amount		
Month	Year	Amount	Rate	Ad.	Start	End
					<i>1/12/2011</i>	<i>Pay Stop</i>
						<i>1/12/2011</i>
						<i>Pay Stop</i>

*Muhammad Riwayat Khan*  
Executive Engineer  
Highway Division  
Khayber Agency

Checked By

NAME

DESIGNATION

EMPLOYMENT TYPE

DATE OF BIRTH

DATE OF JOINING

DDO OFFICE

(Cont. Circle)

PERSONAL NUMBER

GRADE (Pay Scale Group)

*Executive Engineer Highway Division, Muzaffargarh*

*12/10/20*

*11000001*

*00619880*

*Mr. Nadeel Baj*

*02*

PERSONAL ID NO. / Cont. Number

SALARY STATUS

STAT

STP

GENERAL D.V. CHANGE

CHANGE IN DAYS/EVENING DURATION

Sl. No.	Date	Particulars	Type	Rupees		Amount	Paid	Adj.	Effective Date	Remarks
				Rs.	P.					

*(Signature)*  
Executive Engineer  
Highway Division  
Khyber Agency

Checked by

AMENDMENT FORM  
SINGLE EMPLOYEE ENTRY

*Executive Engineer*  
*Highway Division*  
*Khyber Agency*

FORM: PA/72

Date: \_\_\_\_\_

Page No: \_\_\_\_\_

OFFICE OF THE \_\_\_\_\_  
FOR THE MONTH OF 10/2011 200

DDO Code: 1040014 Description: \_\_\_\_\_  
(Cost Center)

Personnel Number: 00488327

Employee Name: Mr. Zelay Khan

National ID Card Number \_\_\_\_\_

Grade (Pay Scale Group): 02

Salary Status: \_\_\_\_\_

Start

Stop

GENERAL DATA CHANGE		CHANGES/REVISIONS					
Type	Code	Row Contents	Wage Type	Reason	Rate	Effective Date	Period
						11/9/2011	

*Pay Stop*

*[Signature]*  
Sub Divisional Officer  
Highway Sub Division  
Peshawar

*[Signature]*  
Executive Engineer  
Highway Division  
Khyber Agency

Entered: Verified By

11

ANNEXURE B

OFFICE OF THE EXECUTIVE ENGINEER  
HIGHWAY DIVISION KHYBER AGENCY.

No. 137 / 17-E(i) Dated 9/3/2012

OFFICE ORDER

The services of the following officials Name and designation noted against each are hereby terminated with effect from 1.3.2012 with interest of Government.

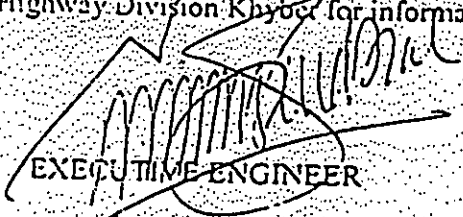
S.No. Name & Designation.

1	Nasir Ali S/O Sardar Ali	Work/Vunshi	Mardan
2	Abid Ali S/O Sardar Ali	DRR Driver	Mardan
3	Saccdullah Jan S/O Musafar Khan	DRR Driver	Charsadda
4	Sikandar Zeb S/O Khial Akbar	DRR Driver	Jamrud
5	Asif Mehmood S/O Muhammad Younis	Mate	Nowshera
6	Nausahad S/O Hajeeb Khan	Mate	Jamrud
7	Daulat Khan S/O Gulat Khan	Mate	Jamrud
8	Muhammad Sarir S/O Rehmatullah	Cooly	Jamrud
9	Tufail Khan S/O Muslim Khan	Cooly	Jamrud
10	Shaheen Khan S/O Jangrez	Cooly	Jamrud
11	Muhammad Perviz S/O Fazal Din	Cooly	Jamrud
12	Aftab Khan S/O Sikander Khan	Cooly	Swabi

EXECUTIVE ENGINEER

Copy to:-

1. Chief Engineer Works & Services Deptt: (FATA) K.P.K. Peshawar for information please.
2. Agency Accounts Officer Khyber at Jamrud for information.
3. All Sub Divisional Officers in Highway Division Khyber for information and necessary action.

  
EXECUTIVE ENGINEER

ATTESTED



2004 S C M R 1419

*For Appellant*

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Rona Bhagwandas and Khalil-ur-Rehman Ramday, JJ

Dr. MUHAMMAD ARSLAN—Appellant

Versus

CHANCELLOR, QUAID-E-AZAM UNIVERSITY, ISLAMABAD and others—Respondents

Civil Appeal No.901 of 1999, decided on 27<sup>th</sup> May, 2004.

(On appeal from the judgment/order, dated 16-12-1998 passed by Federal Service Tribunal, Islamabad, in Appeal No.381(R) of 1998).

**(a) Service Tribunals Act (LXX of 1973)—**

----Ss. 2-A & 4---Limitation Act (X of 1908), Ss.5 & 14---Constitution of Pakistan (1973), Art.212(3)---Appeal before Service Tribunal---Delay, condonation of---Contention of the petitioner was that after retrospective operation of S.2-A of Service Tribunals Act, 1973, question of limitation should have been decided by Service Tribunal in the light of special circumstances since provisions of S.4 of Service Tribunals Act, 1973 provided departmental appeal, only to civil servant and not to a person having fixed term employment to invoke the jurisdiction of Service Tribunal by virtue of S.2-A of Service Tribunals Act, 1973---Petitioner also contended that he was not seeking reinstatement in service but only arrears for the un-expired period of his statutory term by four years-- Leave to appeal was granted by Supreme Court to consider the questions raised by the petitioner.

Lt.-Col. (Retd.) Muhammad Siddique v. Allama Iqbal Open University, Islamabad Civil Petitions Nos.483 and 658 of 1998 ref.

**(b) Service Tribunals Act (LXX of 1973)—**

----Ss. 2-A & 4---Appeal before Service Tribunal---Maintainability-- Limitation---Change in forum of appeal---Effect---On account of change in forum, the question of limitation should not be considered seriously because insertion of S.2-A in Service Tribunals Act, 1973, created confusion about its applicability, therefore, it would be deemed that the aggrieved employee had been diligently pursuing his remedy before the wrong forum---If appeal was barred by time, the period of (imitation would be extended in the interest of justice---Proceedings were instituted by the appellant before Service Tribunal in time and the appellant should not have been non-suited for such reason---Appeal before Service Tribunal was not barred by limitation.

M.D. Sui Southern Gas Co. Ltd. v. Ghulam Abbas and others PLD 2003 SC 724; Muhammad Afzal v. Karachi Electric Supply Corporation 1999 SCMR 92; Aftab Ahmed v. K.E.S.C. 1999 SCMR 197 and Rehmatullah v. Postmaster-General 2003 SCMR 705 fol.

**(c) Quaid-e-Azam University Act (XXVIII of 1973)—**

----S. 12---Service Tribunals Act (LXX of 1973), Ss.2-A & 4---Fixed term employment---Termination of service before the expiry of term fixed--Appellant was appointed as Vice-Chancellor of Quaid-e-Azam University for a period of four years but his services were terminated prior to the completion of the term of employment---Appellant in Constitutional petition, sought recovery of the salaries of the remaining ---During the pendency of Constitutional petition, S.2-A was inserted in Service Tribunals Act, 1973, Ad the petition abated period Appellant invoked jurisdiction of Service Tribunal but the relief claimed by him was declined firstly for the reason that the appeal filed by him was barred by time and secondly because remedy of departmental appeal was not availed b y the appellant ---Validity---When a person had been appointed by a competent authority with a condition to retain the post for a specific period, such period became statutory period in terms of S.12 of Quaid-e-Azam University Act, 1973---Chancellor himself had granted the tenure of four years to appellant to retain the post as Vice Chancellor, therefore, before dispensing with his service, the Chancellor had to exercise such powers judiciously and could not have terminated the services of the appellant merely for the reason that another person had to be accommodated at his place---Such appointments were to be made in the interest, and welfare of the institution, therefore, whenever a change was to be made, the competent authority was required to record certain reasons while dispensing with the service of earlier officer and appointing a new one at his place---Authorities were required to exercise the powers fairly, justly and transparently because statutory functionary was not supposed to act arbitrarily and against the canons of natural justice---Judgment passed by Service Tribunal was set aside and remaining period of service of the appellant after termination order was credited to complete the tenure of four years---Supreme Court directed the authorities to pay the arrears of pay of remaining period to the appellant was allowed.

Gul Zarin Kiani, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Appellant.

Muhammad Munir Piracha Advocate Supreme Court and Manzoor Sheikh, Registrar, Quaid-e-Azam University for Respondents Nos.1 and 3.

Nemo for Respondent No.2.

Date of hearing: 27<sup>th</sup> May, 2004.

## JUDGMENT

**IFTIKHAR MUHAMMAD CHAUDHRY, J.**—This appeal by leave of the Court is directed against the judgment, dated 16<sup>th</sup> December, 1998 passed by Federal Service Tribunal, whereby Service Appeal filed by the appellant has been dismissed.

2. Precisely stating the facts of the case are that appellant was appointed as Vice-Chancellor, Quaid-e-Azam University, Islamabad for a period of four years. The appointment order was followed by a letter dated 11<sup>th</sup> June, 1995, containing terms and conditions of his service. Appellant resumed the charge, thereafter, by means of another notification, dated 3rd January, 1995, earlier appointment letter was partially modified incorporating condition therein that he shall complete his term of four years, notwithstanding the super annuation and the date of expiry of term of office of Vice-Chancellor. However, before the expiry of his tenure of four years, vide letter, dated 13th May, 1997, the Chancellor, Quaid-e-Azam appointed Dr. Muhammad Tariq Siddiqui as Vice-Chancellor for a period of four years with immediate effect and terminated the service of appellant forthwith. The contents of letter for convenience in extenso are reproduced hereinbelow:--

"Subject:-- Appointment to the post of Vice-Chancellor Quaid-e -Azam University, Islamabad

In exercise of the powers under section 12(I) of the Quaid-e- Azam University Act, 1973, the Chancellor, Quaid-e-Azam University is pleased to appoint Dr. Muhammad Tariq Siddiqui as Vice-Chancellor, Quaid-e-Azam University for a period of four years with immediate effect vice Dr. M. Arsalan whose services stand terminated forthwith.

(2) The terms and conditions of Dr. Muhammad Tariq Siddiqui would be settled later on.

By Orders of Chancellor  
Quaid-e-Azam University"

Appellant agitated against termination of his service initially by invoking the jurisdiction of Lahore High Court, Lahore under Article 199 of the Constitution of Islamic Republic of Pakistan but relief so claimed by him was not granted to him as vide judgment, dated 12th May, 1998, learned High Court concluded that a section 2-A has been inserted in the Service Tribunal Act, 1973, therefore, now he can challenge his termination order before the Service Tribunal.

3. It is important to note that Constitution petition filed by him was considered to have abated under the provisions of section 6 of the Service Tribunal Act, 1973 with effect from 10th June, 1997 when section 2-A was inserted in the Act, 1973. Thus for such reasons, appellant invoked the jurisdiction of Federal Service Tribunal by instituting Appeal No.381(R) of 1998. The Service Tribunal also declined to grant relief to him vide judgment, dated 16th December, 1998 mainly for two reasons i.e. firstly the appeal filed by him is barred by time and; secondly without filing departmental appeal/representation appellant cannot approach the Service Tribunal for redressal of his grievance.

4. Leave to appeal was granted to examine the contention raised by learned counsel, which have been incorporated in the following para of the leave granting order.

"Mr. Gul Zarin Kiani, learned Advocate Supreme Court for the petitioner contends that the Tribunal was wrong in holding that the petitioner has already completed his tenure of four years' service, inasmuch, the petitioner's statutory tenure of office was to expire on 26-12-1998, therefore, respondent No.1 on 13-5-1997, illegally issued an order under section 12(1) of the Act, appointing respondent No.3 as Vice-Chancellor of the University of a term of four years in place of the petitioner, whose services were terminated, without assigning any reason. He further states that the Tribunal was wrong in dismissing the appeal being time-barred, inasmuch as the petitioner was entitled to avail of period spent bona fide and in good faith, prosecuting proceedings in and before the High Court, under section 5 read with section 14 of the Limitation Act, 1908. It is submitted that the Tribunal passed the impugned order by misconstruing the above provisions. It is further contended that the Tribunal was wrong in holding that departmental representation under section 4 of the Service Tribunal Act, 1973, should have been filed before invoking the jurisdiction of the Tribunal, inasmuch as, qua the period of limitation prescribed for appeal on the retrospective operation of section 2-A the petitioner was deemed to be a civil servant for availing of remedy in appeal before the Service Tribunal and filing of departmental appeal was not a sine qua non for approaching the Tribunal. Reliance was also placed on order, dated 16-12-1998, passed in Civil Petitions Nos.483 of 1998 and 658 of 1998, in the case of Lt.-Col. (Retd.) Muhammad Siddique v. Allama Iqbal Open University, Islamabad to contend that after retrospective operation of section 2-A of the Act, question of limitation should have been decided by the Tribunal in the light of the special circumstances since the provisions of section 4 of the Service Tribunals Act provided departmental appeal, were applicable only to civil servants and not to a person, like the petitioner, to invoke the jurisdiction of the Tribunal by virtue of section 2-

A. Finally, it is contended that the petitioner is not seeking reinstatement but only arrears for the unexpired period of his statutory- term of four years.

Leave to appeal is granted to consider the above questions.

5. In support of appeal, learned counsel for appellant contended that under the provisions of Quaid-e-Azam University Act, 1973 (hereinafter referred to as 'the Act') against the termination of services of Vice-Chancellor, holding tenure post, no further representation or appeal is competent, and as far as departmental representations are concerned those are required to be filed under section 4 of the Service Tribunal Act, 1973 by the employees who are the Civil Servants for the purpose of the Civil Servants Act, 1973 whereas the employees who had been given the limited right to approach the Service Tribunal for the purpose of redressal of their grievance in terms of section 2-A of the Service Tribunal Act, are not obliged to file departmental representation or appeal against order of termination of services.

6. learned counsel for respondent when confronted with proposition argued that under section 34 of the Act, an appeal or review was competent before the Syndicate.

7. A perusal of this section envisaged that against the order passed by Vice-Chancellor, punishing any officer, an appeal or review is competent before the Syndicate but as far as Vice-Chancellor himself is concerned, he has no remedy even to approach the Syndicate for the redressal of his grievance. In this behalf, this Court in the case of M.D. Sui Southern Gas Co. Ltd. v. Ghulam Abbas and others PLD 2003 SC 724 which attending to an identical proposition has ruled that the employees whose cases are covered by section 2-A of the Service Tribunal Act are not obliged to file departmental appeal before approaching the Service Tribunal for the redressal of their grievance, therefore, in such view of the matter we are of the opinion that the non filing of appeal/representation by appellant before approaching the Service Tribunal would not be fatal.

8. It is next contended by learned counsel that appeal filed by appellant before Service Tribunal was quite in time as he without wasting time instituted appeal after the judgment of learned High Court holding that his remedy lies with the Service Tribunal.

9. In this behalf it is to be noted that in a number of cases this Court has held that on account of change in the forum, as far as the question of limitation is concerned, it would not be considered seriously because insertion of section 2-A in the Service Tribunal Act created confusion about its applicability, therefore, it would be deemed that the aggrieved employee has been diligently pursuing his remedy before the wrong forum and period of limitation shall be extended in the interest of justice if appeal is barred by time. Reference in this behalf call be made to the judgments reported as Muhammad Afzal v. Karachi Electric Supply Corporation 1999 SCMR 92, Aftab Ahmed v. K.E.S.C. 1999 SCMR 197 and Rehmatullah Khan v. Postmaster-General 2003 SCMR 705. Thus following the dictum laid down in these judgments, we are of the considered view that proceedings instituted by the appellant before the Service Tribunal were quite in time and he should have not been non-suited for this reason.

10. Now turning towards the merits of the case, learned counsel appearing for appellant vehemently argued that in case where tenure of a post has been fixed by the statute, competent authority, if desired to dispense with the service of an employee on any ground, he is required to show anything adverse against him, by way of issuing show-cause notice, so he may explain his position but without offering him opportunity of hearing before dispensing with his service, firstly he is entitled for the reinstatement on the post or in alternate salary should be paid to him for left over period of the tenure.

11. Learned counsel for respondents contended that four years was not the tenure of the appellant's service as it was outer limit and the competent authority had jurisdiction to dispense with the service at any moment. In addition to it, he stated that appellant was to hold the post during the pleasure of the Chancellor, who could dispense with his services without offering any reason, even during the period of tenure.

12. It is to be noted that perusal of the termination order of the appellant, dated 13<sup>th</sup> May, 1997 indicates that Chancellor has not dispensed with the service of appellant after issuing show-cause notice to him. It is correct that such powers can be exercised at any moment but fact remains that when a person has been appointed by a competent authority with the condition to retain the post for a specific period, such period becomes statutory period in terms of section 12 of the Act. Since in instant case, respondent-Chancellor himself had granted the tenure of four years to appellant to retain the post as Vice-Chancellor, therefore, before dispensing with his services, he had to exercise such powers judiciously and could not have terminated the services of the appellant merely for the reason that another person has to be accommodated at his place. It is to be noted that as far as such appointments are concerned, those are to be made in the interest and welfare of the institution, therefore, whenever a change is to be made, the competent authority is required to record certain reasons while dispensing with the service of earlier officer and appointing a new one at his place.

13. We inquired from the learned counsel for respondents as to whether there was any reason behind the replacement of appellant, he could not answer satisfactorily except saying that it was the prerogative of the competent authority to terminate the services of appellant. Be that as it may, we are of the considered opinion that as far as such powers are concerned, those are required to be exercised fairly, justly and transparently because statutory functionary is not supposed to act p arbitrarily and against the canons of natural justice.

For such reasons, we are of the opinion that without assigning any reasons, termination order of the appellant from service vide order, dated 13th May, 1997, when the appellant has a period of 1 year 7 months and 13 days at his credit to complete the tenure of four years, is illegal and void in the eye of law, thus not sustainable in law as such is accordingly set aside. However, instead of reinstating appellant into service as Vice-Chancellor, in order to avoid any administrative problem, which the University might face, we would direct that he should be paid arrears of his pay for the period of 1 year 7 months and 13 days at the rate of his pay scale which he was drawing at the time of termination of his service i.e. 13th May, 1997.

In view of above discussion, appeal is allowed in above terms, leaving the parties to bear their own costs.

M.H./M-110/S Appeal allowed



## P L D 2016 Supreme Court 872

*Kar & Appellate*

Present: Anwar Zaheer Jamali, C.J., Mian Saqib Nisar, Ejaz Afzal Khan, Mushir Alam and Manzoor Ahmad Malik, JJ

KHUSHI MUHAMMAD through L.Rs. and others—Appellants

Versus

Mst. FAZAL BIBI and others—Respondents

Civil Appeals Nos. 2564/2001, 2658/2006, 1670/2008, 60-L/2013, 280-L/2013, 60/2014, 965/2014 and 218/2015, decided on 16th August, 2016.

(On appeal from the judgment dated 25-6-2001/27-8-2002/ 2-6-2008/17-12-2012/23-10-2013/7-4-2014/3-10-2014 of the Lahore High Court/Peshawar High Court, Peshawar/Lahore High Court, Multan Bench/Peshawar High Court, D.I. Khan Bench/Lahore High Court Lahore/Peshawar High Court, D.I. Khan Bench passed in C.R. No.1611/2000, R.F.A. No.29/1996, R.F.A. No.230/2005, R.S.A. No.4/1996, R.F.A. No. 185/2011, R.F.A. No. 4/2014 and C.R. No.124-D/2014).

Per Mian Saqib Nisar, J; Anwar Zaheer Jamali, C J, Mushir Alam and Manzoor Ahmad Malik, JJ agreeing; Ejaz Afzal Khan, J disagreeing only with the finding that "principle of actus curiae neminem gravabit had no application where a litigant approached a wrong forum and such appeal was entertained by the staff of the court or by the court or even admitted to regular hearing."

## (a) Limitation Act (IX of 1908) —

----Ss. 3 &amp; 5 &amp; Preamble---Law of limitation, interpretation of---Salient features of interpretation of the law of limitation listed.

Following are the salient features which have been settled by the superior Courts for the purposes of interpretation of the law of limitation;

(i) The law of limitation was a statute of repose, designed to quieten title and to bar stale and water-logged disputes and was to be strictly complied with. Statutes of limitation by their very nature were strict and inflexible. Law of limitation does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment could not be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies were fully complied with in letter and spirit. There was no scope in law of limitation for any equitable or ethical construction. Justice, equity and good conscience did not override the law of limitation. Object of law of limitation was to prevent stale demands and so it ought to be construed strictly;

2016 PLC (CS) 195; 2010 PLC (Labour) 104; 2007 SCMR 1446; 2003 YLR 1837; PLD 2004 AJ&amp;K 38; PLD 2005 Lah 129; PLD 1958 (WP) Lah 936; PLD 2005 Lah 129; 2013 CLC 403; 2003 YLR 1837 and PLD 1962 (WP) Dacca 381 ref

(ii) The hurdles of limitation could not be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship did not save limitation, nor does poverty of the parties;

AIR 1940 Rang 276 (FB); PLD 2003 SC 628; 2002 PLC (CS) 526; 2002 PLC (CS) 474; PLD 2002 SC 101; 1998 PLC (CS) 1007; 1988 SCMR 1354 and 1987 PLC (CS) 200 ref

(iii) It was salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction was enjoined as regards the main provision. For when such a provision was set up as a defence to an action, it had to be clearly seen if the case came strictly within the ambit of the provision;

25 Cal 496, 503 ref

(iv) There was absolutely no room for the exercise of any imagined judicial discretion vis- -vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There was no scope for any equity. The court could not claim any special inherent equity jurisdiction;

AIR 1935 All 323 ref

(v) Statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should receive such support from courts of justice as would have made it what it was intended to be, a statute of repose. Plea of limitation could not be deemed as an unjust or discreditable defence. There was nothing morally wrong and there was no disparagement to the party pleading it. It was not a mere technical plea as it was based on sound public policy and no one should be deprived of the right he had gained by the law. It was indeed often a righteous defence. The court had to only see if the defence was good in law and not if it was moral or conscientious;

48 Cal 110 (PC); AIR 1933 PC 230; 54 All 1067 (PC); AIR 1935 All 323 and 56 Cal 575 ref.

(vi) The intention of the law of limitation was not to give a right where there was not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

21 Cal 8, 18 (PC) ref.

(vii) The law of limitation was an artificial mode conceived to terminate justiciable disputes. It therefore had to be construed strictly with a leaning to benefit the suitor;

AIR 1966 Pat 1 (FB) ref.

(viii) Reading of the Preamble and Section 5 of the Limitation Act, 1908 showed that the fundamental principle was to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who were expected to be aware and conscious of the legal position and who had facilities for proper legal assistance could hardly be encouraged or countenanced.

AIR 1966 Raj 213 ref.

**(b) Limitation Act (IX of 1908)—**

---S. 14---Appeal filed before wrong forum---Exclusion of time of proceeding bona fide in Court without jurisdiction---Application of S.14 of the Limitation Act, 1908 was restricted to suits only and had no direct and independent application to cases where an appeal had been filed before a wrong forum.

From the word the "suit" which appeared in section 14 of the Limitation Act, 1908, it was abundantly clear that the said section applied to suits and there was no mention of appeal or revision etc. Section 14 of the Limitation Act, 1908 was exclusively and solely restricted to suits and suits alone. If it was taken to apply to appeals also, this would tantamount to reading into the section the word "appeal" which did not appear in the said section and such a reading would be contrary to the definition of the word "suit" in the statute. Express provisions of law could not be defeated by resorting to any rule of interpretation which would have the convoluted effect of rendering an appeal a continuation of the suit for the purposes of attracting the application of section 14 of the Limitation Act, 1908.

**(c) Interpretation of statutes —**

---Rule of casus omissus---Scope --- In terms of the said rule the courts were not entitled to read words into an Act of Parliament unless clear reasons for it were found within the four corners of the Act itself.

(1910) 79 LJKB 955 and AIR 1980 SC 485 and Dr. Syed Sibtain Raza Naqvi v. Hydrocarbon Development and others 2012 SCMR 377 ref.

**(d) Limitation Act (IX of 1908)—**

---Ss. 5 & 14---Appeal filed before wrong forum---Condonation of delay---Sufficient cause---Whether the principles of S.14 of the Limitation Act, 1908 could be resorted to for the purposes of determining sufficient cause under S.5 of the said Act---For the purposes of determining whether in a given case sufficient cause had been made out for condonation of delay when an appeal had been filed before a wrong forum, there did not seem to be any bar in law that the conditions or the limitation prescribed by S.14 could not be looked into---However, the conditions laid down in S.14 must be satisfied and established on the record---Term 'sufficient cause' had to be given the widest possible amplitude and in so doing the conditions/principles of S.14 of the Limitation Act, 1908 could not be left out.

For the purposes of determining whether in a given case sufficient cause had been made out for condonation of delay when an appeal had been filed before a wrong forum, no hard and fast rule could be laid down; there could not and should not be a simple test for determining the same. The establishing of sufficient cause was not amenable to mathematical formulae. Courts were called upon in individual cases to apply their judicial faculties to the facts placed before them and weigh the same in order to decide whether that ephemeral threshold had been crossed which meant that the appellant had convincingly established sufficient cause for condonation of delay. It would be unwise and unadvisable to state for all times to come that what may or may not constitute a sufficient cause; each case ought to be decided on its own merits vis- -vis the plea of sufficient cause.

For the purposes of determining whether in a given case sufficient cause had been made out when an appeal had been filed before a wrong forum, there did not seem to be any bar in law that the conditions or the limitation prescribed by section 14 of the Limitation Act, 1908 could not be looked into. However the conditions laid down in section 14 must be satisfied and established on the record.

Term sufficient cause had to be given the widest possible amplitude and in so doing the conditions/principles of section 14 of the Limitation Act, 1908 could not be left out.

**(e) Limitation Act (IX of 1908)—**

---Ss. 5 & 14---Institution or pendency of an appeal before a wrong forum i.e. one lacking jurisdiction, on the wrong advice of the counsel---Condonation of delay---Good faith and due diligence of appellant---Mistaken advice of counsel did not automatically and per se constitute a sufficient cause for condonation of delay as a matter of course and routine, rather, the appellant had to specify the reasons with clarity and precision which prevailed with the counsel and led him to commit the mistake and such application must also be supported by an affidavit---Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel could not constitute sufficient cause ipso facto, but the factor(s) which misled the legal

counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated---Appellant had to establish that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum.

Question as to whether the institution and the pendency of the appeal on the wrong advice of the counsel before a wrong forum i.e. one lacking jurisdiction constituted a sufficient cause for condonation of delay in terms of section 5 of the Limitation Act, 1908, it could neither be held that condonation was absolutely ruled out in such a situation nor that the appellant shall be entitled to condonation as a matter of course and right, rather the Court must look into the facts and circumstances of each case as to whether sufficient cause had been made out.

Person seeking condonation of delay must establish sufficient cause. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: it should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel could not constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel was not an adequate ground per se to constitute sufficient cause because if such rule was accepted, the rule that ignorance of law was no excuse would stand violated. Besides, the factors which caused ambiguity and misled the appellant (or his counsel as the case may be) had to be stated with clarity and precision in the application for condonation of delay and proved on the record.

Poor advice by a counsel may well cause hardship to a litigant and compromise his ability to seek redress in law. But hardship caused to a person on account of poor advice of counsel did not constitute a sufficient cause for condonation of delay per se. Courts must insist that applications for condonation of delay must specify with particularity as to what factors misled the counsel and gave him cause to form his unfortunate opinion with respect to the (wrong) forum adopted and thereafter the said factors must be proved on record. It is then for the court to decide if, on the basis of such factors, sufficient cause had been made out or not.

There may be instances where there was a different period of limitation applicable to different fora of appeal, and an appellant whose appeal was time barred before an appropriate forum may instead deliberately approach another forum (knowing it to be the wrong forum) in order to lay claim that time spent before a wrong forum ought to be condoned on account of the fact that appellant had approached it (forum) on the advice of counsel. All Courts must keep such considerations in mind when deciding whether or not delay caused by virtue of alleged wrong advice by counsel should be condoned.

#### (f) Administration of justice —

---'Actus curiae neminem gravabit' ("an act of the court shall prejudice no man"), principle of---Scope---[Per Mian Saqib Nisar, J]: Said principle was founded upon justice and good sense, and afforded a safe and certain guide for the administration of law and justice; it was meant to promote and ensure that the ends of justice were met; it prescribed that no harm and injury to the rights and the interest of the litigants before the court shall be caused by the act or omission of the court---Said principle of administration of justice was meant for the benefit of both sides of litigants before the court and it would be illogical to conceive that the rule would or should be applied for the advantage of one litigant to the prejudice and disadvantage of the other---Court had the duty to act as a neutral arbiter between the parties and to provide justice to them through strict adherence to law and keeping in mind the facts of each case---[Per Ejaz Afzal Khan, J]: Principle of "actus curiae neminem gravabit" had been founded upon the principles of justice and good conscience---Rationale behind said principle was to undo the wrong or prejudice caused to a party by the act of the court---Said principle was applied to undo an injury or injustice caused to a party by an act of the court or by the laches or mistakes of its officers; it was also applied to restore what had been delayed or denied to a party by the act of the court or negligence of the persons manning and managing it.

Robert Mitchell v. A. M. Overman (103 U.S. 64-65) ref.

#### (g) Limitation Act (IX of 1908)—

---Ss. 5 & 14---Appeal entertained by the staff of the court or the court itself which had no pecuniary jurisdiction---Appeal ultimately returned to the appellant or dismissed---Whether such appellant was protected from the bar of limitation and/or it constituted a sufficient cause for the condonation of delay---'Actus curiae neminem gravabit' ("an act of the court shall prejudice no man"), principle of---Applicability---Per Mian Saqib Nisar, J (Majority view): Principle of actus curiae neminem gravabit had no application where a litigant approached a wrong forum and such appeal was entertained by the staff of the court or by the court or even admitted to regular hearing---No condonation of delay could thus be availed by the appellant on the basis of said principle---Per Ejaz Afzal Khan, J (Minority view): If mistaken view of a counsel in filing an appeal or suit before the wrong forum could constitute a sufficient cause for the condonation of delay, it was not understandable why the same should not apply to a mistaken view of the court entertaining the appeal or the suit---Treating the two situations differently simply because one found expression in the act of the counsel and the other found expression in the act of the court would be unjust, unfair and unreasonable---Latter situation i.e. mistaken view of the court in entertaining the appeal or the suit deserved all the more allowance firstly because the court entertaining the appeal or the suit did not care to know that it laid outside its jurisdiction; secondly because it sat over it for months instead of returning it for being presented in the court of competent jurisdiction and thirdly because the appellant or the plaintiff went out of limitation on account

of the said act of the Court---Excluding the principle of "actus curiae neminem gravabit" from the purview of Ss. 5 & 14 of the Limitation Act, 1908 would amount to excluding a vital part of the jurisprudence which had grown over centuries and earned recognition of the courts---Appellants going out of limitation on account of the act of the court were entitled to extension of time---His Lordship Ejaz Afzal Khan, J observed that the Clerk of the court while receiving appeal in the office and the District Judge hearing an appeal in motion shall ensure that it was presented in a competent forum and in case it was otherwise he shall immediately return it for being presented in the court of competent jurisdiction.

Consolidated Engineering Enterprises. v. Principal Secretary, Irrigation Department and others (2008) 7 SCC 167; J. Kumaradasan Nair and another v. IRIC Sohan and others AIR 2009 SC 1333; Rodger. v. The Comptoir d' Escompte de Paris (1871) 3 P.C. 465; Jai Berham and others v. Kedar Nath Marwari and others AIR 1922 PC 269; East Suffolk Rivers Catchment Board v. Kent and another 1941 AC 74; Pultney v. Warren (1801) 6 Ves.73, 92; Parker v. Ellis 362 U.S. 574; Sough Eastern Coalfields Ltd. v. State of M. P. and others AIR 2003 SC 4482; Amarjeet Singh and others v. Devi Ratan and others AIR 2010 SC 3676; Hidayatullah v. Murad A. Khan PLD 1972 SC 69; Hari Ram v. Akbar Hussain ILR 29 All. 749; Rashad Ehsan and others v. Bashir Ahmad and another PLD 1989 SC 146; Sherin and 4 others v. Fazal Muhammad and 4 others 1995 SCMR 584; Syed Haji Abdul Wahid and another v. Syed Sirjuddin 1998 SCMR 2296; Karachi Electric Supply Corporation Ltd. v. Lawari and 4 others PLD 2000 SC 94 and Mst. Bas Khana and others v. Muhammad Raees Khan and others PLD 2005 Pesh. 214 ref.

### Per Mian Saqib Nisar, J

#### **(h) Limitation Act (IX of 1908)---**

----Ss. 3 & 5---Discretion exercised by the courts below in condoning delay---Interference by higher forum---Principles---Discretion exercised by a court below was not open to interference by a higher court unless it had been exercised arbitrarily---In the exercise of its discretionary power the court (below) was not empowered to act upon whim and caprice, rather the discretion of the court was circumscribed by the law, recognized norms of justice, fairplay, equity, logic, rationality and reasonableness---Where the court (below) had passed an order in exercise of its discretion by condoning the delay, on the basis of sufficient cause which had been made out, it did not behove a superior court to interfere in the matter---However where the exercise of discretion was unbridled, arbitrary and perverse, it did not render it immune to the scrutiny and correction by the superior court---Where no sufficient cause on record had been made out yet the discretion for the condonation of delay was exercised subjectively and whimsically (by the lower court) it was the duty of the superior court to rectify the defect in the exercise of discretion---Such duty was duly mandated by the provisions of S.3 of the Limitation Act, 1908.

Muhammad Bashir v. Province of Punjab through Collector of District Gujrat and others 2003 SCMR 83 and The Province of East Pakistan v. Muhammad Hossain Mia PLD 1965 SC 1 ref.

#### **(i) Punjab Pre-emption Act (I of 1913) [since repealed]**

----S. 21---Limitation Act (IX of 1908), Ss. 5 & 14---Suit for pre-emption---Appeal filed by counsel before the wrong forum i.e. one lacking pecuniary jurisdiction---Whether lack of pecuniary jurisdiction by court sufficient cause for condonation of delay---No reason existed for the counsel of the appellant (pre-emptor) whilst filing the appeal, to be misled by any fact or the law because the jurisdictional value was clearly mentioned in the plaint by the pre-emptor---Such value was also clearly reflected in the decree passed by the Trial Court, whereby the suit of the pre-emptor was dismissed---Appeal should thus have not been filed before the District Court, but before the High Court, as at the relevant point of time, it was the High Court which had the pecuniary jurisdiction to hear the appeal on account of the jurisdictional value fixed in the plaint and decree sheet---Record showed that an objection was raised by the vendees/defendants about the incorrect valuation and that was the most opportune moment for the pre-emptor having been put to notice about his so-called inadvertent incorrect valuation to ratify the said mistake but instead the pre-emptor joined the issue---No attempt was ever made by the pre-emptor during the course of trial to correct the valuation by seeking an amendment in the plaint---Trial Court retained the value of the suit filed by the pre-emptor, which valuation squarely and duly appeared in the decree sheet; it was thus on the basis of the valuation of the suit fixed by the pre-emptor in the plaint itself and reflected in the decree which had to determine the forum of appeal---At the time of passing the decree there was no ambiguity which could mislead the pre-emptor's counsel into filing the appeal before the District Court---Inadvertence, negligence, mistake simpliciter (albeit bona fide) etc. of the counsel did not constitute a sufficient cause for condonation of delay---Pre-emptor had not been able to make out a case beyond mere inadvertence---In the present case, condonation of delay had been granted to the pre-emptor by both the courts below on the basis of arbitrary and whimsical reasons---Such exercise of discretion being against settled principles could always be interfered with---Supreme Court dismissed the appeal of the pre-emptor before the District Court for being barred by time.

#### **(j) Specific Relief Act (I of 1877)---**

----Ss. 8 & 42---Limitation Act (IX of 1908), Ss. 5 & 14 --- Suit for declaration and possession---Appeal filed by counsel before the wrong forum i.e. one lacking pecuniary jurisdiction---Whether sufficient cause for condonation of delay---Contention of appellant that due to the inadvertent mistake of his counsel the appeal had been filed before the District Court (wrong forum) instead of the High Court---Validity---Such mistaken advice of a counsel, even if unintentional, simpliciter did not constitute a sufficient cause in terms of S. 5 of the Limitation Act, 1908, instead there had to be cogent reasons, clearly spelt out and proved on the record, for such purpose---Mere pendency of an appeal before the wrong forum especially when no sufficient cause had been made out shall not be a ground per se or simpliciter for condonation of delay---Application for condonation of delay filed in the present case contained a mere

narration of the facts leading up to the filing of the appeal before the wrong forum (District Court), and there were no plausible reasons or justifications given for the filing of such appeal before the wrong forum, apart from a feeble assertion that "the delay for filing the Regular First Appeal was not intentional" on the part of the appellant---Besides case record showed that the memorandum of appeal was ordered to be returned on 23.6.1994 but the appellant never approached the District Court (wrong forum) for receiving the same within reasonable time rather, after considerable lapse of time of about 18 months, it was received on 2.1.1996---No explanation was provided for such delay, i.e. 18 months and 10 days---Appellant had never claimed that after the order of return of the memorandum of appeal he approached the District Court (wrong forum) promptly and it was the (District) Court which delayed the return of the memorandum of appeal ---No sufficient cause for delay in filing the appeal had been made out in the present case---Appeal was dismissed accordingly.

**(k) Limitation Act (IX of 1908) —**

---Ss. 5 & 14---Appeal, filing of---Condonation of delay---Sufficient cause---Appellant correctly filing appeal before the High Court---High Court returning the appeal and compelling appellant to file his appeal before the District Court (wrong forum), which under law had no jurisdiction---Such order of the High Court was bad in law---Appellant was a victim of an act of the court, which was sufficient cause for condoning delay in filing the appeal.

Pre-emptor, in the present case, had valued the suit property at Rs.500,000 in the plaint and specifically mentioned the said amount as the value of the suit for the purposes of court fee and pecuniary jurisdiction. Such valuation was categorically denied by the vendee through her written statement asserting it to be Rs.2,500,000. In light of such divergent pleas the Trial Court framed an issue in that "What is the market value of the suit property?". On the said issue Trial Court fixed Rs.25,00,000/- as market value of the suit property. Keeping in view such finding of the trial court, which determination was duly reflected in the decree sheet as well, the vendee (appellant) filed an appeal before the High Court, instead of the District Court. High Court ordered return of appeal for filing the same before the proper forum on the basis that valuation of suit for the purpose of court fee and jurisdiction was given as Rs.500,000 in the plaint.

Vendee was justified in considering that the value of the suit for the purposes of jurisdiction had been changed/modified (from Rs.500,000 to Rs.25,00,000) by the trial court, thus leading him to prefer an appeal before the High Court. High Court remained oblivious that in a suit for pre-emption of a house (urban property) the value of the suit for the purposes of jurisdiction was the sale consideration of the suit property; thus as per the finding of the trial court, when it was held that the sale consideration was Rs.2,500,000/- this modified the jurisdictional value automatically.

The market value of the suit property at Rs.2,500,000/- had been clearly indicated in the decree sheet prepared by the trial court, thus for all intents and purposes the said amount became the changed value for the purposes of jurisdiction of the forum of appeal. Vendee had rightly filed the appeal before the High Court and the order of the High Court returning the appeal was bad in law. In such manner the vendee had been compelled to file his appeal before the District Court (wrong forum) which had no jurisdiction on account of the increase in the sale price of the property by the trial court. Vendee was a victim of the act of the court which was sufficient cause for condonation of delay in filing his appeal.

**(l) Interpretation of statutes—**

---Law of limitation---Salient features of interpretation of law of limitation enumerated.

Raja Muhammad Ibrahim Satti, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellant (in C.A. No.2564 of 2001).

Malik Muhammad Qayyum, Senior Advocate Supreme Court, Mian Hamid Farooq, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondents.

Khurram Raza Chaudhry, Advocate Supreme Court for Appellant (in C.A.No.2658 of 2006).

Nemo for Respondent No.12 (in C.A.No.2658 of 2006).

Waqar Ahmed Sheikh, Advocate Supreme Court, Gulzar Hussain, Asstt. Director (Hort.) PHA and Muhammad Tariq Nazir, Asstt. Law, PHA for Respondent No.16 (in C.A.No.2658 of 2006).

L.Rs. of Respondents Nos. 1, 10 and 11: Ex parte.

L.Rs. of Respondents Nos. 2-9, 13-15: Ex parte.

Mian Muhibullah Kakakhel, Senior Advocate Supreme Court for Appellant (in C.A.No.1670 of 2008).

Abdul Sattar Khan, Advocate Supreme Court for Respondents (in C.A.No.1670 of 2008).

Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court for Appellant ((in C.A.No.60-L of 2013).