

# IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Mushir Alam

Mr. Justice Umar Ata Bandial

## Civil Petition No.2411 of 2014

Against the order dated 28.10.2014

Passed by Punjab Service Tribunal,

Lahore in Appeal No.3093 of 2014

Muhammad Akram

**Petitioner(s)**

### VERSUS

DCO, Rahim Yar Khan & others

**Respondent(s)**

For the Petitioner(s):

Mr. Muhammad Bashir Khan, ASC

For Respondent(s):

Raja Muhammad Arif, Addl. AG

Muhammad Akram, DDEO

Date of Hearing:

17.10.2016

### ORDER

**Mushir Alam, J.-** Muhammad Akram Petitioner Ex-Junior

Clerk in the office of the AEO (Women) Markaz Bagh-o-Bahar, Tehsil Khanpur, District Rahimyarkhan was proceeded departmentally on account of extravagant malpractice and prolonged absence from duty w.e.f. 10.10.2013 and after due proceedings major penalty of dismissal from service under section 4(b)(vi) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2009 (*PEEDA Act, 2006*) was imposed by the Competent Authority/*DEO (Education) Rahimyarkhan*, vide order dated 04.07.2014 w.e.f. 10.10.2013.

2. Petitioner instead of filing departmental appeal before appellate authority as provided under section 16 of the *PEEDA Act, 2006*, approached the learned High Court in Writ Petition No.5412 of 2014/BWP. The Petition was heard and on 16.07.2014 following order was passed:-

*"As per request of the learned counsel for the petitioner, the instant writ petition alongwith all its annexures be sent to respondent No.1/District Coordination Officer, Rahimyarkhan, who shall treat it as departmental appeal of the present*

*petitioner and decide the same on its own merits after hearing the present petitioner within a period of one month from the date of production of attested copy of this order by the present petitioner."*

3. Consequently, the writ petition sent to the DCO, Rahimyarkhan, and the appellate authority, to *"treat it as departmental appeal"* and *"to decide the same on its own merits after hearing the petitioner within a period of one month"*. The writ Petition converted into Departmental Appeal, was dismissed on merits, at the same time it was observed *"that no departmental appeal under section 16 of PEEDA Act, 2006 has ever been filed by the Petitioner"*, vide order dated 5.9.2014, which order was maintained through impugned judgment dated 28.10.14 by the Punjab Service Tribunal (PST).

4. Learned counsel for the petitioner, admitted that indeed appeal is provided against the order of departmental authority in terms of section 16 of the PEEDA Act, 2006, however, he under mistaken belief filed Writ Petition within 30 days from the date of the impugned order of his dismissal from service. It was argued that he approached the wrong forum with promptitude and within the period of limitation, the Writ Petition, filed by him was ordered to be treated as departmental appeal and sent to the Appellate Authority, which was not decided by the Appellate Authority and so also by the PST in accordance with law and he was non suited on technicalities.

5. Learned counsel for the respondents vehemently opposed the averments made by the learned counsel for the petitioner. According to him, the departmental appeal was decided on merits as well as on the point of limitation as no appeal was filed before the competent authority/DCO concerned within 30 days from the date of his dismissal from service, which admittedly was not done, therefore the Appellate authority had not Appeal

before it. It was urged that no exception to the impugned order of the *DCO Rahimyarkhan*, as maintained by the *PST* could be taken.

6. Heard the arguments and perused the record. Departmental Appeal against the dismissal from service order is provided under section 16 of the PEEDA, 2006 before the designated Appellate Authority, which in instant case admittedly is the *DCO Rahimyarkhan*. We have examined the impugned Order dated 5.9.2014, passed by the Appellate Authority on merits with an observation that no Appeal was filed under the *PEEDA Act, 2006*, as already noted in the narrative above. Learned *PST* without adverting to merits of the case, dismissed the Appeal before it on the ground of limitation only.

7. The Courts are sanctuaries of justice, and in exercise of authority to do *ex debito justitiae*, that is to say remedy a wrong and to suppress a mischief to which a litigant is entitled. No fetters or bar could be placed on the High Court and or this court to convert and treat one type of proceeding into another type into another and proceed to decide the matter either itself provided it has jurisdiction over the *lis* before it in exercise of another jurisdiction vested in the very court or may remit the *lis* to the competent authority/forum or court for decision on merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. Even time consumed pursuing remedy before a wrong forum in appropriate cases could always be condoned (see *Shamsul Haq and others v. Mst. Ghoti and 8 others* (1991 SCMR 1135).

8. In a case cited as *Muhammad Anis and others v. Abdul Haseeb and others* (PLD 1994 Supreme Court 539), eligibility for consideration of promotion; was successfully challenged in writ jurisdiction of the High Court. On appeal, this Court held that such question is amenable to the

Jurisdiction of learned Service Tribunal, therefore, writ is not maintainable, impugned judgment passed by the learned Sindh High Court in exercise of writ jurisdiction was set aside. In Paragraph 16 of the judgment *supra* this court ordered to treat the Writ Petition, as Service Appeal pending before it which will be decided by the Service Tribunal, after notice to the parties concerned in accordance with law. In similar circumstances in a judgment recently reported as *Province of Sindh and another v. Muhammad Ilyas and others* (2016 SCMR 189) dismissal from service order was challenged before the learned Sindh High Court through Constitution Petition. The Constitutional Petition was treated by the High Court as service appeal and sent to the Service Tribunal; which was decided by the Service Tribunal on merit and this Court declined leave in the matter. Similar course was followed by the learned Division Bench of Peshawar High Court in a case reported as *Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa and 2 others* (2015 PLC (C.S) 215).

9. As noted above the *DCO Rahimyarkhan*, decided the Writ Petition No. 5412 of 2014 treating it as Departmental Appeal on merits as ordered by the Bahawalpur Bench of the Lahore High Court, but at the same time held "*that no departmental appeal under section 16 of PEEDA Act, 2006 has ever been filed by the Petitioner*", which observation under given facts and circumstances was uncalled for. Apparently it is last mentioned observation of the Departmental Appellate Authority, which influenced the *PST* to dismiss the Service Appeal as barred by time. Once the Writ Petition, which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as Departmental Appeal, that too when the limitation by then had not ran out as noted above. Learned *PST*, had fallen in to error to dismiss the Appeal before it on the ground of limitation alone, without advertng to the merits of the case as were attended by the *DCO Rahimyarkhan*. As noted above date of filing

of the writ petition within time should have been reckoned as date of Departmental Appeal and ought to have been treated as Departmental Appeal for all practical purposes as ordered by the High Court.

10. The DCO Rahimyarkhan/Appellate Authority, as noted above decided the Departmental Appeal on merits, as regard observation made in the order dated 5.9.2014 by him *"that no departmental appeal under section 16 of PEEDA Act, 2006 has ever been filed by the Petitioner"* in view of above discussion, is not in accordance with law to such an extent it cannot be approved. We refrain from commenting on merits of the case, which was not adverted to by the *PST*, through impugned Decision dated 28.10.2014, which is set aside, Service Appeal No.3093 of 2014, shall be deemed to be pending and be decided on merits after hearing all the parties concerned as expeditiously as possible.

11. In view of the foregoing, Petition is converted into appeal and is allowed in terms setout above.

Judge

Judge

ISLAMABAD, THE  
17<sup>th</sup> October, 2016  
Syed Farhan Ali

*Approved for Reporting*