

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

***F.A.O. No.20 of 2016***

**AZIZ FATIMA.**

*Vs.*

**FEDERAL PUBLIC SERVICE COMMISSION THROUGH ITS  
CHAIRMAN.**

APPELLANT BY: In person.

RESPONDENTS BY: Mr. M. Javed Iqbal, AAG.  
Mr. Abdullah, A.D (Legal), FPSC.

*DATES OF HEARING:* 18.09.2020.

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LUBNA SALEEM PERVEZ; J: Present First Appeal has been filed against orders dated 09.09.2009 & 13.10.2009, whereby, appellant's representation as well as review petition against rejection of her candidature for selection against the post of Associate Clinical Psychologist (BPS-18), PIMS, Ministry of Health, were rejected by the Respondents.

2. The facts giving rise to the instant appeal are that the appellant, who holds a degree of Masters in psychology from the University of Punjab and has practiced for several years as clinical psychologist in various reputable and prestigious clinics and medical institutions, applied against the permanent post of Associate Clinical Psychologist (BPS-18) at Pakistan Institute of Medical Sciences (PIMS), Ministry of Health, advertized in daily newspaper, with certain qualification/experience. Appellant while considering as eligible candidate was called for written test on 27.09.2006, which she qualified. However, Respondent, vide letter dated 06.11.2006, refused to call the appellant for interview on the ground that she did not has the requisite proof of experience. To which appellant provided the necessary experience certificates, whereafter, she was called for interview. However, one Ms. Shafufta Jabeen, daughter of Senior Joint Secretary, Ministry of Health challenged the selection process through W.P.No. 2891/2006, and the

selection process was stayed. And after dismissal of said petition, appellant approached the Respondent to inquire about the fate of appointment, however, as per appellant's version, she was informed that appellant was the only successful candidate selected for the post from ICT. But, to sheer surprise of the appellant, her candidature was rejected on 13.12.2008 for the reasons communicated through impugned order dated 09.09.2009 and subsequently the appellant's review petition was also declined by the Respondent, vide letter dated 13.10.2009. Hence, she filed present appeal for setting aside the orders dated 09.09.2009 & 13.10.2009, impugned herein.

3. Appellant, in person, *inter-alia*, contended that the impugned orders are void, illegal, and without jurisdiction which are violative of law and equity and in derogation of the pronouncements of the superior courts of the country; that Respondents failed to evaluate the Appellant's candidature for the post on merits and the impugned orders have been passed arbitrarily with malafide intentions and extraneous considerations; that after securing the highest marks in the written test and appearing in the interview for appointment against the post of Associate Clinical Psychologist, appellant had a vested right and valuable interest in the appointment as she was most qualified and best suited candidate for the said post. In view of her submissions, appellant prayed for setting aside the impugned orders.

4. On the other hand, learned AAG along with A.D (Legal), FPSC while supporting the impugned orders contended that appellant's candidature was rejected at the time of scrutiny of her application which was conveyed to her, vide letter dated 06.11.2006 as the appellant submitted her part time experience certificates whereas, the full time job experience was the requirement for appointment against the post, and after due deliberations FPSC finally rejected her candidature on 17.11.2006 by holding that part time experience is not acceptable and appellant's experience dates were overlapping with each other; that representation of the appellant and review petition before FPSC under Section 7(3)(a) and (b) of FPSC Ordinance, 1977, respectively, were considered and after personal hearing of the appellant same were rejected, vide impugned orders dated 09.09.2009 & 13.10.2009, respectively; that appellant instead of filing appeal before the High Court u/s 7(3)(d) of the FPSC Ordinance, 1977 preferred W.P.No.

3229/2009 in the year 2009, before the High Court which was dismissed on 11.05.2015 and her I.C.A. No. 480/2015 was also rejected on 16.11.2015; that appellant's CPLA against judgment in ICA has also been dismissed by the Hon'ble Supreme Court, vide order dated 29.01.2016; that appellant's present appeal is badly barred by time; that the candidate namely Wajeeha Zahra whom the appellant has stated in her appeal as blue eyed person was appointed on 17.02.2016 but the appellant has neither challenged her appointment nor arrayed her as a party in the appeal, hence, her appeal also suffers from laches and non-joinder and misjoinder. Learned AAG prayed for dismissal of instant writ petition.

5. I have heard the appellant as well as learned AAG and have also perused the available record.

6. Appellant in the present case is aggrieved of rejection of her candidature for appointment against the post of Clinical Psychologist, advertised through consolidated No. 14/2006, on 07.06.2006. Against said rejection she filed representation on 13.12.2008, which was also rejected vide letter dated 09.09.2009. Her review petition dated 14.09.2009, was also dismissed, vide letter dated 13.10.2009. The ground for her rejection was lack of experience required for the post which was five years full time experience in Clinical Psychology, whereas, the appellant admittedly has part time experience in different clinics, educational institutions and private consultancy. Against the rejection order dated 09.09.2009, the appellant filed writ petition before this Court vide W.P. No. 3229/2009, which was dismissed, vide order dated 14.05.2015; against the said order the appellant filed Intra Court Appeal bearing ICA No. 480/2015, which was also dismissed in *limine* on 16.05.2015, for being not maintainable. The appellant assailed the said order before the Hon'ble Supreme Court in Civil Petition No. 3804/2015, which was also dismissed, vide order dated 29.01.2016. The Hon'ble Supreme Court observed as under:-

*"After hearing the petitioner in person, we are of the view that the remedy of appeal was available to her, therefore, when the learned single Judge-in-Chambers dismissed her petition on that account the ICA was not competent and it has been so rightly held by the learned High Court. Obviously in such a situation the petitioner if so advised may still avail the remedy of challenging the order dated 09.09.2009 which was assailed by her in the constitution*

*petition before the appellate forum. With the above observation, this petition is dismissed."*

The appellant is of the view that the Hon'ble Supreme Court has issued directions to file appeal before this Court and, therefore, filed present FAO on the same facts along with an application for condonation of delay. The relevant paras of the application for condonation of delay are as under:

1. *That the above cited CM has been filed before this Honourable Court which is based on the solid and legal ground and it is most likely to be accepted in favour of the applicant/appellant.*
2. *That prima facie the CM seems to be barred by time, but in fact it is within time for the simple reason that the order announced by Honorable Supreme Court of Pakistan on 29.01.2016 and the copy of said order was received by the applicant on 09.02.2016.*
3. *That as per direction passed by the Apex Court that the cases should be decided on merits not on technicalities."*

Perusal of the order of the Hon'ble Supreme Court dated 29.01.2016, shows that the Hon'ble Apex Court has not given any such direction that the cases should be decided on merits and not on technicalities by condoning the delay of filing the present FAO after the limitation period provided under section 7(3)(d) of the FPSC, Ordinance, 1977, against the rejection of review by the Commission. Moreover, before the Hon'ble Supreme Court, the order assailed by the appellant was dated 09.09.2009, whereby the representation dated 13.12.2008, was rejected which is an appealable order in terms of section 7(3)(a) of FPSC, Ordinance, 1977, and the Hon'ble Supreme Court has therefore, observed that *the appellant if so advised may still avail the remedy of challenging the order dated 09.09.2009*. However, perusal of the record reveals that the appellant has already availed the remedy by filing review petition before the Commission on 14.09.2009, which was also dismissed by the Commission, vide order dated 13.10.2009. Therefore, I am of the opinion that the appellant has to cross the hurdle of explaining the inordinate delay for filing the present FAO against the order dated 13.10.2009. The appellant contended that she has acted according to the advise of the counsel and filed writ petition and thereafter, ICA and CPLA to pursue her case and she has been diligent in approaching the next forum against the orders. She argued that she has not been heard on merits at any stage upto the Hon'ble Supreme Court and her case has been knocked out on

technical grounds and submitted that it is the settled law that the cases should be decided on merits rather on the technicalities. The argument of the appellant is not convincing as it has been a settled law that the limitation cannot not be condoned on the ground of wrong advise of the counsel of filing case before a wrong forum. In this regard reliance is placed on the judgment of Hon'ble Supreme Court reported as ***Abdul Rehman Qamar v. Government of NWFP, etc [2003 PLC (CS) 1171]*** wherein the Hon'ble Apex Court has been pleased to observed that:-

*"The learned counsel for the appellant has not been able to convince us that the ground urged for condonation of delay would attract the provisions of section 14 of the Limitation Act. There being no ambiguity in the legal position, the erroneous filing of the suit before the Civil Court on the pretext of wrong advice would not be excuse to exclude the time spent in pursuing the remedy before a wrong forum. There can be no exception to the rule that availing of remedy before Wrong forum willingly is not a valid ground for condoning the delay, therefore, the dismissal of appeal by the Tribunal being barred by time was not suffering from, any legal defect."*

The Hon'ble Supreme Court in the judgment re: ***Raja Karamatullah v. Sardar Muhammad Aslam Sukhera (1999 SCMR 1892)***, dismissed the appeal on the point of limitation and held as under:-

*"Section 5 and 14 of the Limitation Act would come into play only if the delay appears to be condonable because of the appellant prosecuting their case with due diligence. The time consumed in pursuing the appeal in wrong forum could not be condoned under section 5 of the Limitation Act. Ghulam Ali v. Akbar alias Aloor and another (PLD 1991 SC 957) may be cited in this behalf. In Abdul Ghani v. Mst. Mussarat Rehana (1985 CLC 2529) it was observed that for bringing the case within the ambit of principles governing section 14, the appellant has to show that he prosecuted his remedy before the wrong forum in good faith. In Government of Pakistan v. Rafi Associates Limited (1985 CLC 2234 Kar.) choosing wrong forum lacking due care and attention were not considered as acts done in good faith."*

In the present case there is no question of availing remedy in the wrong forum because the appellant throughout the litigation upto Hon'ble Supreme Court was contesting her rejection, vide order dated 09.09.2009, against which she has already availed the remedy of review and the order dated 13.10.2009, whereby her review was dismissed has not been challenged in the previous litigation. The appellant preferred the present appeal before this Court almost after six years from the passage of impugned order dated 13.10.2009, and the sole reason provided for such delay is that she kept on pursuing the matter before the High Court through filing of writ petition and

thereafter intra court appeal which in fact is not a reasonable ground for such a long delay. Rather, It is not believable that the appellant even otherwise was not aware of the proper remedy as she was pursuing the matter in person either it is before the Respondent/Commission or before the superior courts as she initially filed representation and review petition before the Respondent under Section 7(3)(a) & 7(3)(b) of the Ordinance, 1977, respectively but has approached the High Court through writ petition instead of filing appeal under section 7(3)(d) of the FPSC, Ordinance, 1977, which provides limitation of 30 days for filing appeal before High Court. Thus, it cannot be said that time spent by appellant before High Court and Hon'ble Apex Court in pursuing remedy cannot be regarded as time spent with *bona fide* in pursuing case before wrong forum. Thus, I am of the view that instant FAO is badly barred by time and there is no sufficient cause available on record to condone such delay. Reference in this regard can be made to the case law reported as *Mushtaq Ahmad Vs. WAPDA and another (1981 SCMR 1077)*, *Raja Karamatullah and 3 others Vs. Sardar Muhammad Aslam Sukhera (1999 SCMR 1892)* and *Abdul Rehman Qamar Vs. Government of NWFP through Secretary, Education, Peshawar and 5 others (2003 PLC (CS) 1171)*.

8. For what has been discussed above, instant appeal stands dismissed being barred by limitation.

(LUBNA SALEEM PERVEZ)  
JUDGE

Announced in the open Court on 01-10-2020.

JUDGE

Junaid/\*