

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

F.A.O. No.47/2018

Altaf Hussain

**Versus**

Federal Public Service Commission through its Chairman and another

**Date of Hearing:** 04.07.2019

**Appellant by:** Sayyid Murtaza Ali Pirzada, Advocate,

**Respondents by:** Mr. Muhammad Nadeem Khan Khakwani,  
learned Assistant Attorney-General,  
Mr. Mahmood Ullah Khan, A.D. (Legal),  
F.P.S.C.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant appeal under Section 7(3)(d) of the Federal Public Service Commission Ordinance, 1977 (“the 1977 Ordinance”), the appellant, Altaf Hussain, impugns the order dated 30.06.2011, whereby the Federal Public Service Commission (“F.P.S.C.”) dismissed his review petition against the order dated 28.05.2011. Vide the said order dated 28.05.2011, F.P.S.C. rejected the appellant’s candidature for the Section Officers’ Promotional Examination-2010 (“S.O.P.E.-2010”). The position taken by F.P.S.C. in the said order was that the appellant was ineligible to take part in the said examination on account of being an employee of the Federal Board of Revenue’s subordinate office, i.e. the Regional Tax Office, Lahore.

**SECTION OFFICERS’ PROMOTIONAL EXAMINATION-2010:**

2. The facts essential for the disposal of the instant appeal are that on 04.10.2010, F.P.S.C. issued a public notice, announcing that S.O.P.E.-2010 for the selection of fifty (50) posts of Section Officers (BS-17) would be held with effect from 28.12.2010. The said advertisement provided that all civil servants who had put in a minimum of eight years of service in BS-11 to BS-16 in, *inter-alia*, the Federal Secretariat and attached departments, would be eligible for the examination. The said advertisement also provided that the officers from, *inter-alia*, the Directorate General of Inspection and Audit (Income Tax/Customs and Federal Excise) and Additional Directorate of Inspection (Direct Taxes)

Faisalabad, were not eligible. Employees of other departments which had not been declared as attached departments in terms of Schedule-III of Rules of Business, 1973, were also not eligible.

3. When the said advertisement was issued, the appellant was serving as an Auditor (BS-14) in the Federal Board of Revenue ("F.B.R."). The appellant participated in the examination and as per the result of the successful candidates announced by F.P.S.C. on 23.04.2011, his name was at serial No.67.

4. Prior to the commencement of interviews of the candidates who had passed the written examination, F.P.S.C., vide letter dated 19.05.2011, informed the appellant that his representation against the rejection of his candidature had been thoroughly examined, but turned down due to lack of *"all attested documents"*. Furthermore, the appellant was informed as to F.P.S.C.'s decision to call him for a personal hearing on 25.05.2011. Thereafter, vide memorandum dated 21.05.2011, F.P.S.C. informed the appellant that his candidature for S.O.P.E.-2010 had been rejected on the ground that *"the Department in which [he was] working is subordinate office"*. F.P.S.C. also informed the appellant as to its decision to call him for personal hearing on 25.05.2011. The said letter dated 21.05.2011 was issued by the R&I Branch of F.P.S.C. on 23.05.2011 with Diary No.2923. The appellant claims that when the said letter was issued, he was serving at Lahore, and had not received it by 25.05.2011. Be that as it may, the appellant managed to attend the personal hearing on 25.05.2011 since F.P.S.C.'s earlier letter dated 19.05.2011 had also required him to attend the personal hearing on 25.05.2011. During the personal hearing, the appellant brought along with himself the attested copies of the required documents. It was during the personal hearing that the appellant was informed that he was not eligible for S.O.P.E.-2010 on the ground that the department in which he was working was a subordinate office.

5. After the personal hearing, F.P.S.C., vide letter dated 28.05.2011, informed the appellant that his candidature had been rejected on the ground that he was ineligible on account of being

an employee of F.B.R.'s subordinate office, i.e. Regional Tax Office, Lahore. The appellant was also informed that if he desired, he could file a review petition against the said decision.

6. The appellant filed writ petition No.1783/2011 before this Court, praying for a direction to F.P.S.C. to withdraw the rejection of his candidature and to include him in the selection process. The appellant had also assailed F.B.R.'s letter dated 21.04.2011, according to which F.B.R. was an attached department of the Revenue Division and that all the Regional Tax Offices were F.B.R.'s subordinate offices. Order dated 01.07.2011 passed by this Court shows that the appellant was not granted any interim relief on the ground that he had approached this Court without availing the alternative remedy provided by law. I shall discuss the outcome of the said writ petition at a later stage in this judgment.

7. On 08.06.2011, the appellant had filed an application before F.P.S.C., seeking withdrawal of the decision regarding the rejection of his candidature. Letter dated 30.06.2011 issued by F.P.S.C. shows that the appellant's review petition dated 08.06.2011 had been turned down. Under Section 7(3)(d) of the 1977 Ordinance, the appellant had a period of thirty days to file an appeal before this Court against the said letter dated 30.06.2011. The appellant did not file an appeal within the limitation period provided by law. In the meanwhile, F.P.S.C. had completed the process of appointing fifty (50) Section Officers (BS-17) pursuant to the advertisement dated 04.10.2010. This is where the matter regarding S.O.P.E.-2010 took a pause.

**SECTION OFFICERS' PROMOTIONAL EXAMINATION-2012:**

8. On 15.07.2012, F.P.S.C. issued another advertisement, informing the public that Section Officers' Promotional Examination-2012 ("S.O.P.E.-2012") for fifty (50) posts was scheduled to be held between 11.12.2012 and 14.12.2012. As per this advertisement, employees of *"All Subordinate Offices such as Customs/Central Excise & Income Tax including field offices of the F.B.R."* were not eligible to take part in the said examination.

9. Vide letter dated 03.05.2013, F.P.S.C. informed the appellant that he was not eligible for the said examination on

account of being an employee of a subordinate office. The appellant was given an opportunity to file a representation against the rejection of his candidature within a period of thirty days. It is an admitted position that the appellant's representation against the rejection of his candidature was rejected and so was the appellant's review petition.

10. The appellant had preferred an appeal (F.A.O.No.400/2013) before the Hon'ble Lahore High Court against F.P.S.C.'s orders dated 18.07.2013 and 07.08.2013, whereby his representation and review petition were rejected on the ground that he was an employee of a subordinate office and therefore not eligible for S.O.P.E.-2012. The said appeal was clubbed with other writ petitions and they were all allowed by the Hon'ble High Court, vide judgment dated 20.12.2013. The condition in the said advertisement making the employees of *"all subordinate offices such as Customs/Central Excise & Income Tax including field offices of the F.B.R."* ineligible for S.O.P.E.-2012 was declared illegal and unlawful. The appellant and the other petitioners were declared eligible to appear in the said examination, and entitled to be treated at par with that of other employees working in F.B.R., whether at the headquarters or in the field offices. Civil Appeals No.599 to 602/2014, filed by F.P.S.C. against the said judgment dated 20.12.2013, were dismissed by the Hon'ble Supreme Court, vide order dated 21.11.2014. F.P.S.C.'s review petition against the said order was also dismissed by the Hon'ble Supreme Court, vide order dated 26.03.2015.

11. While F.P.S.C.'s review petition was pending, F.P.S.C., vide letter dated 15.01.2015, issued the appellant's result/marks sheet for S.O.P.E.-2012. As per this result, the appellant had passed the said examination with 197 marks. It is an admitted position that after this the appellant failed in the interview. This is where the matter regarding S.O.P.E.-2012 ended.

**RE-AGITATION OF THE MATTER REGARDING SECTION OFFICERS' PROMOTIONAL EXAMINATION-2010:**

12. Vide letter dated 13.04.2015, the appellant applied to the Chairman, F.P.S.C. that the rejection of his candidature for

S.O.P.E.-2010 may be recalled on the basis of the judgment dated 20.12.2013, passed by the Hon'ble Lahore High Court and the order dated 21.11.2014, passed by the Hon'ble Supreme Court. The appellant's stance was that since the appellant's candidature for S.O.P.E.-2010 was rejected solely on the ground that he is ineligible on account of being an employee of a subordinate office and since the Hon'ble Lahore High Court and the Hon'ble Supreme Court had concurrently declared such a condition/ineligibility to be illegal and unlawful, the rejection of the appellant's candidature for S.O.P.E.-2010 ought to be recalled. The appellant's said letter dated 13.04.2015 was not graced with a response by F.P.S.C.

13. Writ petition No.1783/2011 (to which reference has been made in paragraph 6 of the judgment) came up for hearing before this Court after a few years. Vide judgment dated 17.03.2016, the said petition was dismissed by the learned Judge-in-Chambers and so was the appellant's intra Court appeal No.163/2016, vide judgment dated 13.12.2017. The said concurrent judgments of this Court were assailed by the appellant in civil appeal No.160/2018, which was *"dismissed as not pressed"* vide order dated 25.04.2018 passed by the Hon'ble Supreme Court. In the said order, it was observed that the appellant may file an appeal before the High Court in terms of the 1977 Ordinance and that the High Court, while hearing the appeal, shall not be influenced by the observations made in the judgments of this Court which had been assailed by the appellant before the Hon'ble Supreme Court. Furthermore, it was observed that *"the application for condonation of delay will also be given sympathetic consideration."*

14. On 15.05.2018, the appellant filed the instant appeal, impugning F.P.S.C.'s letters dated 28.05.2011 and 30.06.2011, whereby his candidature for S.O.P.E.-2010 was rejected on the ground that since he was an employee of a subordinate office, he was ineligible to appear in the said examination. Along with the instant appeal, the appellant has filed an application for

condonation of delay under Section 5 of the Limitation Act, 1908 ("the Limitation Act").

**CONTENTIONS OF THE APPELLANT:-**

15. The appellant appeared in-person, and after ably narrating the facts leading to the filing of the instant appeal, submitted that F.B.R. is an attached department of the Revenue Division in terms of Schedule-III, Serial No.89B of the Rules of Business, 1973; that the appellant is an employee of the Regional Tax Office (Inland Revenue); that as per F.B.R.'s letter dated 21.04.2011, F.B.R. is an attached department of the Revenue Division and the Regional Tax Offices are F.B.R.'s subordinate offices; that for the first time, it was through F.P.S.C.'s letter dated 19.05.2011 that the appellant was informed that his candidature for appointment as Section Officer (BS-17) had been rejected; that prior to this, the appellant had not filed any representation before F.P.S.C.; that the said letter dated 19.05.2011 was a stereotype letter issued by F.P.S.C. without any application of mind; that F.P.S.C.'s letter dated 21.05.2011 was received by the appellant on 25.05.2011, since he was serving at Lahore; that F.P.S.C., instead of treating the appellant's letter dated 08.06.2011 as a representation, treated it as a review petition; and that the appellant had never filed a review petition before F.P.S.C. against the rejection of his candidature.

16. The appellant further submitted that after the Hon'ble Lahore High Court and the Hon'ble Supreme Court had concurrently declared the condition of making the employees of *all subordinate offices such as Customs/Central Excise & Income Tax including field offices of the F.B.R.* as ineligible for S.O.P.E.-2012 to be illegal and unlawful, the appellant's candidature for the said exam was restored; and that even though the appellant was not able to pass the interview for his appointment as Section Officer (BS-17) after S.O.P.E.-2012, he was entitled to be interviewed in the process for appointment as Section Officer (BS-17) after S.O.P.E.-2010. The appellant prayed for the appeal to be allowed and for F.P.S.C. to be directed to interview the appellant for appointment as Section Officer (BS-17) pursuant to the

process initiated through advertisement dated 04.10.2010 with respect to S.O.P.E.-2010.

**CONTENTIONS FOR THE LEARNED ASSISTANT-ATTORNEY GENERAL:-**

17. On the other hand, learned Assistant Attorney-General raised an objection to the maintainability of this appeal on the ground that the appeal was grossly time barred; that under Section 7(3)(d) of the 1977 Ordinance, the appellant had thirty days to file appeals against the orders impugned in the instant appeal; that the instant appeal has been filed with a delay of six years; and that since the limitation period for filing an appeal is provided in a special law, (i.e. the 1977 Ordinance) delay in filing the appeal cannot be condoned under Section 5 of the Limitation Act as the said Section does not apply where the limitation period is prescribed in a special statute. In making his submissions, learned Assistant Attorney-General placed reliance on the cases of Muhammad Amir Vs. Muhammad Sarfraz (2019 CLD 523), Muhammad Khalid Naeem Vs. Habib Bank Limited (2018 CLD 1027), Raja Karamat Ullah Vs. Sardar Muhammad Aslam Sukhera (1999 SCMR 1892), Noor Muhammad Vs. Assistant Commissioner, Vehari (1986 SCMR 292) and Abdul Aziz Vs. Additional Settlement Commissioner (1984 SCMR 1562).

18. He further submitted that the appellant had appeared in the written examination, i.e. S.O.P.E.-2012, and after obtaining relief from the Hon'ble Lahore High Court as well as the Hon'ble Supreme Court, the appellant appeared in the interview, which he failed; that after the appellant failed the said interview, the matter regarding S.O.P.E.-2012 became a past and closed transaction; that as regards S.O.P.E.-2010, indeed ineligibility criteria on the basis of which the appellant's candidature was rejected was again adopted for S.O.P.E.-2012 and the said ineligibility criteria was declared illegal and unlawful by the Hon'ble Lahore High Court as well as the Hon'ble Supreme Court; that the appellant had not challenged the said ineligibility criteria when it was made applicable for S.O.P.E.-2010, therefore, the rejection of the appellant's candidature with respect to S.O.P.E.-2010 did not

suffer from any legal infirmity; and that the time consumed by the appellant in challenging the rejection of his candidature for S.O.P.E.-2012 cannot be excluded while computing the limitation period for filing an appeal against the rejection of his candidature for participation in S.O.P.E.-2010. Learned Assistant Attorney-General prayed for the appeal to be dismissed.

**REJOINDER ON BEHALF OF THE LEARNED COUNSEL FOR THE APPELLANT:-**

19. In rejoinder, Sayyid Murtaza Ali Pirzada, learned counsel for the appellant, submitted that even though the application for condonation of delay was filed under Section 5 of the Limitation Act, it may be treated as an application under Section 14 of the said Act; that the appellant had been diligently pursuing his remedy regarding the unlawful ineligibility criteria for S.O.P.E.-2012 before the Hon'ble Lahore High Court and the Hon'ble Supreme Court; that since the appellant had appeared in the written test, (i.e. S.O.P.E.-2012) and had also challenged the unlawful ineligibility criteria due to which his candidature for the said examination had been rejected, there was no purpose in filing an appeal against the rejection of his candidature for S.O.P.E.-2010 before the said ineligibility criteria which was common for both S.O.P.E.-2010 and S.O.P.E.-2012 was declared illegal and unlawful by the Hon'ble Lahore High Court as well as the Hon'ble Supreme Court. Learned counsel for the appellant prayed for the application for condonation of delay to be allowed and for the appeal to be allowed on merits.

20. I have heard the contentions of the appellant, his learned counsel and the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 14 above and need not be recapitulated.

21. Section 7(3)(a) of the 1977 Ordinance provides that a candidate aggrieved by any decision of F.P.S.C. may, within thirty days of such decision, make a representation to F.P.S.C. which shall decide the representation within fifteen days after giving the candidate a reasonable opportunity of hearing. Furthermore, it is



provided that the decision of F.P.S.C, subject to the result of a review petition, shall be final. Section 7(3)(b) of the said Ordinance provides that a candidate aggrieved by the decision of F.P.S.C. made under Section 7(3)(a) of the said Ordinance may, within fifteen days of the decision, submit a review petition to F.P.S.C. which shall decide the review petition within thirty days under intimation to the petitioner. Section 7(3)(d) of the said Ordinance provides that any candidate aggrieved by a decision of F.P.S.C. under Section 7(3)(b) of the said Ordinance may, within thirty days of the decision, prefer an appeal to the High Court.

22. As mentioned above, the appellant's candidature for S.O.P.E.-2010 was rejected by F.P.S.C. Vide letter dated 21.05.2011, F.P.S.C. had informed the appellant that his candidature had been rejected due to lack of *"all attested documents"*. The appellant was also informed that his personal hearing was scheduled for 25.05.2011. F.P.S.C., vide letter dated 21.05.2011, informed the appellant that he had been found ineligible for S.O.P.E.-2010 since the department in which he was working was a subordinate office. In this letter, the appellant was also informed that his personal hearing was scheduled for 25.05.2011. It is not disputed that the appellant appeared for personal hearing on the said date. After this, F.P.S.C., vide letter dated 28.05.2011, informed the appellant that his candidature had been rejected since he was ineligible on account of being an employee of F.B.R.'s subordinate office, i.e. Regional Tax Office, Lahore. Furthermore, the appellant was informed that he could file a review petition within a period of fifteen days.

23. On 08.06.2011, the appellant addressed a letter to the Assistant Director, F.P.S.C., asking for the decision to reject his candidature to be withdrawn. If this letter is to be treated as a representation under Section 7(3)(a) of the 1977 Ordinance, the same was decided against the appellant, vide F.P.S.C.'s letter dated 30.06.2011. Even though F.P.S.C., in the said letter dated 30.06.2011, termed the appellant's letter dated 08.06.2011 as his review petition, the fact remains that the appellant did not take issue with this or inform F.P.S.C. that he had not filed any review

petition. The appellant could have asserted that F.P.S.C.'s decision dated 28.05.2011 was not on the appellant's representation under Section 7(3)(a) of the 1977 Ordinance. He could also have filed a review petition against F.P.S.C.'s letter dated 30.06.2011 and asserted therein that F.P.S.C.'s decision dated 30.06.2011 was not on the appellant's review petition under Section 7(3)(b) of the said Ordinance, but on his representation dated 08.06.2011 under Section 7(3)(b) of the said Ordinance. The appellant did neither of these.

24. Be that as it may, an appeal under Section 7(3)(d) of the 1977 Ordinance before the High Court can be filed only against F.P.S.C.'s decision on a candidate's review petition. Since the appellant has filed the instant appeal under Section 7(3)(d) of the said Ordinance, it would be safe to consider F.P.S.C.'s decision in its letter dated 30.06.2011 (which has been impugned in this appeal) to be a decision on the appellant's review petition. In the said letter, it has explicitly been mentioned that the appellant's review petition dated 08.06.2011 was considered by F.P.S.C. and the same was turned down.

25. Now, F.P.S.C.'s decision dated 30.06.2011 was assailed by the appellant after almost six years, whereas the limitation period prescribed for filing an appeal before this Court in Section 7(3)(d) of the 1977 Ordinance, is thirty days.

26. The appellant, in his application for condonation of delay filed under Section 5 of the Limitation Act, took the plea that ever since the passing of F.P.S.C.'s order dated 30.06.2011, he had been prosecuting his case in good faith before this Court as well as the Hon'ble Supreme Court, and that the period consumed in the appellant's said endeavor should be excluded from the limitation period prescribed under Section 7(3)(d) of the 1977 Ordinance for filing an appeal before this Court. The appellant also stressed that this Court ought to bear in mind the observations of the Hon'ble Supreme Court, in its order dated 25.04.2018, and give "*sympathetic consideration*" to the appellant while deciding his application for condonation of delay.

27. Where an application for condonation of delay is filed, it is the foremost duty of the Court first to decide such an application, and only after such an application is allowed, can it proceed to decide the case on merits. Therefore, I propose, in the first instance, to decide the question as to whether the instant appeal is barred by limitation.

28. As mentioned above, the appellant's application for condonation of delay has been filed under Section 5 of the Limitation Act, which reads thus:-

*“5. Extension of period in certain cases.- Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.*

*Explanation.-The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.”*

**(Emphasis added)**

29. Section 5 of the Limitation Act does not apply on its own force to special or local laws but has to be made applicable to such laws through legislation. This is implicit in the employment of the words, *“[a]ny appeal or application ... to which this section may be made applicable by or under any enactment”* in Section 5 of the Limitation Act. In the case of Mahmud Alam Vs. Mehdi Hussain (PLD 1970 Lahore 6), the Hon'ble Mr. Justice Muhammad Afzal Zullah (as he then was) had the occasion to hold that *“[t]he words “by or under any enactment” indicate that Section 5 of the Limitation Act is not of general application to all the enactment, but can be made applicable by the provisions of an enactment.”* It is an admitted position that the legislature has not made Section 5 of the Limitation Act specifically applicable to appeals filed under Section 7(3)(d) of the 1977 Ordinance. In fact, no provision of the Limitation Act has been made applicable to any proceedings under the 1977 Ordinance by the said Ordinance. The mere fact that the 1977 Ordinance does not expressly exclude the application of Section 5 of the Limitation Act to the proceedings

under the said Ordinance would, by itself, not extend the application of Section 5 of the Limitation Act to such proceedings. Therefore, it is my view that the appellant's application under Section 5 of the Limitation Act for the condonation of delay in filing the appeal for which the limitation period of 30 days is provided in Section 7(3)(d) of the 1977 Ordinance, is not maintainable.

30. By way of an explanation, it may be stated that the Service Tribunals' Act, 1973, is a special statute, Section 4 whereof provides a limitation period of thirty days for filing an appeal by a civil servant before a Service Tribunal against a final order made by a departmental authority. Section 7 of the said Act only makes Sections 5 and 12 of the Limitation Act applicable to appeals under the Service Tribunals' Act, 1973. The other provisions of the Limitation Act, therefore, do not apply to appeals filed under Section 4 of the Service Tribunals' Act, 1973. As regards the case at hand, as mentioned above, no provision of the Limitation Act has been made applicable to appeals filed under Section 7(3)(d) of the 1977 Ordinance.

31. Since the limitation period of thirty days for filing an appeal before this Court under Section 7(3)(d) of the 1977 Ordinance, I am of the view that the applicability of the Section 5 of the Limitation Act stands excluded by Section 29(2) of the said Act, which reads thus:-

*“(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law*

*(a) The provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and*

*(b) The remaining provisions of this Act shall not apply.”*

32. Since the 1977 Ordinance is a special law, the application of Section 5 of the Limitation Act has also been excluded by Section 29(2)(b) of the said Act. Since the limitation period of

thirty days for filing an appeal under section 7(3)(d) of the 1977 Ordinance before this Court has not been prescribed in the Limitation Act, but in the 1977 Ordinance, which is a special law, Section 5 of the said Act cannot be made applicable to such appeals filed under Section 7(3)(d) of the 1977 Ordinance. There is a catena of case law in support of the proposition that where the limitation period for filing an appeal or a revision is provided in a special law, therefore, Section 5 of the Limitation Act would have no application due to Section 29(2)(b) of the said Act. In this regard, reference may be made to the following case law:-

(i) In the case of Government of Balochistan Vs. Abdul Rashid Langove (2007 SCMR 510), it was held that the delay in filing a revision petition under the provisions of the Land Reforms Regulations, 1972 could not be condoned as Section 5 of the Limitation Act, was not applicable.

(ii) In the case of Haji Hussain Haji Dawood Vs. M.Y. Kherati (2002 SCMR 343), it was held as follows:-

*"7. Under section 21 of the Sindh Rented Premises Ordinance, 1979, an appeal can be preferred against the order of the Rent Controller to the High Court "within 30 days of such order". In this case, the date of the ejectment order is 17-5-1986 whereas the First Rent Appeal was filed by the appellants in the High Court on 30-9-1987. If the date of the ejectment order in this case is taken as the date from which the period of limitation of 30 days for filing an appeal to the High Court commences, the appeal before the High Court was obviously barred by time. Section 5 of the Limitation Act is not applicable to appeals filed under the Sindh Rented Premises Ordinance, 1979. Reference can be made to Abdul Ghaffar v. Mumtaz (PLD 1982 SC 88) and Ali Muhammad v. Fazal Hussain (1983 SCMR 1239)."*

(iii) In the case of Rahim Jan Vs. Securities and Exchange Commission of Pakistan (2002 SCMR 1303), the petitioner, instead of filing an appeal within the limitation period provided in Section 34 Securities and Exchange Commission of Pakistan Act, 1997, preferred a Constitutional petition against the order of the Commission. Subsequently, the Constitutional petition was withdrawn and an appeal was filed by the petitioner. The Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court dismissing the petitioner's appeal as time barred and holding that by virtue

of Section 29 of the Limitation Act, Section 5 of the said Act was not attracted to the said appeal for the purpose of condonation of delay.

- (iv) In the case of Muhammad Nazir Vs. Saeed Subhani (2002 SCMR 1540), it was held that since the special law, i.e. West Pakistan Urban Rent Restriction Ordinance, 1959, had provided a limitation period for filing an appeal, an application under Section 5 of the Limitation Act for condonation of delay in filing of an appeal had been correctly dismissed.
- (v) In the case of Allah Dino Vs. Muhammad Shah (2001 SCMR 286), it was held as follows:-

*"There is no cavil with the argument that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a Whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115, C.P.C. then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29(2) of the Limitation Act, as held in the cases (i) The Canara Bank Ltd. v. The Warden Insurance Co. Ltd. (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v. Mst. Mumtaz (PLD 1982 SC 572), (iii) Ali Muhammad and another v. Fuai Hussain and others (1983 SCMR 1239), (iv) Collector of Customs (Appraisement) v. Messrs Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Ashraf v. The State and 3 others (1999 MLD 330)."*

- (vi) In the case of Riaz Hussain Vs. Board of Revenue (1991 SCMR 2307), the Hon'ble Supreme Court, after making reference to Section 8 of the West Pakistan Board of Revenue Act, 1957, which is a special law providing a limitation period of ninety days for filing a review petition against a decree passed by the Board of Revenue, held as follows:-

*"The scope and grounds to review an order have been specified by subsection (1) of section 8 while subsection (2) prescribes period of limitation of 90 days for filing review application computed from the date of decree or order. Section 5 of the Limitation Act has not been made applicable to the review application. Therefore, the application for review must be filed within 90 days from the date of the order of and delay in filing such application beyond the period of limitation cannot be condoned by applying section 5 of the Limitation Act."*

*The power to exercise review jurisdiction emanates from the statute and, therefore, it has to be exercised within the four corners of the prescribed conditions and limitation. Such power can be exercised if application is filed by a party within a particular period fixed by the Act and unless the power to extend the time has been conferred, on expiry of such period, such jurisdiction cannot be exercised by any authority. As section 5 of the Limitation Act has not been made applicable and power to condone the delay or extend the period of limitation has not been conferred by law, the authority exercising review power cannot, in breach of the statutory provisions, assume power and extend the time.”*

- (vii) In the case of Ali Muhammad Vs. Fazal Hussain (1983 SCMR 1239), the great jurist, Mr. Justice Nasim Hassan Shah (as he then was) after making reference to Section 15(4) of the West Pakistan Urban Rent Restriction Ordinance, 1959, held as follows:-

*“The time allowed for an appeal under subsection (4) of section 15 to the High Court, under the Ordinance, is 30 days, whereas under Article 156 of the Limitation Act it is 90 days. The time allowed for filing the appeal by the special law i.e., West Pakistan Urban Rent Restriction Ordinance, 1959 being different from that given in the Limitation Act, Section 5 stands excluded by virtue of section 29(2) of the Limitation Act, which permits the application of only, sections 4, 9 to 18 and 22 in such situations. The same view has also been taken by us in Abdul Ghaffar and others v. Mst. Mumtaz (PLD1982 SC 88). The High Court, therefore, rightly dismissed the applications for condonation of delay invoking the provisions of section 5 of the Limitation Act.”*

Even otherwise, in the cases of Furqan Habib Vs. Government of Pakistan (2006 SCMR 460), Syed Haji Abdul Wahid Vs. Syed Siraj Uddin (1998 SCMR 2269) and Khan Muhammad Vs. Senior Superintendent of Police (1989 SCMR 589), it has been held that prosecution of a wrong remedy in a wrong Court is not a sufficient ground for condonation of delay under Section 5 of the Limitation Act.

33. I shall now address the contention of the learned counsel for the appellant that the appellant’s application under Section 5 of the Limitation Act may be treated as an application under Section 14 of the said Act and the time consumed in prosecuting writ petition No1783/2011 and I.C.A.No.163/2016 before this Court and civil appeal No.160/2018 before the Hon'ble Supreme

Court, should be excluded while computing the limitation period for filing the instant appeal. This contention cannot be accepted for the simple reason that Section 14 of the Limitation Act provides for the exclusion of time for computing the limitation period prescribed for any suit or an application. Section 2(10) of the Limitation Act provides that a “*suit*” does not include an appeal or an application. Section 14 of the Limitation Act does not come to the aid of an appellant who had been prosecuting his remedy against an appealable order before a wrong forum. In holding that the appellant cannot derive any benefit from Section 14 of the said Act, reliance is placed on the following judgments:-

(i) In the case of Sherein Vs. Fazal Muhammad (1995 SCMR 584), it has been held *inter alia* that the criterion of “due diligence” for enlargement of time is prescribed by Section 14 of the Limitation Act which upon its terms applies only to the suits and applications and not to the appeals.

(ii) In the case of Sibtain Raza Naqvi Vs. Hydrocarbon Development (2012 SCMR 377), it was held as follows:-

*“11. On reading Section 14 of the Act along with section 2(10), it appears that legislature specifically excluded the appeal or an application from the purview of “Suit”. We left no doubt in our mind that benefit of section 14 of the Act cannot be extended to exclude the time consumed in prosecuting an appeal before wrong forum having no jurisdiction, for the purposes of filing an appeal before a forum having jurisdiction.”*

(iii) Recently, in the case of Khushi Muhammad Vs. Fazal Bibi (PLD 2016 SC 872), the Hon'ble Supreme Court, after making reference to Sections 2(10) and 14 of the Limitation Act, held as follows:-

*“Thus from a plain reading there is no ambiguity that Section 14 is exclusively and solely restricted to suits and suits alone. If it is taken to apply to appeals also, this would be tantamount to reading into the section the word “appeal” which does not appear in the said section and such a reading would be contrary to the definition of the word “suit” in the statute.”*

(iv) In the case of Ameerullah Khan Vs. Mst. Nisar Begum (PLD 2016 Peshawar 49), the Hon'ble Peshawar High Court,



after making reference to Section 14 of the Limitation Act, held as follows:-

*“From the perusal of section 14 of the Limitation Act, it transpires that time spent in pursuing the proceeding before the wrong appellate forum cannot be excluded on the clog provided in section 2(10) of the Limitation Act, as the suit does not include the appeal or the application. It leaves no doubt in my mind that benefit of section 14 of the Act cannot be extended to exclude the time consumed in prosecuting an appeal before wrong forum, having no jurisdiction for the purpose of filing of an appeal before the proper forum, having jurisdiction. In this behalf there is no need of detailed discussion because now it has been well settled that provisions of Section 14 cannot be invoked for the seeking condonation of delay of filing the appeal.”*

34. Nothing has been mentioned by the appellant in his application for condonation of delay as to what prevented him from filing an appeal within the limitation period provided in Section 7(3)(d) of the 1977 Ordinance. Since the appellant is a civil servant, he ought to have known that Section 7(3)(d) had provided a limitation period of thirty days for filing an appeal before this Court. It is well settled that ignorance of the law is no excuse.

35. Since for the reasons mentioned above, I find the appellant's application under Section 5 of the Limitation Act for condoning the delay in filing the appeal under Section 7(3)(d) of the 1977 Ordinance not to be maintainable; and since the delay in filing appeals cannot be condoned under Section 14 of the said Act, this Court does not have the jurisdiction to condone the six-year delay with which this appeal has been filed. The application for condonation of delay is dismissed and as a result so is the appellant's appeal. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2019

Qamar Khan\*

**APPROVED FOR REPORTING**

(JUDGE)

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