

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Irfan Saadat Khan

**Civil Petition No.653-K of 2022**

Against the order dated 05.03.2022 passed by  
Sindh Subordinate Judicial Service Tribunal,  
High Court of Sindh, Karachi, in SA No. 15/2003

Abdullah Channah

...Petitioner

**Versus**

The Administrative Committee & others

...Respondents

For the Petitioner:

Mr. Amer Raza Naqvi, ASC

For the Respondents:

Mr. Sibtain Mehmood, Addl. AG Sindh  
Mr. Asim Majeed, Acting Registrar SHC

Date of Hearing:

08.04.2024

**Judgment**

**Muhammad Ali Mazhar, J.** This Civil Petition for leave to appeal is directed against the order dated 05.03.2022, passed by the Sindh Subordinate Judicial Service Tribunal, High Court of Sindh at Karachi, ("**Tribunal**") in Service Appeal No.15/2003, whereby the Appeal of the petitioner was dismissed.

2. The terse facts of the case are that the Sindh High Court advertised the post of the first batch of Judicial Magistrates (BPS-17) in Sindh *vide* advertisement dated 30.04.1991 and after fulfillment of codal formalities, 22 names were recommended *vide* their letter dated 03.12.1991 in which the name of the petitioner was at serial number 6. On the same patron, the posts of Civil Judges were advertised and the names of 26 candidates were recommended for the posts of Civil Judges. The High Court issued a Seniority List of Judicial Magistrates on 01.12.1996, whereby the petitioner and other Judicial Magistrates were assigned seniority w.e.f 22.04.1992. Similarly, the list of respondent No. 2 to 60 was issued on the same date and they were shown junior to the petitioner because their Notification of appointment was issued on 29.04.1992 i.e., after one week of the notification of the petitioner. The seniority list issued on 01.12.1996 attained finality without any objection from respondents No.02 to 60.

On 16.05.1998, the petitioner was promoted to the rank of Senior Civil Judge but his existing seniority was not followed, therefore, he filed representation which ultimately came up before the Administration Committee, and *vide* order dated 20.03.1999, it was resolved that the incumbent of the posts of Judicial Magistrates and Civil Judges (Respondents 2 to 69) appointed on the recommendations of the High Court shall be considered as combined cadre for reckoning their seniority on the basis of their date of appointment. The petitioner further alleged that the seniority issued on 02.01.2003 was in accordance with law but it was changed by the then Administrative Committee of the High Court without any valid and legal justification *vide* letter dated 04.06.2003. The petitioner, after sending representation, filed his Service Appeal, which remained pending for about 19 years. However, *vide* impugned order, the appeal was dismissed by the Tribunal for not being maintainable and for non-prosecution.

3. The learned counsel for the petitioner argued that in the service appeal, a serious question of law with regard to the fixation of seniority was involved and the appeal was pending for the last 19 years. He further argued that a request for adjournment was made but it was not mentioned in the impugned order. It was further averred that besides dismissing the appeal for non-prosecution, the maintainability has also been decided, which prevented the petitioner from applying for the restoration of the appeal. He also contended that the change in seniority list *vide* letter dated 04.06.2003 was against the law which could not be revised, withdrawn, or rescinded, and after taking effect, certain rights were created in favor of the petitioner. It was further argued that for deciding the issue of seniority, the learned Tribunal was the ultimate forum, but it declined its jurisdiction without adverting to the ground reality that in all previous seniority lists, the petitioner was senior amongst the Civil Judges and the Administrative Committee which issued the impugned seniority list did not consider the recommendations of the High Court dated 03.12.1991 in which the name of the petitioner was shown at serial number 06; but the previous seniority was reversed without any cogent reason. He further argued that on 05.03.2022, the matter was fixed for hearing but on the many previous dates, the service could not have been effected on respondents and also, on the said date, no one from the respondents

was present, the counsel for the petitioner was out of station and a request was made on his behalf intimating the Tribunal about the non-availability of the counsel and this request was made by Mr. Muhammad Arshad Qaiser Warsi Advocate but his request was not considered.

4. In compliance of our last order dated 03.04.2024, the MIT/Acting Registrar of the High Court of Sindh is present and submits that according to the memo of appeal, the respondent No.2 to 60 were to be served through him. He further informed us that the respondents who are in judicial service have been served and informed the date of hearing by him, while some of the respondents have retired and some of them have passed away. Nobody appeared to represent the respondents who have been served by the Acting Registrar, Sindh High Court, hence they are declared *ex-parte* and the instant petition against those who have retired or died has become infructuous as per information conveyed by the Acting Registrar, Sindh High Court, who will also submit in the office a service certificate along with the list of judicial officers arrayed as respondents in the service appeal who have retired or died.

5. The learned Additional Advocate General, Sindh, argued that the issue raised in the service appeal was related to revision and fixation of seniority, hence, the petitioner had the only remedy to invoke jurisdiction before the learned Tribunal and he fully endorsed the views of the petitioner's counsel advanced on the jurisdictional issues.

6. Heard the arguments. The impugned order passed by the Tribunal on 05.03.2022 is reproduced as under: -

"For hearing of main case.

Mr. Sandeep Malani, Assistant Advocate General Sindh.

None present for the appellant without intimation. It appears that this appeal is not maintainable as it has been filed against the Administrative Committee and Sub-Committee of the High Court of Sindh, as such this appeal is dismissed for not being maintainable and for non-prosecution".

7. The impugned order has two limbs. The learned Tribunal found the service appeal not maintainable because it was filed against the Administrative Committee and Sub-Committee of the High Court of

Sindh but in one fell swoop, also dismissed the appeal for non-prosecution which created serious inconvenience for the petitioner who could not approach the Tribunal for resurrection of the appeal because it was also dismissed on merits, so his only recourse was to approach this Court under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**").

8. The purpose of enacting the Sindh Service Tribunals Act, 1973 ("**Act**") was to lay down the law for the establishment of Service Tribunal to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants and for the matters connected therewith or ancillary thereto. According to the Section 2, "Definition Clause (bb)", of the Act, a member of the subordinate judiciary is defined as under: -

(bb) "member of the subordinate judiciary" means a District and Sessions Judge, Additional District and Sessions Judge, Senior Civil Judge and Assistant Sessions Judge, Civil Judge and Judicial Magistrate and includes an officer and servant of the High Court or any employee working under the administrative control of the District and Sessions Judge wherever he may be.

Whereas under Section 2 (c), of the Act, the Tribunal is defined as under: -

(c) "Tribunal" means a Service Tribunal established under section 3 or section 3-B.

In order to resolve the present controversy, Section 3-B of the Act is quite relevant, which is reproduced as under: -

**"3-B. Tribunals for members of the subordinate judiciary. -**

Notwithstanding anything contained in section 3, the Chief Justice of the High Court may establish a Tribunal consisting of three judges of the High Court, the most senior of whom shall be the Chairman and the other two judges shall act as members of the Tribunal and the Tribunal so established shall have exclusive jurisdiction in respect of matter relating to the terms and conditions of service of members of the subordinate judiciary, including the disciplinary matters".

9. There is no doubt that the Tribunal constituted under Section 3-B of the Act has exclusive jurisdiction to decide all the issues relating to the terms and conditions of service of members of the subordinate judiciary including the disciplinary matters and being aggrieved they can file the appeal before the Sindh Subordinate Judiciary Service

Tribunal under Section 4 of the Act for the redress of grievance against any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of service. In Section 4 of the Act, "departmental authority" means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants which, in the present context, means members of the subordinate judiciary as per Section 3-B of the Act. While Section 5 of the Act elucidates the powers of the Tribunal which may, on appeal, confirm, set-aside, vary or modify the order appealed against, and for the purpose of deciding any appeal, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908, including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; (c) issuing commission for the examination of witnesses and documents; and (d) execution of its decisions.

10. The impugned order of the learned Tribunal depicts mainly that the service appeal was found not maintainable on the notion that indeed it challenges the order of administrative committee of the High Court. There is a substantial distinction between the hearing of appeal by the learned judges of the High Court as a Tribunal and hearing of Constitution Petition under Article 199 of the Constitution against any administrative order of the administration committee of the High Court or the Chief Justice which obviously could not be maintainable keeping in mind the bar contained in the case of Gul Taiz Khan Marwat v. Registrar Peshawar High Court, (PLD 2021 SC 391) in which this Court, very elaborately and eloquently, decided the question of maintainability of a Constitutional Petition under Article 199 of the Constitution against the administrative orders passed by an Administrative Committee or the Chief Justice of High Court; but here the case is only confined to the jurisdiction of the Tribunal which conferred powers and exclusive jurisdiction to decide the cases of members of the subordinate judiciary relating to the terms and conditions of their service.

11. In the case of Bashir Ahmed Badini, D&SJ & others versus Hon'ble Chairman & Member of Administration Committee and Promotion

Committee of Hon'ble High Court of Balochistan (2022 SCMR 448= 2022 PLC (C.S) 610), also, the judgment passed by the learned Balochistan Sub-Ordinate Judiciary Service Tribunal, Quetta, was challenged, which dealt with some anti-dated promotion and seniority issues of judicial officers posted in the province of Balochistan. All such appeals were decided on merits and the appellants were not nonsuited on the ground that since they challenged the orders of the Administration Committee of the High Court, therefore such actions are immune and not challengeable before the Service Tribunal constituted to decide the issues of judicial officers of subordinate judiciary. Right of appeal is the most precious remedy for every aggrieved person which is always deemed to be a continuation of the original proceedings and the nature of jurisdiction obligates the appellate forum to explore every avenue of questions of law and facts in order to reach the proper conclusion on whether the matter has been decided in accordance with the relevant law or not and in case the conclusion is reached that some injustice has been done at original stage then obviously it is the main purpose and function of appellate court to cure the injustice, therefore, the verdict of the appellate forum either allowing or dismissing the appeal or modifying the order of lower fora, ought to bring to light a conscious and proper application of mind.

12. The foremost aspiration of setting up a Tribunal under Section 3B of the Act by the Chief Justice of the High Court is to provide an expeditious and fastmoving remedy for settling the disputes relating to the terms and conditions of service of the members of the subordinate judiciary. Indubitably, as, and when, any issue is cropped up in respect of the terms and conditions of the service of members of the subordinate judiciary including the grievance against the dismissal from service, compulsory retirement, wrong fixation of seniority, or grievance against any minor or major penalty, then what is the remedy provided under the law to challenge such actions for redress? The recourse is to be made through the Tribunal which is an ultimate fact-finding forum available and they are not supposed to file civil suit in the Civil Court or the Writ Petition in the High Court to challenge the adverse departmental or disciplinary actions against them and if they are nonsuited on the ground of maintainability as done in the case in

hand, then their grievances or injustice will become irremediable and irreversible.

13. An error or oversight in any order or decision may be reviewed sanguine to the renowned legal maxim "*actus curiae neminem gravabit*", which is a well-settled enunciation and articulation of law, expressing that no man should suffer because of the fault of the Court or an act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court [Ref: Homoeo Dr. Asma Noreen Syed Vs. Government of the Punjab through its Secretary Health, Department & others (2022 SCMR 1546=2022 PLC (C.S) 1390)]

14. Another most important aspect that cannot be lost sight of is that the service appeal remained pending for the last 19 years without any decision on merits. No doubt, at times, the adjournments are sought by the counsel for the appellants and the law officers from advocate general office before the Tribunal which also become the cause of delay but keeping any service appeal pending for 19 years is also unjustified and unwarranted. As a result of such a long pendency and no decision on appeal, of course, certain developments are made by the efflux of time which makes and spoils the entire purpose of filing appeal infructuous and worthless. Either the appellants have reached the age of superannuation or died. As in the present case, the Acting Registrar, Sindh High Court, intimated us that many respondents either retired from judicial service or died, so no seniority issue can be decided against such persons who are not in arena. No doubt, we rightly expect from the subordinate judiciary to curtail the docket and backlog of old cases and accelerate the proceedings for an early disposal but in unison, if the service appeals of judicial officers are kept pending for 19 years, then obviously, it creates serious frustration and despondence amongst them and many times due to the bottleneck of such service appeals, they halfheartedly lost their interest. In particular, the present matter was related to the claim of

seniority which is a very important issue for every civil servant and judicial officer, which has greatest nexus for promotion subject to fitness. If the seniority issue is not thrashed out within a reasonable period of time, naturally it affects the chance and venue of progression. Similarly, if other appeals against minor and major penalties will remain pending for an indefinite period during the service tenure, it will also become a cause of mental stress and exasperation. Another possibility that cannot be ruled out is that when the matter is taken up for hearing for a final decision, though after several years, they are no more in judicial service and not actively pursuing the case or may have passed away. In such eventuality, the second phase of litigation for impleading the legal heirs will be triggered keeping in mind the nitty-gritties of service appeal to decide the question of, firstly, whether the right to sue survives to the legal heirs or not. With an eye to overcome and resolve this distressing and disquieting situation, it would be most advantageous and strategic if the honorable Chief Justice, Sindh High Court, and the learned Chairman of the Tribunal, formulate any Standing Instructions to settle down a reasonable timeline for making decisions of pending service appeals before the learned Tribunal according to ageing from the date of institution. Copy of this judgment may be transmitted to the honorable Chief Justice, Sindh High Court, and the learned Chairman of the Tribunal through Registrar for their consideration to paragraph 14 of the judgment.

15. In the wake of the above discussion, this civil petition is converted into an appeal and allowed. Consequently, the impugned order is set aside and the matter is remanded to the learned Sindh Subordinate Judicial Service Tribunal to decide the service appeal afresh strictly in accordance with law.

Judge

Judge

KARACHI  
8<sup>th</sup> April, 2024  
Mudassar/\*  
Approved for reporting