

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEALS NOS. 902 AND 903 OF 2020

(Against the judgment dated 10.3.2020 of the Peshawar High Court, Mingora Bench, (Dar-ul-Qaza), Swat passed in Writ Petitions No.71-M/2019 & 108-M/2019)

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| 1. | University of Malakand through Registrar & another Vs. Dr. Alam Zeb etc. | In CA 902/2020 |
| 2. | Vice Chancellor, University of Malakand & another Vs. Dr. Imtiaz Ahmad etc. | In CA 903/2020 |

For the Appellant(s):	Mr. Khaled Rehman, ASC Mr. Muhammad Hamayun, Asst. Registrar Legal (In both cases)
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For the Respondent(s):	Mr. Muhammad Asif Yousafzai, ASC (For respondent No. 1 in CA 902/2020) (For respondents 1-7 in CA 903/2020)
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Mr. Muhammad Sharif Janjua, AOR

Date of Hearing:	03.02.2021
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JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through these appeals by leave of the Court, the appellant has called in question the vires of the impugned judgment dated 10.03.2020 passed by the Peshawar High Court, Mingora Bench, whereby the Writ Petitions filed by the respondents were allowed and the respondent No. 1 in Civil Appeal No. 902/2020 and respondents No. 1-7 in Civil Appeal No. 903/2020 were held entitled to payment of salary during the period they remained abroad while availing leave for higher studies, which was duly sanctioned by the competent authority.

2. Briefly stated the facts of the matter, are that respondent No. 1 in Civil Appeal No. 902/2020 and respondent Nos. 1-7 in Civil Appeal No. 903/2020 were initially appointed as

Lecturers on contract basis on different dates in the years 2001 to 2005. The contract of the respondents was extended from time to time on the basis of their performance. Subsequently, their services were regularized in the year 2007. They applied for study leave abroad for the sake of higher studies (Ph.D program). Their applications were duly processed and as a consequence, those were allowed by the Vice Chancellor of the University and the respondents were allowed study leave for different tenures without payment of salary. They were also selected for overseas scholarship for higher studies due to their academic qualifications. On return after completion of their studies, they approached the appellant authority with the request that their leave without pay may be treated as leave with full pay. The request was considered by the Syndicate in its meeting held on 27.05.2013 and was turned down. The respondents then preferred review to the Syndicate, which was placed before the Syndicate in its next meeting held on 25.12.2013. The Syndicate constituted a Committee to look into the matter and report. On receipt of the report, the review was once again placed before the Syndicate in its meeting held on 28.06.2014 but it also met the same fate. Ultimately the respondents filed appeals before the Chancellor/Governor KPK but they were also dismissed vide order dated 06.11.2018. This led to their filing of Writ Petitions before the Peshawar High Court, which have been allowed vide impugned judgment dated 10.03.2020. Hence, these appeals by leave of the Court.

3. *Learned counsel for the appellants inter alia contended that grant of leave is neither a vested right nor the respondents can claim the same as such; that the learned High Court has misinterpreted Rule 89 of the Service Rules of University of Malakand, according to which study leave can be granted to an employee who has put in at least three years service in the University or its constituent units; that the word 'employee' means a regular employee having three years service and not the contract employee and all the respondents were contract employees at the time when the study leave was granted to them; that the writ petitions were hit by the doctrine of laches as leave without pay was*

granted in the year 2007 whereas the writ petitions were filed in 2019 after a lapse of 12 years.

4. *On the other hand, learned counsel for the respondents contended that although the respondents were initially appointed on contract basis but subsequently their services were regularized and their previous service was also directed to be considered for the purpose of seniority; that according to Rule 89 of the Service Rules, an employee who has three years of service on his credit can be granted leave on full pay; that the word 'employee' according to the Rules means a person who is being paid from the University funds. He lastly contended that the impugned judgment passed by the High Court is well reasoned and in accordance with the spirit of law and the same may be maintained.*

5. *We have heard learned counsel for the parties and have perused the record of the case.*

6. *Firstly, we will take the issue as to whether the writ petitions were hit by laches or not because according to learned counsel for the appellants leave without pay was granted to the respondents in the year 2007 whereas the writ petitions were filed in 2019 after a lapse of 12 years, therefore, the writ petitions were hopelessly barred by limitation. However, we have noted that although leave without pay was granted to the respondents in the year 2007 but after their return they remained knocking the door of the department to get the relief and ultimately in the year 2014 their request was turned down by the competent authority. Thereafter, they filed appeal before the Chancellor of the University i.e. Governor KPK which was rejected on 06.11.2018. In this view of the matter, it can safely be said that finally the cause of action accrued to the respondents on 06.11.2018, therefore, the writ petitions filed on 24.01.2019 were within time.*

7. *Now we will advert to the question whether the word 'employee' mentioned in Rule 89 of the Service Rules covers a contract employee or does it mean a regular employee. It would be in order to reproduce the said Section, which reads as follows:-*

"89. Study leave on full pay may be granted to an employee who has put in at least three years service in the University or its constituent units. It shall not be granted to an employee within three years of the date on which he/she has the option of retiring. Nor should it

be granted to an employee who is about to retire on proportionate pension."

8. *The learned High Court in paragraph 9 of the impugned judgment has dealt with this issue. Relevant portion of the judgment reads as under:-*

"9. We have considered the respective contentions of the parties in the context of the Rules. In Rule 89, the word 'employee' is mentioned who is eligible to study leave with pay with the additional qualification that he must have three years of service in the University, and no distinction has been drawn in the said rule, as to whether the said employee is a regular employee of the University or his employment is on contract basis. Rule 4(h) of the Rules, the 'university employee' has been defined to mean a person who holds a post in the university service and who is paid from the University funds whereas 'regular appointment' has also been defined in Rule 4(f). Thus, the occurring of word 'employee' in Rule 89 appears to be intentional and not an accidental slip or a draftsman's error. Viewing the aforesaid rule through the prism of literal construction, which envisages that a word used in the statute is to be given its ordinary meaning and the Court has indeed no authority to read a word into an Act of the parliament or omit the same unless clear reason for it is to be found within the four corners of the Act itself. 'Maxwell on the Interpretation of statutes' (12th Edition) has explained this position as under:-

"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". "We are not entitled," said Lord Loreburn L.C. "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional.

We see no reason to infer from the plain reading of Rule 89 that the word employee occurring in the said rule means a regular employee and the period of his employment should be on regular side and not on a contract base because the rules itself have defined both types of employees differently in the definition clause."

9. *A close reading of the above portion of the impugned judgment leaves no room to believe that the word 'employee' mentioned in Rule 89 means a regular employee. The learned High*

Court has very elaborately dealt with this issue and we find no reason to differ with the findings of the High Court.

10. *Now the question, which remains to be decided is whether the respondents had the requisite service of three years in terms of Section 89 ibid or not. Despite that the word 'employee' used in Section 89 ibid means a regular employee, in the present case it would not be of any benefit for the appellant department. The record shows that although the respondents were appointed on contract basis on different dates in the years 2001 to 2005 but their services were regularized in the year 2007. It is clearly mentioned in their regular appointment orders that their previous service shall be considered for the purpose of seniority, therefore, it can be concluded that the total length of service rendered by the respondents at the time of availing the leave was more than three years, which entitles them to study leave with full pay.*

11. *The learned High Court in paragraph 10 of the impugned judgment has also dealt with the issue, as to when the respondents were allowed study leave then after availing the same and after joining the duties, whether they are not estopped by their conduct to claim the said study leave with full pay. The learned High Court after relying on the judgments of this Court came to the conclusion that as a rule of evidence estoppel can be invoked by a party, however, the same cannot be accepted against the statutory obligation of a person even though one party might not have expressly claimed his right which was available to him under the law. This Court in the case of Zarai Taraqiati Bank Limited Vs. Said Rehman etc (2013 SCMR 642) has candidly held that "there is no estoppel against law". The same view was expressed by Indian Supreme Court in the cases of Union Territory, Chandigarh Admn Vs. Managing Society, Goswami, GDSDC (AIR 1996 SC 1759) and P.R. Deshpande Vs. Maruti Balaram Haibatti (AIR 1998 SC 2979) by holding that principle of estoppel does not apply against statute and it has no application when statutory rights and liabilities are involved. As it is now well settled that no estoppel exists against law, therefore, keeping in view the facts and circumstances of the cases, we are compelled to observe that one wrong of the respondents of not claiming their right earlier cannot be acted upon*

as a precedent when it comes to give effect to the express words of a statute. If a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute. When the statute clearly provided that study leave on full pay may be granted to an employee who has put in at least three years service, the appellant authority ought not to have refused the respondents their right guaranteed under the statute.

12. *For what has been discussed above, we find that the learned High Court has passed a well reasoned judgment to which no exception can be taken. The appeals having no merit are accordingly dismissed with no order as to costs.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
3rd of February, 2021
Approved For Reporting
Khuram