

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik

Mr. Justice Sajjad Ali Shah

Mr. Justice Syed Mansoor Ali Shah

C.P.1554-L to 1573-L of 2020

(on appeals from the judgments of Punjab Service Tribunal, Lahore dated 18.06.2020, passed in Appeal Nos.532, 534, 535, 546, 537, 538, 539, 540, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of 2017)

Province of Punjab through Conservator of Forest, Faisalabad, etc.
(In all cases)

.....Petitioner(s)

Versus

Javed Iqbal (In all cases)

.....Respondent(s)

For the petitioner(s): Raja M. Arif, Addl. A.G.
(In all cases)

Respondent: In person

Date of hearing: 26.11.2020

JUDGMENT

Civil Petitions No.1554-L to 1564-L, 1566-L to 1568-L and 1570-L of 2020.

Syed Mansoor Ali Shah, J.- The substantial question of law of public importance in terms of Article 212(3) of the Constitution that arises in these petitions is whether the proviso to section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("Act") is directory or mandatory? Under the said proviso departmental proceedings initiated against a retired employee shall be finalized not later than two years of his retirement.

2. In Civil Petition No.1554-L/2020, brief facts of the case are that the Respondent while working as Forest Guard was departmentally proceeded against under the Act by way of show cause notice dated 19.12.2009 and was awarded major penalty vide order dated 23.10.2012. During the course of the said inquiry the petitioner retired from service on 15.04.2010. The departmental proceedings initiated against the petitioner on

19.12.2009 continued and were finalized on 23.10.2012, more than two years after his retirement. Similar facts are involved in rest of the listed cases.

3. Proviso to section 21 of the Act provides as under:

Section 21. Proceedings under this Act - Subject to this Act, all proceedings initiated against the employees having retired or in service, shall be governed by the provisions of this Act and the rules made thereunder:

Provided that in case of retired employee, the proceedings so initiated against him shall be finalized not later than two years of his retirement.

In order to determine whether the aforesaid proviso is directory or mandatory, the duty of the court is to try to unravel the real intention of the legislature. The ultimate test is the intent of the legislature and not the language in which the intent is clothed. The object and purpose of enacting the provision provide a strong and clear indicator for ascertaining such intent of the legislature.¹ The intention of the legislature must govern and this is to be ascertained not only from the phraseology of the provision but also by considering its nature, its object, and the consequences which would follow from construing it one way or the other.² This exercise entails careful examination of the scheme of the Act in order to discover the real purpose and object of the Act. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding. One of the important test that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, the court would say that that provision must be complied with and that it is obligatory in its character.³ There are three fundamental tests, which are often applied with remarkable success in the determination of this question. They are based on considerations of the scope and object, sometimes called the scheme and purpose, of the enactment in question, on

¹ Collector of Sales Tax v. Super Asia, 2017 SCMR 1427; State v. Imam Baksh, 2018 SCMR 2039

² Crawford, *Statutory Construction*, p. 515-516.

³ N S Bindra's – *Interpretation of Statutes*. 12th edition. p.435

considerations of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affects the performance of a public duty or relates to a right, privilege or power – in the former case the enactment is generally directory, in the latter mandatory.⁴

4. Examining the scheme and object of the Act we notice that the preamble to the Act provides that the law has been promulgated with the object to improve the efficiency, discipline and accountability of employees in government and corporation service in order to achieve good governance. Further Section 1(4)(iii) provides as follows:

Section 1. Short title, extent, commencement and application.- (1) This Act may be called the Punjab Employees Efficiency, Discipline and Accountability Act, 2006.

(2) ...

(3) ...

(4) It shall apply to-

(iii) retired employees of government and corporation service; provided that proceedings under this Act are initiated against them during their service or within one year after their retirement.

The above provision shows that the main purpose of Act is to enhance good governance in service matters and provide measures for improvement of efficiency, discipline and accountability of the employees. “Employee⁵” is defined as a person who is in employment either in a Corporation or in the Government service. Employee (a person in service) is, therefore, the blue-eyed boy of the Act and the central focus of the law, which revolves around improving governance through improvement of efficiency, discipline and accountability of the serving employees. A retired employee, however, falls outside the focus and theme of the Act except a limited category of retired employees. The presence of a retired employee under the Act is recognized for the first time in the definition of the term “accused⁶” under the Act, which provides for a person who is or has been an employee and against whom an

⁴ *ibid.* p. 454

⁵ [section 2(h)]

⁶ section 2(a)

action has been initiated under the Act. Retired employee is only recognized if there are disciplinary proceedings initiated against him and not otherwise. Section 1 (4) (iii) provides that the Act is applicable only to a retired employee against whom departmental proceedings have been initiated either while he was in service or within a period of one year after his retirement. Therefore, an employee who has retired for over an year and no departmental action has been initiated against him falls outside the mischief of the Act. Proviso to Section 21 of the Act provides an upper time limit for finalizing the departmental proceedings initiated against a retired employee i.e., no later than two years from the date of his retirement. The scheme of the Act shows that a retired employee recognized by the Act has a restrictive meaning i.e., a person against whom departmental proceedings have been initiated and finalized within certain strict statutory timelines. First, those retired employees, against whom departmental proceedings have been initiated either in service or within one year of their retirement. Second, against whom departmental proceedings have been finalized within two years of their retirement. A retired employee falling outside these two timelines falls outside the mischief of the Act.

5. The aim of interpretation in law is to realize the purpose of the law. The objective purpose of the statute means the interests, values, objectives and policy that the law should realize. The focus of the Act is on the employees that are managing the affairs of the Government or the Corporation rather than those who have retired. Further, any long drawn departmental proceedings against a retired employee would be an unnecessary drain on the resources of the Government and would also distract the Government from its prime objective of regulating its employees. The scheme of the Act seems to supports the public policy that an employee who has served the Government all his life must enjoy his retirement in peace and must be spared from undergoing long drawn departmental proceedings during his retired life. It is only those employees against whom inquiry has been initiated prior to their retirement or within one year of their retirement that are relevant for the purposes of the Act. The Act

further provides that any such departmental proceedings shall be finalized not later than two years of the retirement of the employee. The importance of the proviso can be gauged by supposing that there was no proviso to section 21. As a consequence there would be no statutory timeline for the conclusion of the departmental proceedings against a retired employee, as is the case with an (in service) employee under the Act. Therefore, the insertion of the proviso has a specific purpose; to conclude the proceedings against a retired employee not later than two years of his retirement.

6. On a more textual level, as a general principle, a statute which regulates the manner in which public officials exercise the power vested in them is construed to be directory rather than mandatory, especially when neither private or public rights are injured or impaired thereby. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact peremptory or mandatory as a general rule.⁷ According to Sutherland;⁸ where a public officer is directed by a statute to perform a duty within a specified time, the provision as to time are only directory. This general principle, however, does not apply where the phraseology of the provision, or the nature of the act to be performed, or the consequence of performing or failing to perform it within the prescribed timeframe is such that the prescription of timeframe is actually a limitation on the power of the public functionary. Or where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such a duty within the specified timeframe is mandatory.⁹ Where a public official can impose liability on a retired employee if the power is exercised within a certain statutory timeframe and there is a delay in the exercise of such power on the part of a public official, no such liability can be imposed after the lapse of the statutory period.

⁷ Crawford in Maxwell's, *Interpretation of Statutes*, 11th edition, pp. 369, 380.

⁸ Sutherland, *Statutory Construction*, p. 107, Vol.-III (3rd Edition).

⁹ See *Nagina Silk Mill v. Income-Tax Officer*, P L D 1963 SC 322; *CBR/Sales Tax Department v. Pace International*, PTCL 2005 CL. 841 maintaining decision of the Justice (r) Saleem Akhtar, the FTO, delivered in *Pace International v. CBR/Sales Tax Department*, 2005 PTD 340; *Dandot Cement Company v. Secretary, Revenue Division*, 2008 PTD 609, per Justice (R) Munir A. Sheikh; *Super Asia v. Collector of Sales Tax*, 2008 PTD 60 maintained in *Collector of Sales Tax v. Super Asia*, 2017 SCMR 1427.

7. At a more granular level, the effect of a qualifying proviso, according to the ordinary rules of construction, is to qualify something enacted in the preceding portion of the enactment.¹⁰ The word *shall*, used in the proviso, is commonly construed as mandatory. The phrase *not later than two years* in the proviso passes for a negative phrase and gives an imperative effect. Such negative phrases or words are prohibitive in essence, and are ordinarily used as a legislative device to make a provision in a statute mandatory. Therefore, negative words used in a provision that prescribes some statutory requirement makes, as a general rule, that requirement mandatory even if no penalty is prescribed for non-compliance of that requirement.¹¹

8. The Guidebook¹² for conducting inquiry, issued under the Act is to eliminate, as far as possible, chances of delay by removing bottlenecks in inquiry proceedings. According to the Guidebook the following points should be kept in mind while conducting proceeding under the Act;

(4) Points to be considered for proceeding under the PEEDA Act 2006

(i) – (xviii) ...

(xix) Inquiry against retired employees

(a) As per section 21 of the PEEDA Act 2006, a retired employee can be proceeded under PEEDA Act 2006 within one year of his retirement, provided that inquiry has already been initiated during his service under PEEDA Act 2006 and it should be finalized within two years of his retirement.

(b)

(c) on completion of two years from the date of retirement, the proceedings under the PEEDA Act, 2006 abate and no penalty can be imposed under PEEDA Act 2006.

(emphasis supplied)

9. It is also important to highlight that closure of departmental proceedings after retirement of an employee under

¹⁰ Craies on Statute Law, p.218, (7th edition).

¹¹ N S Bindra's, *Interpretation of Statutes*, pp. 996-998, (10th edition), and Shujat Hussain v. State 1995 SCMR 1249; Atta Muhammad v. Settlement Commissioner, PLD 1971 SC 61

¹² Notification No.SORI(S&GAD)1-30/2003(P-II) dated 17.08.2015

the Act is not a new concept and finds historical support and reference in Fundamental Rules (FR), the Civil Service Regulations (CSR), Punjab Civil Service Pension Rules, 1955 and Civil Establishment Code (ESTA CODE) in the following manner:

FR 54-A states:

54A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

This Court in *Muhammed Zaheer Khan*¹³ held that the plain reading of F.R.54-A is clear that the disciplinary proceedings against an officer abate if the latter attains the age of superannuation. The Rule entitles such officer to retire with full pensionary benefits and period of suspension is bound to be treated as period spent on duty. It was held that the fundamental principle laid down in FR.54-A postulates that the case of the appellant cannot be remanded to the authority for holding de novo proceedings, after eleven years of his superannuation. In *Muhammed Anwar Bajwa*¹⁴, it was held that Rule 54-A shows that if a disciplinary action is initiated against the Government servant and the said action remains inconclusive during the course of his service and he retires on attaining the age of superannuation in the meanwhile, not only the un-concluded disciplinary action shall abate against such a Government servant but that he shall also be entitled to full pensionary benefits. In *Munir Hussain Shah*¹⁵, this Court held that time limit has also been fixed for such departmental proceedings inasmuch as no such inquiry can be held after one year of the retirement of a pensioner. Similarly, in *Muhammed Akhtar*,¹⁶ it was held that the disciplinary inquiry could not have been initiated after a lapse of one year of the retirement of the respondent.

¹³ Muhammad Zaheer Khan vs. Government of Pakistan, 2010 SCMR 1554.

¹⁴ Muhammad Anwar Bajwa, Executive Director, Agricultural Development Bank of Pakistan vs. Chairman, Agricultural Development Bank of Pakistan, 2001 PLC (CS) 336.

¹⁵ Province of the Punjab v. Munir Hussain Shah, 1998 SCMR 1326.

¹⁶ Secretary, Education (Schools), Government of the Punjab, Lahore vs. Muhammad Akhtar, Ex-Headmaster, 2006 SCMR 600.

10. The Civil Service Regulations (CSR) provide as under:-

351-A. The President reserves to himself the right to order the recovery from the pension of an officer who entered service on or after 23rd February, 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service:

Provided that—

(1) such departmental proceedings, if not instituted while the officer was on duty,-

(i) shall not be instituted save with sanction of the President;

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty and:

(iv) shall be conducted by such authority and in such places whether in Pakistan or elsewhere, as the President may direct;

(2) all such departmental proceedings shall be conducted, if the officer concerned so requests, in accordance with procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(3) such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

351-B The Government may, within one year from the date of issue of Pension Payment Order, recover any of its dues from the pension granted to a civil servant, subject to the condition that no recovery shall be made from the pension without the personal order of the Head of the Ministry or Division or Head of the Department, declared as such under S.R.2(10) and included in Appendix No.14, Vol. II of the Compilation of the Fundamental Rules and Supplementary Rules, as the case may be.

417-A. If an officer, who has been suspended pending inquiry into his conduct, attains the age of superannuation before completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

(emphasis supplied)

11. Under Rule 1.8 (b) of the Punjab Civil Services Pension Rules, 1955, Government reserves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the

date of retirement of the Government pensioner. In *Muhammed Said Khan*¹⁷, the reason for the limitation of one year in clause (b) of Rule 1.8 of the Civil Services Pension Rules was that the Government reserved to itself the right to recover from the pension any sum which it had suffered by way of loss while the pensioner remained in service. It was held that this right could not have been available to the Government for all times to come. After the judgment in *Muhammed Said Khan* the following letter was issued by the Government:

No.SOR-I(S&GAD) 4-38/97 Dated the 10th January, 1998
<p>Subject: WITHHOLDING / WITHDRAWAL OF PENSIONER ANY PART OF IT, FOR GRAVE <u>MISCONDUCT DURING SERVICE</u></p> <p>I am directed to refer to this Department's letter No.SORI(S&GAD)7-1/72 dated 23rd October, 1973, on the subject noted above and to say that in pursuance of Supreme Court's pronouncement in their decision of Government appeal titled "the Government of N.W.F.P. versus Mr. Muhammad Saeed Khan and another" vide PLD 1973-SC-514, though interpretation of rule 1.8 of Punjab Civil Services Pension Rules was issued vide circular letter referred to above, yet the departments are seeking interpretation time and again. The important provisions of the instructions under reference are reproduced below for facility of reference:</p> <p>(a) Each of the clause(a) and (b) of this rule is a self-contained and independent provision designed to cater for two different situations. Under clause (a), maintenance of "Good Conduct" is made an inseparable condition for the grant or continuance of pension to a government servant and the Govt. reserves to itself the plenary power to with-hold or withdraw a pension or any part thereof if the pensioner is convicted for serious crime or is found guilty of grave misconduct whether during or after completion of his service. However, clause (b) cannot be used to effect a penal recovery if there be a case of fraud or negligence during the service thought it may be made a ground for a finding that the service has not been thoroughly satisfactory.</p> <p>(b) Clause (b) ibid empowers the Government to order recovery from the pension, of the whole or part of any pecuniary loss, caused to the Government if the pensioner is found in departmental or judicial proceedings, to have</p>

¹⁷ Government of NWFP Vs. Mohammad Said Khan, PLD 1973 SC 514.

	<p>been guilty of grave misconduct or negligence during his service. Under clause (b) the Government reserves to itself the right to recover from the pension the amount of any pecuniary loss which it has suffered while the pensioner was in service. It is, however, to be noted that this power cannot be resorted to after efflux of one year from the date of retirement of the pensioner.</p>
c)	On general principles as also on the wording of rule 1.8(a), the Executive has the exclusive power to determine whether on the facts of the case the officer / official concerned was guilty of gross misconduct and this applies equally to the serving officers as well as to those who have retired but whose pensionary claims are yet to be settled.
(d)	Except as a result of the inquiry contemplated under clause (a) the Government has no power under the rules to suspend the payment of whole or any part of the pension of a Government servant otherwise admissible, pending inquiry against him. It follows that any order in that behalf in anticipation of the result of the inquiry, will be without any valid basis.
2.	<p>The above interpretation of rule 1.8 of the Pension Rules by the Supreme Court in PLD 1973 SC-514, may kindly be brought to the notices of all concerned for information and guidance so as to avoid unnecessary correspondence in the matter. <i>(emphasis supplied)</i></p>

12. Under the Civil Establishment Code (ESTACODE),¹⁸ the following instructions have been issued for quick disposal of disciplinary proceedings pending against Government Servants who are about to superannuate:

Sl. No. 31.6¹⁹

It has come to the notice of government that inquiry proceedings against civil servants under the Government Servants (Efficiency and Discipline) Rules, 1973 (Sl.No.23) tend to be unduly protracted for various avoidable reasons causing hardships to the affected government servants on the one hand and defeating the purpose of speedy disposal of cases in others. This is obviously against dictates of justice.

2. The disposal of disciplinary proceeding assumes vital importance especially in cases against government servants who are about to attain the age of

¹⁸ Estacode Vol-II, 2018 Ed. These provisions from the Code existed in the same manner in earlier editions under a different number i.e., Sl. No 131 and 132.

¹⁹ Authority.-Estt. Division O.M. No.12/2/88-R.3, dated 3-10-1988.

superannuation. It goes without saying that delay in disposal of such cases not only causes hardships to the affected persons but also puts the administration to unnecessary criticism.

3. It is, therefore, requested that disciplinary proceedings against government servants nearing the age of superannuation in future should be disposed of before they superannuate. All the agencies working under the administrative control of the Ministry concerned should be advised accordingly.

Sl. No. 31.7²⁰

Reference Estt. Division's O.M.No.12/2/88-R.3, dated the 3rd October, 1988 (Sl No.31.6) on the subject mentioned above, wherein all the Ministries/Divisions were requested that **disciplinary proceedings against Government Servant nearing the age of superannuation should in future be disposed of before they superannuate. Despite this, instances have come to the notice of this Division wherein the disciplinary cases have been delayed to such an extent that these stood abated due to non-finalization thereof before the age of superannuation of the accused civil servants, which is not a happy state of affairs.**

2. In order to guard against recurrence of such instances, it is once again requested that the instructions (Sl. No. 143) may please be brought to the notice of all concerned for strict compliance to ensure that the State's interests are fully protected and the civil servants really guilty of misdemeanor of any sort do not go unpunished due to the inefficiency and/or connivance of the departmental personnel in finalizing the Efficiency and Discipline cases before the accused's superannuation.
(emphasis supplied)

13. The legislative intent and the purposive interpretation of the Act read with the supportive material discussed above, it is clear that the finalization of the departmental proceedings not later than two years of the retirement of the employee under the proviso to section 21 of the Act is a mandatory provision and any proceedings after the said statutory period shall stand abated and any orders passed after the efflux of the above time period are void and have no legal effect.

14. In the instant cases, the departmental proceedings against the respondent have been finalized after a period of two years of his retirement, the departmental proceedings, therefore,

²⁰ Authority.-Estt. Division O.M. No.6/14/94-D.I, dated 19-12-1994.

have no legal consequence and the subsequent departmental orders are void and have no legal effect. For this reason we take no exception to the impugned judgments and are of the view that they do not warrant any interference. Leave is, therefore, declined and these petitions are dismissed. For future, the Government must ensure that cases of retired employees are fast tracked so that they are concluded within the aforesaid statutory timeframe allowing the retired employees to enjoy their retired life and the Government to save unnecessary expense and time in pursuing matters against retired employees.

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15. The abovementioned proviso does not apply in these cases, as the departmental proceedings were finalized within a period of two years from the date of retirement. Office shall separate these petitions and fix them for hearing in the next session to be decided on merit.

Judge

Judge

Lahore,
26th November, 2020.
Approved for reporting
Iqbal

Judge