

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.512 of 2022

On appeal from an Order dated 29.11.2021, passed by the Federal Service Tribunal, Islamabad on Misc. Petition No.1893/2018 moved in Appeal No.1879 to 1883 (R) CS/2013.

Pakistan Railways thr. its Chairman ...Petitioner(s)
Pakistan Railways, Islamabad & another

Versus

Muhammad AminRespondent

For the Petitioner(s) : Mr. Umer Sharif, ASC
(via video link from Lahore)

For the Respondent(s) : Nemo

Date of Hearing : 11.12.2024

Judgment

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is directed against the Order dated 29.11.2021, passed by the learned Federal Service Tribunal, Islamabad ("FST") in Misc. Petition ("M.P.") No.1893/2018 in Appeal No.1879 to 1883(R)CS/2013.

2. According to the facts, the FST, *vide* its consolidated judgment dated 14.10.2015 passed in Appeal No.1879 to 1883(R)CS/2013, directed the petitioners to upgrade the post of respondent, Signal Maintainer ("SMR") at Multan Division, from BS-8 to BS-10 to maintain harmony and congruence with the employees posted at Rawalpindi Division for the same position in BS-10. The aforesaid judgment of the FST was challenged in this Court in C.P No.4055/2013 and 207 to 210 of 2016 which were dismissed *vide* order dated 02.03.2016. The appellants in Appeal(s) No.1879 to 1883(R)CS/2013 filed M.Ps. No.2184 to 2188/2016 for implementation of the judgment of the FST dated 14.10.2015. Whereas, the petitioner also filed M.P. No.1893/2018

under Section 12(2) read with Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("CPC") with the prayer that the implementation petition be dismissed as the employees of Rawalpindi Division are not working in BS-10, therefore the impugned judgment of the FST was based on misrepresentation and fraud, and was thus liable to be set aside. The M.P. filed by the petitioner was dismissed by the FST *vide* impugned order dated 29.11.2021.

3. The learned counsel for the petitioners argued that while granting benefit to the employees of the Multan Division, reliance on the status of the employees of the Rawalpindi Division in BS-10 was baseless. He further argued that there was no discrimination among employees working as SMRs in BS-8 in any Division within Pakistan. The SMRs of the Rawalpindi Division filed Service Appeal No.170 to 194 (R)CS-2018 for the same relief, but their service appeals were dismissed by the FST *vide* order dated 15.07.2019. It was further averred that at present, there are conflicting views between two different benches of the FST; therefore, the learned FST should have constituted a larger bench to resolve the anomaly. He further contended that the respondent obtained relief from the FST on the basis of misrepresentation and fraud, but the application filed under Section 12(2), CPC, was dismissed without considering the element of fraud and misrepresentation, resulting in grave injustice to the department.

4. Heard the arguments. According to the main judgment dated 14.10.2015 passed in Appeal No.1879 to 1883(R)CS/2013, the plea taken by the respondent was that the SMRs working in the Rawalpindi Division are receiving BS-10 whereas their counterparts in the Multan Division have been deprived of this scale and remain in BS-9, thereby creating an anomaly. On the other hand, the department denied the availability of any right of upgradation. After hearing the parties, the learned FST observed from the memo of appeal that the discrepancy was specifically alleged, but in the written objections, the department's reply was evasive. It was further observed that the job description is the same in both Rawalpindi and Multan Divisions; therefore, it would be apt to ensure that the disparity is removed in the pay scales of SMRs in both Divisions. Finally, the learned FST, while allowing appeals, directed the petitioners/respondents to bring the post of SMRs in the Multan Division from BS-9 to BS-10 to make it at par with the SMRs in the Rawalpindi Division.

5. It is an admitted fact that the aforesaid judgment of the FST was challenged in this Court in C.P No.4055/2015 and 207 to 210 of 2016, which were filed by the Divisional Superintendent, Pakistan Railway, Multan and another, but this Court found no substantial question of public importance within the contemplation of Article 212(3) of the Constitution. Hence, the petition was dismissed and leave was refused. Although the Court also recorded the statement of the petitioner's advocate specifying that all SMRs are to be treated alike as notified by the Chief Account Officer of the department, and that it is a matter of policy which was decided by the government, but the fact remains that despite this statement, neither had this Court set aside the FST judgment nor varied or modified it. Hence, for all intents and purposes, the judgment of the FST is still intact. After the dismissal of the civil petitions, the matter was set at rest and as a consequence thereof, the judgment of the FST had also attained the finality.

6. The learned counsel for the petitioner also referred to an order of the FST dated 15.07.2019, passed in Appeal No.170 to 194 (R)CS-2018. According to the facts reflected in the order, the appellants in the referred case took the plea that the post of SMR was merged with the posts of Block Mistries, Track Mistries, and Signal Mistries and was re-designated as SMR (BS-8). This post was upgraded *vide* letter dated 05.01.2006, and the pay scale was fixed from BS-8 to BS-9, and subsequently from BS-9 to BS-10, *vide* order dated 09.04.2007 and 12.12.2007, with effect from 01.12.2006 and 01.12.2007, respectively. However, the department began paying the salary in April 2017 at BS-8 instead of BS-10. The main cause of concern was that the reversion of the appellants from BS-10 to BS-9 was imposed without issuance of a show-cause notice, and the order, once passed, could not be revoked as it had created a vested right. Seemingly, the department referred to an earlier judgment of the FST passed in Appeals No.1879(R)CS/2013 and others but without adverting to the said earlier decision, the FST held that the pay of the appellants was fixed from BS-8 to BS-9 and BS-10 by the Divisional Superintendent, Pakistan Railways, Rawalpindi Division, who has no authority; as such, it was declared null and void. Regarding the plea of non-issuance of a show-cause notice before withdrawing the benefit, the FST held that before fixing pay scales in BS-9/BS-10, no order of

upgradation was issued by any authority, including the Divisional Superintendent, thus no show-cause notice was required. While in the earlier part of the same judgment, the FST held that the pay scale of the said appellants was fixed from BS-8 to BS-9 and BS-10 by the Divisional Superintendent, Pakistan Railways, Rawalpindi Division, without authority. Such findings in our view are mutually destructive and suggest that upgradation was indeed accorded.

7. At this juncture, the case pertains only to the effect of impugned order of the FST, whereby Misc. Petition No.1893/2018, moved by the petitioners under Section 12(2) read with Order VII, Rule 11, CPC, was dismissed. According to the niceties of subsection (1) of Section 12, CPC, where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies. However, subsection (2) of Section 12, CPC, permits a person to challenge the validity of a judgment, decree, or order on the plea of fraud, misrepresentation, or want of jurisdiction. This remedy may be sought by a person on presenting an application to the Court which passed the final judgment, decree, or order and not by a separate suit.

8. It is a well-known legal exposition that the validity of a judgment, decree, or order under Section 12(2), CPC, can only be challenged on the plea of fraud, misrepresentation, or want of jurisdiction. The literal meaning of "fraud" can be understood as a planned and calculated usage of deceptiveness, spuriousness, or a trick and/or dishonest means to divest another of his movable or immovable property or a legal right. The term "misrepresentation" refers to the act of conveying false or misleading information about something or someone to get unfair or unwarranted advantage and the expression "want of jurisdiction" epitomizes the lack of authority to hear a case by a judge/Court; a judge who surpasses his power or dominion to hear a case, or a court which does not have authority to hear the matter.

9. How was an application under Section 12(2), CPC, maintainable before the FST? There is no doubt that the judgment passed by the FST was challenged in this Court and was subsequently affirmed. At this moment, we cannot disregard the doctrine of merger, which is

commonly understood to mean sinking or disappearing in something else; to be lost to view or absorbed into something else; to become absorbed or extinguished; to be combined or be swallowed up and absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.

10. It is a matter of record that in the main case, the petitioners were duly represented by their advocate. Neither was the original judgment secured by the respondent behind the petitioners' back, nor was it an *ex parte* judgment in which the petitioners before us were not allowed to file a reply or were not duly represented by their advocate/law officers. On the contrary, when the respondent filed M.P. No.2184/2016 for the implementation of the FST judgment, only then, the petitioners filed M.P. No.1893/2018, which otherwise did not mention a single ground as to what fraud or misrepresentation was committed by the respondent and how the order of the FST was liable to be set aside for want of jurisdiction. One more important aspect that cannot be overlooked is that the petitioners did not file their aforesaid Misc. Petition for setting aside the main judgment of the FST but only prayed for dismissal of M.P. No.2184/2016, filed by the respondent for implementation of the original order of the FST on the grounds that since the respondent/petitioner has not approached the Court with clean hands, his M.P. is liable to be dismissed with cost; that the M.P. was not maintainable in the eyes of the law; that the M.P. has been filed with mala fide intentions and ulterior motives of blackmailing and harassing; and that the M.P. is barred by law as it is frivolous and vexatious. All such sweeping grounds were alien to the provisions of Section 12(2), CPC, for setting aside any judgment and decree wherein the applicant/person is obligated to characteristically and judiciously point out the act of fraud, misrepresentation, or want of jurisdiction, if any, but the elementary constituents were missing from the application filed by the petitioners before the FST which was rightly dismissed.

11. An additional provision mentioned in the application by the petitioners before the FST was Order VII Rule 11 CPC, under which the Court can reject the plaint when it does not disclose a cause of action; where the relief claimed is under-valued, and the plaintiff, on

being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; and where the suit appears from the statement in the plaint to be barred by any law. We are at a loss as to how this provision was applicable in the present case, where the matter had already been decided by the FST and affirmed by this Court, and where actually was the plaint, which could be rejected by the FST after the finalization of appeal much earlier? Neither the provisions of CPC are meant to be misused for ulterior motives nor should the same be allowed to be used as a weapon to prolong the legal proceedings on one or the other pretext nor to harass the opponent by filing misconceived applications.

12. No doubt, while deciding any appeal, the Service Tribunal is deemed to be a Civil Court and has the same powers as are vested to Civil Courts under the CPC, 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. Concurrently, it is also a ground reality that the Service Tribunal exercises exclusive jurisdiction as a fact finding forum in respect of matters relating to the terms and conditions of service of civil servants and for the matters connected therewith or ancillary thereto.

13. The exclusive appellate jurisdiction is exercised by the Service Tribunal in the case of civil servants to vet and examine departmental orders passed against civil servants. A civil servant may approach the Tribunal against an adverse order within the specified limitation period for filing an appeal, where either an order is passed on his departmental appeal, or if the departmental appeal is not decided within the prescribed period of time, the aggrieved civil servant may approach and file appeal before the Service Tribunal within the statutory period. One crucial facet that cannot be ignored is that though the matter reaches the Service Tribunal against adverse orders, but after being filtered through the departmental hierarchy or

chain of command, the onerous duty of the Service Tribunal, as an appellate forum, is to determine whether the departmental action taken against the civil servant complies with the law or not. Why do we emphasize this? For the simple reason that the purpose of establishing an exclusive Tribunal is to ensure that appeals are decided expeditiously and not delayed at the whims or wishes of the parties or under the garb of frivolous applications.

14. If all the intricacies or nitty-gritties of CPC are made applicable, allowed, encouraged, or taken into consideration in every case without any lawful justification, then the whole purpose of creating a Service Tribunal with exclusive jurisdiction would be seriously undermined and prejudiced and matters will likely be dragged for an unusual period, given the complexities and convulsion of the CPC, like it happens in the Civil Courts, which seemingly go beyond the legislature's intention to provide speedy justice to the aggrieved civil servants. As far as the remedy against the order and judgment of the Service Tribunal is concerned, not only there exists a right to file a review petition, even against the final order or judgment of the Service Tribunal, there also exists a right to file an appeal in this Court under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. Therefore, filing an application under Section 12(2) CPC with the prayer to dismiss an M.P. moved for implementation of a judgment of the FST is no solution after the judgement has attained finality up till this Court.

15. As a result of the above discussion, we do not find any justification to cause any interference in the impugned order of the learned FST, which is based on the correct exposition of law. The Civil Petition is dismissed and leave is refused.

Judge

Judge

Islamabad
11.12.2024
Khalid
Approved for reporting

