

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

Civil Petitions No.525-K to 527-K/2024 and
Civil Petitions No.477-K to 511-K OF 2024

Against the Orders dated 19.03.2024 and 30.01.2024 passed by Sindh Service Tribunal, Karachi in Appeals No.58, 59, 61, 760, 862, 902, 774, 805, 820, 776, 821, 864, 755, 803, 829, 742, 841, 804, 901, 759, 766, 831, 806, 822, 794, 761, 840, 747, 764, 746, 749, 817, 748, 744, 830, 743, 740, 763/2023.

Rao Muhammad Rashid	(in CP 525-K/24)
Khalid Mehmood	(in CP 526-K/24)
Kaleem Khan	(in CP 527-K/24)
Noor Khan Dahar	(in CP 477-K/24)
Hafezullah	(in CP 478-K/24)
Khair Muhammad	(in CP 479-K/24)
Tahir Mehmood	(in CP 480-K/24)
Syed Shahid Hussain Shah	(in CP 481-K/24)
Abdul Qayoom	(in CP 482-K/24)
Qurban Ali	(in CP 483-K/24)
Parvaz Khan	(in CP 484-K/24)
Abdullah	(in CP 485-K/24)
Aalia Aamir	(in CP 486-K/24)
Khalid Hussain	(in CP 487-K/24)
Zahid Hussain	(in CP 488-K/24)
Pir Sher Muhammad	(in CP 489-K/24)
Asma	(in CP 490-K/24)
Muhammad Hanif Sholani	(in CP 491-K/24)
Abdul Fatah	(in CP 492-K/24)
Muhammad Irfan	(in CP 493-K/24)
Ghulam Nabi	(in CP 494-K/24)
Muhammad Nadeem	(in CP 495-K/24)
Farooque Ali Palari	(in CP 496-K/24)
Mujib ur Rehman	(in CP 497-K/24)
Aijaz	(in CP 498-K/24)
Muhammad Irshad	(in CP 499-K/24)
Wazeer Shah	(in CP 500-K/24)
Mumtaz Ali Qureshi	(in CP 501-K/24)
Aivaz Ali	(in CP 502-K/24)
Fatima	(in CP 503-K/24)
Noor Hussain	(in CP 504-K/24)
Meraj Uddin	(in CP 505-K/24)
Abdul Hafeez Shah	(in CP 506-K/24)
Ali Raza	(in CP 507-K/24)
Mansoor Ahmed	(in CP 508-K/24)
Imdad Ali	(in CP 509-K/24)

Muhammad Bux	(in CP 510-K/24)	...Petitioner(s)
Muhammad Ilyas	(in CP 511-K/24)	

Versus

Province of Sindh through Chief Secretary etc. (in all cases) ...Respondent(s)

For the Petitioners:	Mr. Sadar-ud-Din Buriro, ASC
For the Respondents:	Mr. Kafeel Ahmed Abbasi, Addl. AG, Sindh. Mr. Javed Ali Khawaja, Focal Person (Litigation) and Syed Abid Ali, Director (HR), Education & Literacy Department, Government of Sindh

Date of Hearing: 01.08.2024

Judgment

Muhammad Ali Mazhar, J. The aforesaid Civil Petitions for leave to appeals are directed against the Orders dated 19.03.2024 and 30.01.2024, passed by the Sindh Service Tribunal, Karachi, in Appeals No.58, 59, 61, 760, 862, 902, 774, 805, 820, 776, 821, 864, 755, 803, 829, 742, 841, 804, 901, 759, 766, 831, 806, 822, 794, 761, 840, 747, 764, 746, 749, 817, 748, 744, 830, 743, 740, 763/2023.

2. According to the petitioners, they applied for different posts i.e. Sindhi Language Teacher, Arabic Language Teacher, Oriental Teacher Naib Qasid etc. announced in different basic pay scales, pursuant to a job advertisement published by the Education and Literacy Department, Government of Sindh, in different newspapers. After a written test and interview, they were declared successful candidates. On completion of codal formalities, the Education and Literacy Department, Government of Sindh, issued offer letters to the petitioners along with the letter for Medical Examination and Police Verification. The District Committee (DRC) was constituted to scrutinize/verify all credentials and after due satisfaction, the appointment orders were issued and the petitioners submitted joining reports. It is further alleged that the petitioners were performing their duties diligently but the respondent department, without service of any show cause notice or justification, stopped the payment of

salaries. Therefore, some petitioners approached the High Court of Sindh and filed Constitution Petitions Nos.D-1825/2015 & No.D-2715/2015 for release of unpaid salaries but the petitions were disposed of by the High Court with the directions to approach the Sindh Service Tribunal. However, in view of the protest made by a large number of affectees, this Court initiated *Suo Moto* action by means of HRC No.41962/2018 and issued directions to the official respondents to constitute a Scrutiny Committee, comprising Secretary Education & Literacy Department, Secretary Services Department, and Director Schools Education, to scrutinize the cases of each and every petitioner separately. The Committee submitted the report in this Court whereby a number of persons were declared validly appointed and some were found ineligible for the appointment due to certain reasons and were dismissed from service. Being aggrieved and dissatisfied with the said orders of dismissal from service, the present petitioners preferred departmental appeals before the Secretary Education & Literacy Department, Government of Sindh, Karachi, and thereafter filed Service Appeals which were dismissed *vide* two different consolidated impugned Orders dated 19.03.2024 and 30.01.2024.

3. The Civil Petitions No.525-K to 527-K of 2024 are barred by 15 days and applications for condonation of delay have been filed along with the said CPLAs. As connected CPLAs against the same impugned Orders of the Sindh Service Tribunal, Karachi ("**Tribunal**") have been preferred within time, therefore, for the reason mentioned in the applications for condonation of delay, C.M.A. Nos.625-K to 627-K of 2024 are respectively allowed and the delay is condoned.

4. The learned counsel for the petitioners argued that the learned Tribunal failed to consider the peculiar facts and circumstances of the case and passed the impugned orders in a hasty manner without applying a judicious mind. It was further argued that the drastic action of the department was based on *mala fide* and discrimination. It was further contended that the learned Tribunal mentioned the dates of filing departmental appeals and date of institution of appeals before the Tribunal but many dates of filing departmental appeals are incorrect and since all service appeals were filed on the basis of

different dates of departmental orders, therefore the date of cause of action for filing the service appeals was not one and the same, hence for this reason, due diligence was required to be made in every appeal separately to reach a just conclusion on whether the departmental appeals were barred by time or not. He further argued that the petitioners consumed some time in the High Court in the writ jurisdiction to challenge an act of stoppage of salary and not against dismissal from service, but the High Court declined to interfere, hence after receiving impugned departmental orders conveyed for dismissal of services, the petitioners filed the departmental appeals which were within time and not barred as these were filed after the late receiving of the adverse orders passed by the department.

5. The learned Assistant Advocate General argued that the learned Tribunal nonsuited the petitioners on the ground of limitation. He further argued that since the department was not issued any notice and all the appeals were dismissed in limine, therefore, the department could not place some crucial facts before the Tribunal. He further argued that departmental action was taken on the basis of inquiry and since their departmental appeals were barred by time, hence the learned Tribunal dismissed all the appeals being barred by time. He further argued that since the bulk of cases was decided by two consolidated impugned orders in which the cause of action to the extent of the date of filing departmental appeal and presentation of appeals before the Tribunal were different, therefore, each appeal was required to be considered minutely on whether it was barred by time or not.

6. Heard the arguments. The impugned Order dated 30.01.2024, passed by the learned Tribunal in Service Appeal No. 742/2023 and some connected appeals demonstrates that in paragraph (3), the learned Tribunal observed that the Secretary, Schools Education & Literacy Department, *vide* separate impugned orders dated 30.09.2022, 27.09.2022, 06.10.2022, 27.09.2022, 10.01.2023, 27.09.2022 and 10.01.2023, declared the appointments invalid and in the same paragraph, the dates of a huge number of department appeals are mentioned conjointly which do not specify or identify the names of the appellants who were nonsuited. One thing is clear

beyond doubt that different departmental appeals were filed by different petitioners/appellants against different adverse departmental orders, which means that the date of the cause of action was not one and the same for filing the departmental appeals as well as filing the service appeals before the learned Tribunal. Whereas in another consolidated impugned Order dated 19.3.2024, passed by the learned Tribunal in Appeal No.58/2024 and some connected appeals also, the appellants before the Tribunal pleaded the late receiving of the departmental orders which is also reflecting from the order of the learned Tribunal itself. This factual controversy was required to be resolved by the Tribunal, being a fact-finding forum. However, while relying on the dictum of this Court rendered in the cases of Zia-ur-Rehman vs. Divisional Superintendent, Postal Services (2009 SCMR 1121), Irshad Muhammad Shah vs. Hesco (2011 SCMR 1717), Sajjad Hussain vs. Secretary, Ministry of Railways, Islamabad (2012 SCMR 195) and Prof. (R.) Nadeem Hussain Saiyid vs. Governor, Province of Punjab (2004 PLC (C.S.) 1258), the learned Tribunal observed that it is mandatory for an aggrieved civil servant to prefer departmental representation or appeal to the competent authority against the order, whether original or appellate, in respect of his terms and conditions of service and shall have to wait for a period of 90 days and since the departmental appeals were found to be barred by time, hence the service appeals before the Tribunal were also dismissed.

7. The Sindh Service Tribunal has been constituted by virtue of the Sindh Service Tribunals Act, 1973 ("**Act**"), 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. The powers of the Tribunal are provided under Section 5 of the aforesaid Act, whereby the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against and for the purpose of deciding any appeal it is deemed to be a Civil Court and have the same powers as are vested in the Code of Civil Procedure, 1908 ("**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. A conscientious examination of this provision would show that the only limitation on

the power of the Tribunal is that it must ensure and meet the acid test of reasonableness and judiciousness. The astuteness of discretion in the judicial power is meant to serve and advance the cause of justice in a judicious manner, in aid of justice, rather than perpetuating injustice.

8. In order to regulate the procedure, the Government of Sindh in exercise of the powers conferred by Section 8 of the Act promulgated the Sindh Service Tribunals Rules, 1974 ("**Rules**"). Under Rule 8, procedural requirements for filing an appeal in the Tribunal are provided, in which the most worth mentioning prerequisite is in clause (b), whereby the appellant is bound to state in brief the facts constituting cause of action and the precise date or period when it arose. In the case of Bashir Ahmed Badini vs. Honorable Chairman & Members of Administration Committee, High Court of Balochistan (2022 SCMR 448) (authored by one of us) it was held that a cause of action is predominantly a technical legal term meant for the set of circumstances and facts which lead to instituting and lodging a claim in the court of law but not any premature claims or grievances. It is legally acknowledged and recognized that it is the wrongdoing which in fact originates and triggers the right to sue. The court cannot hear any case nor render any decision without a valid cause of action or without an accrual of right to sue or, in other words, without an accrual of cause of action to set the law into motion. The expression "cause of action" means a bundle of facts which, if traversed, a suitor claiming relief is required to prove for obtaining judgment. It is also well understood that not only is the party seeking relief supposed to have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim. The expression "cause of action" is a fundamental element to confer jurisdiction and is commonly used to mean a state of affairs that enables a party to carry on an action in a court of law or a Tribunal.

9. The direct admission of appeal for regular hearing is dealt with by Rule 11, unless the Tribunal wishes to hear the appellant or his counsel before admission for which an opportunity of preliminary hearing is provided. Whereas the niceties of Rule 12 expound that after preliminary hearing the Tribunal may, for reasons to be recorded,

dismiss the appeal in limine with a further rider that if the appeal is not dismissed in limine, it shall be admitted to regular hearing. Since in the case at hand, all the service appeals were dismissed in limine on the ground that departmental appeals were time barred, therefore, we asked Mr. Javed Ali Khawaja, Focal Person (Litigation) and Syed Abid Ali, Director (HR), of Education & Literacy Department, Government of Sindh, to assist us on the date of filing departmental appeal as there are rival contentions that state that the departmental appeals were filed within time after receiving the dismissal from service letters. The officials present in the Court on their tentative gazing and assessment of the record submitted that certain departmental appeals were filed within time but they need to thrash out the entire record which could not be done at the Tribunal stage because neither any notice was issued nor any comments were filed to handle each petitioner/appellant individually, but the petitioners were nonsuited in limine. In such peculiar circumstances of the case, we feel that such factual controversy could not be decided summarily and in order to thrash out the assertion that departmental appeals were preferred within time, the notice to the department ought to have been issued for proper adjudication and verification by the department in each case regarding the exact dates of the different impugned departmental orders, receiving date of such orders by the petitioners, filing of departmental appeals/representations, decision of departmental appeals conveyed individually, if any, and finally, the date of filing service appeals by individuals for which painstaking scrutiny was required by the learned Tribunal as a first judicial fact-finding forum; because according to the petitioners, both the impugned orders do mention some details but do not correctly reflect the actual picture.

10. No doubt, keeping in mind the dictum laid down by this Court, the learned Tribunal dismissed all the appeals on the notion that departmental appeals were barred by time and we have no cavil, obviously, to such proposition of law set down by this Court but coherently, in our conscience, the question of limitation apparently in this case does not seem to be in the plainest or purest form but on the face of it, emerges as a mixed question of law and fact which has congregated certain factual controversies that are neither based

on facts virtuously nor unreservedly grounded in the law, thus require both legal and factual appraisal and exploration for the proper determination of the appeals. The procedure is a mere device with the object to facilitate and not to obstruct the administration of justice, therefore, to advance the cause of justice, any technical construction of law or rules that leaves no room for reasonable elasticity of interpretation should be guarded against and any construction which reduces the statute to a futility must be avoided; mindful of the reminiscence and resonance of the principle that the role of procedure in any system of justice is to assist, not obstruct, the granting of rights to the people, as held by this Court in the case of Imtiaz Ahmad vs. Ghulam Ali (PLD 1963 SC 382).

11. As a whole, mixed questions of law and fact activate the intermingling of the scrutiny of question of law as well as the factual resolution. A plea of limitation cannot be decided theoretically or presumably without adverting to the starting point of limitation in each case separately. Even under Order 7 Rule 11 C.P.C., before rejection of plaint, the foremost consideration for the Courts is always the meaningful construction of the averments made in the plaint and even the Rules of the Tribunal accentuate a mandatory requirement for every appellant to articulate the facts constituting the cause of action and the date when it actually arose. To cope with any such exigency, Rule 17 is relevant which empowers the Tribunal to decide the issues arising for determination upon affidavits and relevant documents, but the discretion has been accorded to the Tribunal which may direct such issues, as it may consider necessary, to be decided on such other evidence and in such manner as it may deem fit with a further rider that the party affected by any such affidavit may be permitted to cross-examine the deponent. At the same time, Rule 18 is also very significant which elucidates that if the Tribunal directs any issue to be proved by evidence, the party wishing to examine any witness on such issue shall make an application for summoning the witness within three days from the date of such directions and set forth a list of witnesses and state whether the witnesses are required to give evidence, or produce any document with a brief resume of the evidence that each witness is expected to give and brief description of the document which is required to be produce by the witness.

However, once again, discretion has been given to the learned Chairman of the Tribunal or any member nominated by him in this behalf that if he is of the opinion that the evidence of any witness specified in the list of witnesses given under sub-rule (1) is material for disposal of an appeal before it, he may direct such witness to be summoned on a date to be fixed.

12. As a result of the above discussion, the aforementioned civil petitions for leave to appeal are converted into appeals and allowed. As a consequence, thereof, the impugned Orders of the learned Tribunal are set aside to the extent of present petitioners and the matter is remanded to the learned Tribunal to consider all relevant questions afresh and decide the service appeals of the present petitioners in accordance with the law after affording a fair opportunity of hearing to the parties.

Judge

Judge

KARACHI
1st August, 2024
Mudassar
Approved for reporting