IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEALS NO.1685 TO 1687 OF 2021
(Against the judgment dated 08.01.2021 passed by the Lahore High Court, Lahore, in W.Ps. No. 428, 431 and 432 of 2021)

Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala ...Appellant
(In all cases)

VERSUS

Khalid Mehmood and others ... Respondents
(In all cases)

For the Petitioner	Mr. Muhammad Munir Paracha, ASC (In all cases)
For the Respondent No.1	Mr. Azhar Iqbal, ASC (in all cases)
For the Respondent No.4	Syed Moazam Ali Rizvi, ASC Syed Rifaqat Hussain Shah, AOR (In all cases)
Date of Hearing:	03.10.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. These Civil Appeals by leave of the Court are directed against the common Judgment dated 08.01.2021 passed by the learned Lahore High Court in W.Ps. No. 428, 431 & 432 of 2021, whereby all writ petitions filed by the Appellant were dismissed.

2. The transient facts of the case are that the respondent No.1 (Khalid Mehmood) was working as LS-1 in Model Town, Sub Division Sialkot during the year 1996-1997. On 24.03.1997, disciplinary action was initiated against him in terms of Rule 5 (iv) of the Pakistan Wapda Employee (Efficiency & Discipline) Rules, 1978 ("**Wapda E&D Rules**"). He submitted his reply, however, after personal hearing on 02.11.1999, the competent authority found him guilty without holding any regular inquiry. As a result thereof, he was compulsorily retired from service vide order dated 03.11.1999, issued by Chief Engineer, Gujranwala Electric Power Company Limited. The respondent No.1 filed a departmental appeal against the said order on 25.11.1999, which remain undecided, therefore, he approached the Federal Service Tribunal, Lahore ("**FST**") on 04.03.2000 by dint of Appeal No.197(L)(CS)/2000 but

his appeal was found barred by 02 days and as no application for condonation of delay was moved, the appeal was dismissed vide order dated 06.10.2003. The respondent No.1 subsequently approached this Court through a Civil Petition for leave to appeal which was fixed in Court on 14.09.2006, when the following order was passed:

> "Learned counsel states that in view of judgment of this court dated 27.6.2006 passed in CA 792 of 2005 etc. Muhammad Mubeen us Slam (sic) Vs. Federation of Pakistan and others, instant petitions have abated. These petitions are accordingly dismissed as abated".

3. After abatement of the Civil Petition in view of the aforesaid order, the respondent No.1 approached the Punjab Labour Court, Gujranwala through a Grievance Petition filed under Section 46 of the Industrial Relations Ordinance, 2002 but his Grievance Petition was dismissed vide order dated 15.11.2007 and being aggrieved, he filed an appeal in the Labour Appellate Tribunal which was allowed vide order dated 06.05.2014 and the case was remanded to the Labour Court. After post remand proceedings, the Grievance Petition filed by respondent No.1 was allowed and he was re-instated. The order passed by the learned Punjab Labour Court was challenged by means of an appeal before the Labour Appellate Tribunal, Punjab which was dismissed as time-barred vide order dated 21.10.2020. To end with, the appellant filed Writ Petitions in the Lahore High Court which were also dismissed vide judgment dated 08.01.2021. In a nutshell, three separate departmental proceedings were initiated against the respondent No.1 and upon the completion of proceedings the competent authority imposed the penalty of compulsory retirement.

4. The learned counsel for the appellant argued that the learned High Court failed to consider the effect of withdrawal of the Civil Petition by the respondent No.1 from this Court and wrongly dismissed the Writ Petitions on the ground that the appeals of the appellant before the Labour Appellate Tribunal were barred by time. He further argued that the penalty was imposed on the respondent No.1 by WAPDA under the provisions of the Wapda E&D Rules so, at that time, the respondent No.1 was an employee of WAPDA and covered under the statutory rules. The appeal was heard by the learned FST and, vide order dated 06.10.2003, it was dismissed as being time-barred by two days. It was further contended that the respondent No.1 approached this Court but he withdrew the petition for leave to appeal on the wrong assumption that the Muhammad Mubeen-Us-Salam Case (infra) is applicable to him. The

employees of the Gujranwala Electric Power Company ("**GEPCO**") could not approach the Labour Court, but despite that the High Court refused to issue the writ on the ground that the appeals before the Labour Appellate Tribunal were time-barred. However, the learned High Court failed to consider that, despite the time-barred appeals the writ could have been issued against the order of the Labour Court which had been passed without jurisdiction.

5. The learned counsel for the respondent No.1 argued that, after the abatement of the Civil Petition in view of the Muhammad Mubeen-Us-Salam Case (infra), the respondent No.1 could not be left without a remedy, and hence he filed the case in the Labour Court against GEPCO. No illegality was committed by the learned Labour Court and so far as the appellate order is concerned, the appellant had filed hopelessly time-barred appeals which were rightly dismissed by the Tribunal.

6. After penning down the controversy in detail, leave to appeal was granted on 03.12.2021 to examine and delve into the bone of contention i.e. effect of dismissal of service appeals by the learned FST being time-barred which were filed by the respondent No.1 for challenging the compulsory retirement. Whether abatement in this Court amounts to the abatement of the proceedings before the FST and/or the judgment of the FST was also abated and whether judgment of the FST was in field, therefore the Labour Court could not have decided the Grievance Petitions of respondent No.1 as an appellate forum, nor could it ignore the implications of the judgments of the FST which were in field.

7. Heard the arguments. The barebones of the matter reflect that after the compulsory retirement of the respondent No.1, he filed an appeal in the FST which was dismissed on 06.10.2003, with the observation that the order of the compulsory retirement was passed on 03.11.1999, therefore he (respondent No.1) could have filed the service appeal within 120 days from 03.11.1999, but he filed the appeal after lapse of 122 days, hence, his appeal was barred by two days, besides that some discussion was also made on merits despite finding the appeal time-barred which was the main reason for the dismissal of the appeal. Being aggrieved the respondent No.1 challenged the order of the Tribunal in this Court vide Civil Petition No.2869-L to 2871-L of 2003. However, on 14.09.2006 the counsel for the respondent No.1, in the presence of the counsel for the appellant, stated that in view of the judgment passed by this Court in the case of Muhammad Mubeen-Us-Salam (infra), the Civil

Petitions have abated and, in view of his statement, the Civil Petitions were dismissed as abated vide order dated 14.09.2006.

8. In the case of Muhammad Mubeen-Us-Salam and others Vs Federation of Pakistan through Secretary, Ministry of Defence and others **(PLD 2006 SC 602)**, it was held after threadbare discussion that Section 2-A of the Service Tribunals Act, 1973 ("**STA 1973**") was partially ultra vires of Articles 240 and 260 of the Constitution to the extent of the category of employees, whose terms and conditions of service have not been determined by the Federal Legislature and by a deeming clause they cannot be treated civil servants as defined under section 2(1)(b) of the Civil Servants Act, 1973 ("**CSA 1973**") and they are not engaged in the affairs of the Federation. It was further held that the cases of the employees under, section 2-A, STA 1973, who do not fall within the definition of civil servant as defined in section 2(1)(b) of the CSA 1973, shall have no remedy before the Service Tribunal, functioning under Article 212 of the Constitution and they would be free to avail appropriate remedy and the proceedings instituted either by an employee or by an employer, pending before this Court, against the judgment of the Service Tribunal, not covered by category (a) before this Court or the Service Tribunal shall stand abated, leaving the parties to avail remedy prevailing prior to promulgation of section 2-A of the STA 1973.

9. It is an admitted fact that the Civil Petition filed by the respondent No.1 in this Court against the judgment of the FST was abated in presence of the counsel for both the parties and obviously, in view of the judgment rendered by this Court in the case of Muhammad Mubeen-Us-Salam (supra), it was open for the respondent No.1 to avail remedy, thus he filed the Grievance Petition against GEPCO in the Labour Court. Had the Civil Petition not abated in this Court, there would be only two possible judgments/outcomes, either the dismissal of the CPLA, or allowing it, which means setting aside the judgment of the FST. No presumption could be drawn that the judgment of the FST attained finality, but its fate was subject to the final outcome of the CPLA which was subsequently abated. So in all fairness, no definitive conclusion can be drawn, nor can we foresee or anticipate what would be the decision in CPLA if the *lis* was not abated in this Court but, at the same time, the respondent No.1 could not be left in a limbo. The Labour Court proceeded on merits and if the appellant was so aggrieved, including the objections, if any, to the jurisdiction, the right course was to immediately approach the Labour Appellate Tribunal for further recourse.

10. The Punjab Labour Court-7, Gujranwala allowed the Grievance Petition on the sole premise that no reasonable opportunity was given to the respondent No.1 to defend the allegations of dishonesty, corruption and negligence, while the competent authority was required to hold a regular inquiry which had not been done, therefore the order of compulsory retirement was found unsustainable and was set aside by the Labour Court. It was also observed by the Labour Court in its judgment that the respondent No.1 was about 62 years old and already reached at the age of superannuation two years ago, therefore the intervening period was treated as leave. The appellant challenged the learned Labour Court's judgment before the Punjab Labour Appellate Tribunal, Lahore but the appeals were dismissed. It is significant to note that, though the appeals were filed by the appellant, but on the date of hearing nobody was there to represent the appellant before the learned Tribunal hence the appeals were dismissed vide order dated 21.10.2020, wherein the learned Labour Appellate Tribunal found the appeals hopelessly barred by 10 months and 25 days and even no application was filed for condoning such huge delay. The judgment of the Punjab Labour Appellate Tribunal was challenged by the appellant in the Lahore High Court, where also the counsel for the appellant candidly admitted that the appeals were time-barred and no application for condonation of delay was filed before learned Appellate Tribunal. However, it was argued that the order of the Labour Court which was impugned before the Appellate Tribunal was *void ab initio*, therefore no limitation runs against the void order. The learned High Court also considered the judgment of the learned Labour Court wherein the moot question was raised that without conducting any regular inquiry, punishment of compulsory retirement was imposed. Since the appellant failed to prosecute their appeals before the Tribunal and due to their own reckless and negligent conduct, they filed the appeals after lapse of considerable delay without any application for condonation of delay therefore, the appeals were rightly dismissed and the learned High Court did not find any perversity or illegality warranting interference and dismissed the writ petitions. We have also noted that before the Appellate Tribunal, the premise of objections were directly related to misjoinder and non-joinder of necessary parties and acceptance of dues and throughout the proceedings before the Labour Court, the appellant participated and also adduced evidence which is evident from the memo of the appeals filed in the Labour Appellate Tribunal, in which no specific plea was taken that GEPCO employees cannot approach the Labour Court.

11. The allegations of dishonesty, corruption and negligence leveled against the respondent No.1 could not be proved without regular inquiry. The astuteness of triggering of disciplinary proceedings by the employer is to find out whether the charges of misconduct leveled against the delinquent are proved or not and, in case his guilt is established, what action should be taken against him under the applicable Service laws which may include the imposition of minor or major penalties. There is no rigid or definitive rule that in each and every case after issuing show cause notice a regular inquiry should be conducted, but if the department aspires to dispense with the regular inquiry due to some compelling circumstances or exigency, then justifiable reasons should be assigned in writing before dispensing with the regular inquiry. No doubt if a charge is set up or stems from admitted documents, no full-fledged regular inquiry is obligatory, but if the allegations are based on disputed questions of facts, then obviously the employee cannot be denied a right of regular inquiry, specifically where the allegations cannot be resolved without leading evidence and providing a fair opportunity to the parties to cross-examine the witnesses. This Court in the case of Ghulam Muhammad Khan Vs. Prime Minister of Pakistan and others **(1996 PLC (C.S.) 868),** held whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. A similar view was expressed by this Court in the case of Shakeel Ahmad Vs. I.G. Punjab Police, Lahore and others **(2007 SCMR 192),** that if disputed questions of fact are involved, particularly in case of major penalty, a regular inquiry should be held. Whereas this Court in the case of Naseeb Khan Vs. Divisional Superintendent, Pakistan Railways, Lahore and another **(2008 SCMR 1369)** held that the principle of natural justice requires that a regular enquiry be conducted. In the case of Fuad Asadullah Khan Vs. Federation of Pakistan **(2009 SCMR 412)**, this Court held that in awarding major penalty, a proper inquiry be conducted in accordance with law where full opportunity of defence be provided to delinquent officer. Recently, in the case of Chief Postmaster Faisalabad, GPO and another. Vs. Muhammad Fazal **(2020 SCMR 1029),** it was held by this Court that it is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an obligation to conduct a regular inquiry in all circumstances in case the departmental authorities

come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD Vs. Collector of Sales Tax and others **(2013 SCMR 587)**, this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others **(2022 SCMR 1074)**, it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the

claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others **(2022 SCMR 933)**, it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (**PLD 2015 SC 212**), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself.

13. In the lower *fora*, one more plea was taken that after passing the order of compulsory retirement, the respondent No.1 accepted his dues, hence he was not an aggrieved person to assail the order of compulsory retirement which plea in our view also not based on a correct exposition of law laid down by this Court. In the case of General Manager, National Radio Telecommunication Corporation, Haripur, District Abbottabad Vs. Muhammad Aslam and 2 others **(1992 SCMR 2169)**, this Court held that mere acceptance of legal dues by an employee does not amount to waiver so as to estop him from challenging the order of dismissal. Such remedy cannot be denied to him if the charge of misconduct has not been established. In case order of termination is held to be mala fide or the charge of misconduct has not been proved, the payment of entire dues will not disentitle an employee to seek further relief of re-instatement

from the Court. It cannot be accepted as a rule in each and every case that receipt of dues would debar an employee from approaching the Labour Court for the redress of his grievance. The law has provided a forum to settle the dispute between an employer and employee including the question of misconduct. The jurisdiction of the Courts could not be taken away on the plea that after the payment had been received by a worker he is no more an aggrieved person. It is always a question of fact to be determined on the basis of record whether an employee has accepted his termination and severed his relationship with the employer. After termination of his service, out of free will, he accepted all his dues as full and final settlement of the dispute. But this act of the employee has discontinued his connection with his employer for good. After reverence of such relationship there is nothing to be adjudicated upon by' the Labour Court as relationship of the parties as employer and employee has ceased to exist. Whereas in the case of Farasat Hussain and others Vs. Pakistan National Shipping Corporation through Chairman and others **(2004 SCMR 1874)**, this Court adverted to the question that the respondents had received financial benefits after termination of their services but also noted that merely receiving such an amount would not constitute estoppel and the appropriate legal remedy could be sought.

14. As the result of the above discussion, we do not find any justification for interference in the impugned judgment passed by the learned High Court. Accordingly, these Civil Appeals are dismissed.

Judge

Judge

Judge

Islamabad the
3rd October, 2022
Khalid
Approved for reporting.