

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
Mr. Justice Jamal Khan Mandokhail

Civil Petition Nos. 1854-L, 1855-L, 1899-L and 1900-L of 2022

Commissioner Inland Revenue, Lahore. ... *Petitioner*
(In all cases)

Versus

Sui Northern Gas Pipeline Limited, Lahore. ... *Respondent*
(In all cases)

For the petitioner: Mr. Muhammad Shakeel Ch., ASC.
(Through video-link from Lahore)

For the respondent: Mr. Shahbaz Butt, ASC.
(Through video-link from Karachi)

Amicus curiae: Mr. M. Makhdoom Ali Khan, Sr. ASC.
Mr. Tariq Aziz, AOR.

On Court's call: Mr. Abdul Razzaque, Additional Registrar,
Judicial, Supreme Court of Pakistan.

Date of hearing: 29.09.2022.

ORDER

Civil Miscellaneous Applications No. 5939-L to 5942-L of 2022 ('the applications'): The office of this Court noted that the titled civil petitions for leave to appeal ('the petitions') were belatedly filed with a delay of one hundred and forty-two and one hundred and forty-three days respectively. The applications filed by the Commissioner Inland Revenue ('the petitioner') state that the petitions were filed within the prescribed period of sixty days¹ which is confirmed by the documents attached therewith.

2. Mr. Muhammad Shakeel represents the petitioner and states that the judgments impugned in these petitions were passed in four tax references heard by the High Court on 18 November 2021. However, judgments were *reserved*, that is, they were not written, signed and pronounced when they were heard. He further states that the requisite notices informing about the

¹ Order XIII of the Supreme Court Rules, 1980.

pronouncement of the judgments were not issued and the judgments do not inscribe the date when they were written, signed and pronounced. On 18 November 2021, requisite applications to obtain certified copies of the judgments were filed (copies whereof are attached with the applications) but these were returned because the judgments had not been written as yet. It was when the judgments were uploaded on the website of the Lahore High Court on 24 March 2022 that the petitioner first learnt of them, submits Mr. Shakeel, and then fresh applications to obtain certified copies of the judgments were filed on 1 April 2022. The learned counsel has also referred to the noting made by the AOC (Administrative Office Coordinator of the High Court) on the impugned judgments, that '*Blue Slip verified 31/3/22 AOC*'; we are informed that blue slips are issued in respect of judgments which have been *approved for reporting*. It is submitted that the date on the Blue Slip confirms that the impugned judgments were signed and announced on 31 March 2022.

3. The learned Mr. Shahbaz Butt represents the respondent, and states that the impugned judgments only inscribe one date, that is the *date of hearing*, which is 18 November 2021, and though the date of signing and pronouncing the impugned judgments is not separately mentioned thereon the same can be ascertained from the surrounding circumstances; from which it can be gathered that the petitions have been belatedly filed.

4. An examination of the record confirms that the impugned judgments were not written, signed and pronounced on the '*date of hearing*'. The respondent also does not controvert the contents of the applications nor has referred to the order-sheets of the Lahore High Court to rebut the contention of the petitioner. If dates had been inscribed on the impugned judgments, there would have been no difficulty in calculating the start and end of the prescribed sixty day period within which the petitions for leave to appeal had to be filed. Instead, considerable court time was wasted to ascertain when the impugned judgments were written, signed and pronounced, and having done so to then proceed to determine whether the petitions were filed within time. But these are not the only cases in which time has been wasted in trying to ascertain when a judgment was written, signed and pronounced. A practice is developing of not inscribing the date when the judgment is written, signed and pronounced. And at times the

date when the case was earlier heard is mentioned as the date of the judgment, even though the judgment is written, signed and pronounced later.

5. To resolve such anomalous situations it would be appropriate to consider and determine the following questions:

Q1. Does a judgment have to be dated?

Q2. What are the consequences if a judgment does not mention the date when it was written, signed and pronounced?

Q3. When a judgment, which does not mention when it was written, signed and pronounced, is challenged should the surrounding circumstances and record be considered to determine whether the challenge has been made within the prescribed period?

The Code of Civil Procedure, 1908 (**'the Code'**) defines what a *judgment* is - "*judgment*" means the statement given by the Judge of the grounds of a decree or order.² Therefore, in regards to the aforesaid queries an *order* is included when referring to a *judgment*.

6. Learned senior counsel Mr. Makhdoom Ali Khan was appointed as *amicus curiae* to assist the Court on the aforesaid questions. Mr. Tariq Aziz who is an Advocate on Record (**'AOR'**) of this Court was also appointed as *amicus curiae* to benefit from his practical knowledge of working as an AOR. We also sent for Mr. Abdul Razzaque, the Additional Registrar (Judicial) of this Court, to apprise us of the application of the Supreme Court Rules, 1980 and the practice of this Court.

7. On the question of whether a judgment is required to be dated when it is written, signed and pronounced the learned Mr. Makhdoom Ali Khan referred to the different provisions of the Code including Order XX, rule 1(2), 3 and 7 and Order XLI, rules 30 and 31. And, the learned AOR Mr. Tariq Aziz referred to the different provisions of the Supreme Court Rules, 1980 (**'the Rules'**).

8. With regard to the original jurisdiction of a court, Order XX, rule 1(2) of the Code stipulates that the '*judgment should be pronounced in open Court, either at once or on some future day in respect whereof notice shall be*

² Section 2(9) of the Code of Civil Procedure, 1908.

given to the parties or their advocates'. Order XX, rule 3 of the Code stipulates that, *'The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it...'*. And, decrees are attended to by Order XX, rule 7 of the Code which provides that:

'7. Date or decree. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.'

With regard to the appellate jurisdiction Order XLI, rule 30 of the Code stipulates that the court, *'shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders'*. And, Order XLI, rule 31 of the Code stipulates that the judgment *'shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein'*. The abovementioned provisions of the Code clearly stipulate that a judgment, whether in a court's original or appellate jurisdiction, must be dated. And, the pronouncement of a judgment does not simply mean the result of the case, such as, *allowed*, *dismissed* or any other variant, but, as stipulated in section 2(9) of the Code, it is *'the statement given by the Judge of the grounds of a decree or order'*.

9. Now we proceed to consider certain relevant provisions of the Supreme Court Rules, 1980. An appeal before this Court is required to be filed *'within thirty days from the date of grant of certificate or the date of impugned judgment, decree or final order'*, and a petition for leave to appeal is required to be filed *'within sixty days of the judgment or decree or final order'*, as respectively provided by Order XII Rule 2 and Order XIII of the Supreme Court Rules, 1980. Mr. Abdul Razzaque, the Additional Registrar (Judicial), provided useful insight into the practice of this Court and stated that it would greatly facilitate matters if all judgments bore the actual date that they are written, signed and pronounced. The personnel of this Court waste considerable time in determining whether an appeal, or as the case may be, a petition for leave to appeal has been filed within time when the impugned judgment does not inscribe the date on which it was written, signed and pronounced. If in all judgments, the dates were inscribed when they were written, signed and pronounced, the difficulties arising from this

self-created problem would be avoided and the precious time of all courts wherein judgments are assailed, would not be pointlessly wasted in trying to ascertain something which should have been expressly stated, that is, the date the judgment was written, signed and pronounced.

10. The Supreme Court Rules, 1980 also prescribe that if a judgment is to be pronounced later, notice thereof must be given as stipulated in Order X, rule 1, reproduced below:

‘1. The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their Advocates-on-Record and the decree or order shall be drawn up in accordance therewith.’

As stated above the pronouncement of a judgment does not simply mean the result of the case but also the reasons thereof. Simply announcing the result of the case after hearing it but before it is written, containing the grounds/reasons for the decision, does not constitute a judgment/decision. A judgment/decision explains how and why the court decided a case in a particular manner. This is also what Article 189 of the Constitution of the Islamic Republic of Pakistan states – ‘*Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan*’.

11. If a judgment of the Supreme Court is sought to be reviewed the requisite application has to be filed *within thirty days after pronouncement of judgment* as stipulated by Order XXVI rule 2 of the Rules, reproduced hereunder:

‘2. Application for review shall be filed in the Registry within thirty days after pronouncement of the judgment, or, as the case may be, the making of the order, which is sought to be reviewed. The applicant shall, after filing the application, for review, forthwith give notice thereof to the other party and endorse a copy of such notice to the Registry.’

The Additional Registrar stated that if a judgment of the Supreme Court does not inscribe the date when it was written, signed and pronounced it results in considerable waste of time in ascertaining when this was done. And, having once ascertained when the judgment was written, signed and pronounced it is then determined whether the review application has been filed within time.

12. Not inscribing the date when a judgment is written, signed and pronounced is connected with the belated writing of judgments. This Court has repeatedly held that a judgment must be written within a reasonable time of the case being heard. In the case of *Iftikhar-Ud-Din Haidar Gardezi v Central Bank of India Ltd.*,³ it was held by a three-member Bench of this Court⁴ that:

'In this position of law, the High Court was required to pronounce judgment in open Court at once or on some future day. The "future day" under Rule 30 could not possibly mean that judgment would be announced after unreasonable delay as was done in this case. In any case, a period of 8 months is not reasonable according to the rule laid down by this Court in Muhammad Bakhsh's⁵ case supra. In the case of Mst. Ghulam Fatima,⁶ following observations were made:

"I have deliberately reopened the case so far as the arguments are concerned, because after such a long time the learned Judge cannot be expected to remember the arguments put forward and he may either not have any notes or may have destroyed the notes."

Delay even of a little over three months was considered to be objectionable and its explanation was asked for in case of Bashir Ahmad Khan.⁷ In the case of Walayat Hussain,⁸ there was delay of 8 months in announcing the judgment and it was held to be appropriate to rehear the case. The following observations were made:

"It was contended by learned counsel for the petitioner that the suit was badly mishandled by the learned Civil Judge inasmuch as he hurriedly closed the evidence of the petitioner but then slept over the matter for a long time and decided it after about 8 months of the hearing of arguments. It was pointed out by them that the normal period for announcing judgment, after hearing of arguments, is three months and if the case is not decided within that period arguments are required to be heard afresh. Learned counsel for respondent could not justify the announcing of judgment by the learned Civil Judge after 8 months of the hearing of arguments and had no objection to the remand of the case to him for fresh decision after hearing arguments again."

³ 1996 SCMR 669, pp. 674 and 675.

⁴ Comprising of Sajjad Ali Shah, CJ, Sh. Riaz Ahmad and Raja Afrasiab, JJ.

⁵ *Muhammad Bakhsh v State* (1989 SCMR 1473).

⁶ *Fatima v Sardara* (PLD 1956 (WP) Lahore 474).

⁷ *Bashir Ahmed Khan v Mumtaz Begum* (1979 CLC 114).

⁸ *Walayat Hussain v Muhammad Hanif* (1989 MLD 1012).

Dacca High Court while dealing with identical circumstances, took a very serious notice of delay in the announcement of judgment in case of M.K. Zaman.⁹ Para 4 of the judgment says:

"It is to be noted that the procedure adopted in this case by the learned Magistrate Mr. A.K.M. Fazlul Haq is open to serious objection. There was no reason for not delivering the judgment within a week of hearing arguments. The first date for judgment was fixed 22 days ahead and then pronouncement of the judgment was adjourned on two other dates till at last it appears to have been written on 29-10-1966 more than 3-1/2 months after hearing of the arguments. It was simple case under sections 323 and 379 of the Pakistan Penal Code and there was no justification whatsoever for such delay in delivery of judgment. The delay on the part of the learned Magistrate in pronouncing his judgment in this simple case cannot be too strongly condemned.

Let a copy of this judgment be sent to the Chief Secretary, Government of East Pakistan."

This Court in Muhammad Bakhsh case ruled that the reserved judgments had to be announced within reasonable time:

"... it is proper that once the arguments concluded and the judgment reserved, it has to be announced' within reasonable period. We are sure that in future no unnecessary delay will take place in announcement of judgments."

13. There are also adverse consequences when there is inordinate delay in writing judgments as pointed out in the case of *Muhammad Ovais v Federation of Pakistan*¹⁰ by another three-member Bench of this Court:¹¹

'The unreasonable delay of ten months in the instant case in pronouncement of judgment by the learned High Court has caused prejudice as well. In the lengthy arguments addressed before us on merits, we were referred to a bulk of documentary evidence going to the very route of the case which was never found mentioned in the impugned judgment of the High Court. This omission seems to be caused only and only due to the delay of ten months in question.'

14. More recently in the case of *MFMY Industries Ltd. v Federation of Pakistan*,¹² which is also by a three-member Bench this Court,¹³ what had

⁹ *M. K. Zaman v Matiar Rahman* (1969 P.Cr.L.J. 361).

¹⁰ 2007 SCMR 1587, p. 1590.

¹¹ Sardar Muhammad Raza Khan, Ch. Ijaz Ahmed and Hamid Ali Mirza, JJ.

¹² 2015 SCMR 1550, pp. 1566 and 1567.

¹³ Comprising of Mian Saqib Nisar, Gulzar Ahmad and Maqbool Baqar, JJ.

been earlier stated was reiterated and done so comprehensively after a thorough survey of precedents, and it was emphatically expounded, that:

'If the Judges cannot compose and deliver the judgments within the above (reasonable) time, then they for sufficient reasons, to be recorded (by them) should set out the case for re-hearing. However, because of the high status of the judges of the High Courts, it is not expected that the learned Judges shall fix the matters for rehearing in routine just to cover up the lapse in composing the judgment within 90 days, rather I am sure that it shall definitely be for genuine reasons, reflected in the order of rehearing as to why the judgment could not be written and pronounced. However, pronouncement of judgment by the High Court after a lapse of time period of 90 days if the matter for any reason is not put for any rehearing per se shall not be invalid, though it may be frowned upon. But again it does not mean that learned High Court has indefinite time to pronounce the judgment after hearing of the matter. In my opinion, the maximum time within which the judgment should come is 120 days. Otherwise the judgment shall stand weakened in quality and efficiency, if not invalid altogether and therefore when challenged before this Court, the Court shall decide whether it should sustain or set aside on the simple and short ground of inordinate delay.'

15. Judgments by the superior courts, by which are meant the High Courts and the Supreme Court, were also specifically considered in the *MFMY* case and it was held, that:¹⁴

'8. Now coming to the judgments to be rendered by the apex Court of the country. The cases/matters by this Court are heard in benches. Usual cases are heard by a three member bench, though two member benches also hear the matters. The rule of 90 days should also ordinarily extend to those (cases) heard by two, member benches of this Court and if the matter is not decided within this time the case should be fixed for rehearing. This is what I would do for myself.'

'9. Furthermore, in the context of the judgments in general and in particular to be delivered by the superior courts, it is, my firm and well thought-out view that if there is an inordinate delay in pronouncement of judgment after hearing of the matter, ... the Judges shall not be in a position to exactly recall and record with precision and exactitude as to what propositions of law and facts were argued before them. This shall have reflection upon the rule of *audi alteram partem*, which is a fundamental and salutary rule of justice and postulates that if someone has been denied appropriate opportunity of hearing in a case, any verdict/decision given against such person/party shall not be laudable.'

¹⁴ *MFMY Industries Ltd. v Federation of Pakistan* (2015 SCMR 1550, p. 1566).

16. This Court (in the case of *MFMY*) had also observed that Judges who do not decide cases quickly and do not write judgments within a reasonable time may be guilty of misconduct, and did so by referring to the Judges Code of Conduct:

'And of course the mandate of Article X of the Judges Code of Conduct, which they have sworn (vide their oath) to follow and abide by in letter and spirit. And the said Article stipulates:

"In this judicial work a Judge shall take all steps to decide cases within the shortest time, controlling effectively efforts made to prevent early disposal of cases and make every endeavor to minimize suffering of litigants by deciding cases expeditiously through proper written judgments. A Judge who is unmindful or indifferent towards this aspect of his duty is not faithful to his work, which is a grave fault."

17. It may be that the date is not inscribed on the judgment when it was written, signed and pronounced to circumvent the directions of this Court to write judgments within a reasonable time and/or to escape, as observed by this Court, the consequences of such *misconduct*.

18. Having considered the Code, the Rules, the Constitution and precedents it is clear that every judgment must inscribe the date when it is written, signed and pronounced because this, as discussed above, is what the law mandates; the above noted Q1 is accordingly answered. As regards Q2, there may be serious consequences for parties if the challenge to a judgment is disallowed because it was incorrectly ascertained when it was signed or objection to belated filing could not be taken because the date of signing and pronouncement was incorrectly assumed to be later than when it was actually signed and pronounced. That with regard to Q3, in addition to wasting the time of the courts' personnel, valuable court time is also wasted in ascertaining when an impugned judgment may have been written, signed and pronounced, and then to determine whether it was assailed within the time prescribed for doing so.

19. We are conscious of the fact that no one should be prejudiced due to an act of a court. Therefore, when judgments are belatedly written or wherein the date of signing and pronouncement is not mentioned its

consequences should not be suffered by litigants. Accordingly, the answers to the said three questions should not be construed to undermine the right of litigants.

20. Any impression that judges want to escape criticism or accountability by not inscribing the date on a belatedly written judgment must be assiduously dispelled. This Court must lead by example and do away with the practice, sometimes resorted to, of not inscribing the date when a judgment is actually written, signed and pronounced. This Court holds judges of other courts to account, therefore, it is all the more incumbent upon it to abide by the same standard.

21. The reasons mentioned in the applications and those put forward by the petitioner's counsel, and our own independent examination of the facts confirm that the petitions were not belatedly filed; the determination by the office in this regard was not correct. Therefore, since Civil Petitions No. 1854-L, 1855-L, 1899-L and 1900-L of 2022 were filed within the period prescribed for their filing they should be listed for hearing in due course.

22. A copy of this order be sent to the Registrars of all the High Courts who should upon receipt issue requisite instructions in their respective territories to all judges, including judges of the High Court, to inscribe the date on every order and judgment when it was actually written, signed and pronounced.

Judge

Judge

Judge

Islamabad:
07.11.2022
(M. Tauseef)

Approved for Reporting