

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench - V:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

C.P.2712/2020

(Against the order of Federal Service Tribunal, Islamabad,
dated 28.07.2020, passed in M.P. No.464/2020 in Appeal No.1872(R)CS/2005)

Zakir Mehmood

..... **Petitioner**

Versus

Secretary, Ministry of Defence (D.P), Pakistan Secretariat, Rawalpindi,
etc.

..... **Respondents**

For the petitioner: Mr. Aftab Alam Yasir, ASC.

For the respondents: N.R.

Date of hearing: 12 April 2023

ORDER

Syed Mansoor Ali Shah, J.- The sole question that has come up for our consideration in the present case is: whether the Federal Service Tribunal ("**Tribunal**") while deciding an appeal under the Service Tribunals Act 1973 ("**Act**"), or any application including an application under Section 12(2) of the Code of Civil Procedure 1908 ("**CPC**"), can award costs.

2. Briefly, the facts are that the petitioner was proceeded against departmentally for misconduct and awarded major penalty of compulsory retirement. Thereafter, the petitioner embarked upon a long journey of unending litigation, which is described hereunder in a tabular form for convenience and clarity as under:

No.	Nature of proceedings	Court	Decision	Date
1	Service appeal	Tribunal	Dismissed	09.01.2008
2	Petition for leave to appeal	Supreme Court	Dismissed	08.05.2008
3	Review petition	Supreme Court	Dismissed	01.06.2009
4	Writ petition	Islamabad High Court	Dismissed	26.02.2015
5	Intra Court Appeal	Islamabad High Court	Dismissed	02.04.2015
6	Petition for leave to appeal	Supreme Court	Dismissed	07.10.2015
7	Constitution petition under Article 184 (3)	Supreme Court	Returned with office objection	03.04.2017
8	Misc. appeal against office order	Supreme Court	Dismissed as withdrawn	07.06.2017

9	Constitution petition under Article 184 (3)	Supreme Court	Returned with office objection	07.10.2017
10	Misc. appeal against office order	Supreme Court	Dismissed	30.10.2017
11	Application under Section 12(2) CPC	Supreme Court	Dismissed as withdrawn	02.05.2019
12	Application under Section 12(2) CPC	Tribunal	Dismissed	13.06.2019
13	Application under Section 12(2) CPC	Tribunal	Dismissed	28.07.2020

The last mentioned order dated 28.07.2020 is impugned in the present petition for leave to appeal, whereby the Tribunal dismissed the application under Section 12(2) CPC of the petitioner with costs of Rs.50,000/-. The said application was filed by the petitioner against the order of the Tribunal, dated 09.01.2008.

3. We have heard the learned counsel for the petitioner and examined the record of the case.

4. Section 5(2) of the Act provides for the powers of the Tribunal and is reproduced hereunder for ease of reference:

5. Powers of Tribunals.

- (1)
- (2) A Tribunal shall, for the purpose of deciding any appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of —
- (a) enforcing the attendance of any person and examining him on oath;
 - (b) compelling the production of documents; and
 - (c) issuing commission for the examination of witnesses and documents.

A bare reading of the above provision shows that for the purpose of deciding an appeal, the Tribunal is deemed to be a civil court and has the same powers as are vested in a civil court under the CPC. Needless to mention that all courts exercising civil jurisdiction (whether original/ trial, appellate or revisional) under the CPC read with the Civil Courts Ordinance 1962, are referred to as "civil courts." But as the powers of a civil court have been conferred on the Tribunal for the purpose of deciding appeals, the reference in Section 5(2) of the Act to the powers of a civil court under the CPC is to be taken as a reference to the powers of an appellate civil court under the CPC. And since the Tribunal can interfere with the findings of facts recorded by the departmental authorities, in addition to correcting any legal error committed by them, the appeals filed before it are in the nature of first appeals as provided in the CPC. Thus, the principles governing first appeals under the CPC

apply to appeals before the Tribunal, and the powers of the first appellate court under the CPC are available to it.¹

5. A first appellate court can award the actual costs incurred in appeal as per provisions of rule 35(3) of Order 41, CPC and can also impose special costs in the exercise of its inherent powers under Section 151, CPC if the facts and circumstances of the case necessitate the making of such an order to secure the ends of justice or to prevent the abuse of the process of the court.² Therefore, both these powers are also available to the Tribunal while deciding an appeal under the Act. Similarly, a first appellate court can award not only the actual costs incurred on an application under Section 12(2), CPC by virtue of Section 35 read with Section 141,³ CPC but also compensatory costs under Section 35A, CPC or special costs under Section 151, CPC. Thus, the Tribunal can also exercise these powers in awarding costs while deciding an application under Section 12(2), CPC or any other application.

6. It may be elaborated that actual costs are awarded by a civil court under Section 35 of the CPC to reimburse the successful party the expenses incurred by him in the assertion or defence of his rights before the court and compensatory costs are granted under Section 35A to compensate him for undergoing unnecessary litigation due to false or vexatious claim or defence made by his opponent. Whereas special costs are imposed, under Section 151, for deterrent purposes on a party who initiates a proceedings, particularly the appellate proceedings, in complete disregard of the obvious factual or legal position, and thereby wastes the precious court time and abuses the process of the court.

7. In the present case, the Tribunal which has imposed special costs on the petitioner, while dismissing his application under Section 12(2) of the CPC, is situated in Islamabad and thus has the powers available to the first appellate civil courts in Islamabad, where the amended provisions of Sections 35, 35A and 35B, CPC are applicable under the Costs of Litigation Act 2017. By notification dated 14 March 2018, the Costs of Litigation Act 2017 has been enforced and made applicable to all courts in Islamabad in respect of all proceedings including suit, appeal, review, revision, execution or any other proceedings and any matter incidental thereto. The 2017 Act has, in fact,

¹ Ali Muhammad v. Commissioner Afghan Refugees 1995 SCMR 1675; Shakeel Ahmed v. E.M.E., Rawalpindi 1998 SCMR 1970.

² Section 35A of the CPC as to compensatory costs does not apply to appeal proceeding.

³ Section 141, CPC states that the procedure provided in the CPC in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

consolidated the two types of costs, compensatory and special, in the newly added Section 35B under one head of "special costs" by removing the upper limit on the amount of such costs. It has left to the discretion of the court concerned to determine the appropriate amount of special costs. It may be underlined that a civil court or the Tribunal as the case may be, is to exercise this discretion, like all other discretions, on the principles of fairness, equity and justice, not arbitrarily or perversely, while keeping in view the peculiar facts and circumstances of a particular case.

8. In view of the legal position stated above, we find that while deciding an appeal under the Act or an application under Section 12(2) of the CPC, the Tribunal has the powers to impose special costs, without any upper limit of amount, on a party to that appeal or application as the case may be, keeping in view the peculiar facts and circumstances of a particular case. In the present case, the Tribunal has imposed special costs of Rs.50,000/- on the petitioner for wasting the precious public time of the Tribunal by making a vexatious application under Section 12(2) CPC. Such exercise of discretion by the Tribunal in imposing the costs is fully justified in the facts and circumstances of the case stated in para 2 above, and in no manner does it tantamount to an arbitrary or perverse exercise of discretion. The present petition is thus found meritless. It is therefore dismissed and the leave to appeal is declined. We may mention here that we have abstained to impose additional costs, in the exercise of powers of this Court under the Supreme Court Rules 1980, while dismissing the present petition as the petitioner has not pressed the merits of his application under Section 12(2) CPC before us and argued his grievance only to the question as to the powers of the Tribunal to impose costs.

9. Before parting with the order, we find it necessary to emphasise that it is high time that courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants, which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence before court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and

fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the financial burden of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The practice of imposing costs would thus cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe.⁴

Judge

Islamabad,
12th April, 2023.

Approved for reporting
lqbal

Judge

⁴ Qazi Naveed ul Islam v. District Judge, Gujrat 2023 SCP 32.