

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.2467 OF 2020

(Against Order dated 18.08.2020 passed by the Federal Service Tribunal, Islamabad in Appeal No. 141(P)CS/2022)

Abid Jan

...Petitioner

Versus

Ministry of Defence through its Secretary,
Islamabad and others

... Respondents

For the Petitioner:

Mr. Riaz H. Rahi, ASC

For the Respondents:

Mr. Nasir Mehmood, ASC
(Thr. video link at Peshawar)

Date of Hearing:

04.04.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the Order passed by the Federal Service Tribunal, Islamabad ("**FST**") dated 18.08.2020 in Appeal No.141(P)CS/2020 whereby the appeal of the petitioner was dismissed *in limine*, being barred by time.

2. According to the narrative of the petitioner, he was dismissed from service *vide* order dated 29.05.2019 and being aggrieved, he filed a Departmental Appeal on 28.06.2019. Since his departmental appeal was not decided, therefore, he filed a Writ Petition before the Peshawar High Court. Being a civil servant, the petitioner should have filed an appeal before the FST rather than approaching the High Court, keeping in view the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. Mindful of the correct legal position, the High Court, *vide* judgment dated 16.06.2020, instead of dismissing or nonsuiting the petitioner on the question of jurisdiction, observed that the Writ Petition should be treated as a Service Appeal and remitted it to the FST for its disposal

in accordance with law and subject to all legal objections that may be raised by the other side. In paragraph 06 of the High Court judgment, the Office was directed to retain a copy of the Writ Petition and send the original memo of the petition along with its annexures to the FST at the earliest possible date.

3. The learned counsel for the petitioner argued that despite the conversion of the Writ Petition into a Service Appeal, and its remittance to the FST, the appeal was dismissed on the ground of limitation rather than deciding the appeal on merits. The FST also failed to advert to the fact that the appeal was not time barred and it was sent to the FST by the High Court with a continuing cause of action, but the appeal was dismissed *in limine*.

4. The learned counsel for the respondents argued that since the appeal was time-barred, therefore it was rightly dismissed by the FST and even sending back the memo of the petition to the FST was subject to all legal objections. However, he agrees that the FST dismissed the Service Appeal *in limine* without issuing notice to the respondents in appeal, and no one was present on behalf of the respondents even to take any legal exception with regard to the plea of limitation.

5. Heard the arguments. It is an admitted fact that, *vide* order dated 16.06.2020, the High Court remitted the matter to the FST and the Office of the High Court was also directed to transmit the original memo of the Writ Petition along with annexures to the FST, which shows by all means that the purpose of sending the original memo of petition to the FST was to entertain and register it as a Service Appeal rather than subpoenaing the petitioner to submit any fresh or amended memo of appeal. In the impugned order of the FST, the date of institution is mentioned as 21.07.2020, whereas the order was passed by the High Court on 16.06.2020. Moreover, the date of the dismissal order of the petitioner was 29.05.2019, and he submitted his departmental appeal on 28.06.2019, which was indubitably within time. The FST has failed to mention as to how the date of institution was marked as 21.07.2020 in the impugned order, and what was the date of receipt of the certified copy of the Order from the High Court along with the original memo of the Writ Petition after its conversion into a Service Appeal. When the original writ was directed to be

transmitted to the FST by the High Court in the aforementioned order, then it was neither within the dominion of the petitioner to present the fresh memo of appeal by himself, nor was he obligated to submit a fresh memo of appeal which would otherwise have become time barred when, in order to save the *lis* from the rigors of limitation, the Writ Petition was converted into an appeal. Indeed, the matter of transmitting the memo of the Writ Petition after its conversion to the FST was, in all fairness, a matter between the Office of the High Court and FST, therefore the observation made by the FST in paragraph 6 of the impugned Order dated 18.08.2020 that the petitioner filed the Service Appeal in the FST on 21.07.2020 is unwarranted and misconstrued.

6. In the case of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56), an identical controversy was dilated upon by this Court and it was held that no fetters or bar could be placed on the High Court and/or this Court to convert and treat one type of proceedings into another type into another and proceed to decide the matter either itself, provided it has jurisdiction over the *lis* before it in exercise of another jurisdiction vested in the very Court or may remit the *lis* to the competent authority/forum or Court for decision on merits. It was further held that once the Writ Petition which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as departmental appeal, that too where the limitation by then had not run out as noted above, therefore the learned Punjab Services Tribunal had fallen into error to dismiss the Appeal before it on the ground of limitation alone, without advert to the merits of the case and as a consequence of these findings, this Court had set aside the Punjab Services Tribunal order and remanded the matter with the direction to decide the pending appeal on merits. In the next case of Abdul Qadoos v. Commandant Frontier Constabulary, KPK, Peshawar and another (2023 SCMR 334), a similar controversy was adverted to by this Court keeping in mind the doctrine of *ex debito justitiae* which refers to the remedies to which a person is entitled to as of right, as opposed to a remedy which is discretionary. Every Court has the power to rectify *ex debito justitiae* its judgment and order to prevent abuse of process and severe patent oversights and mistakes. This power is an inherent power of the Court to fix the procedural errors if arising from the Court's own omission or

oversight which resulted in a violation of the principles of natural justice or due process. In this case also the High Court, in order to avoid a grave injustice and the rigors of technicalities, remitted the matter to the FST but the FST dismissed the appeal on the ground of limitation and in similar circumstances, the matter was remanded back to the Service Tribunal to decide the appeal on merits. This Court in the case of Government of the Punjab, through Secretary, Schools Education Department, Lahore etc. vs. Abdur Rehman & others (2022 SCMR 25), held that the lexicons of law provide the definition of the legal maxim "*Ex Debito Justitiae*" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act *ex debito justitiae* is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process.

7. It is the foremost duty of the Court and Tribunal to do complete justice. A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim "*actus curiae neminem gravabit*", which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court, or that an act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. This is a *de rigueur* sense of duty in the administration of justice that the Court and Tribunal should be conscious and cognizant that nobody should become a victim of injustice as a consequence of their mistake and, in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making the necessary correction forthwith. According to the principle of restitution, if the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not happen.

This expression is established on the astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake. [Ref: Homoeo Dr. Asma Noreen Syed Vs. Government of the Punjab through its Secretary Health, Department & others (2022 SCMR 1546 = 2022 PLC (C.S) 1390)].

8. We have considered the impugned order of the FST and reached the conclusion that when the Writ Petition was treated as a Service Appeal and transmitted to the FST, then non-suiting the petitioner on the ground of limitation was not justified and the proper course was to issue notice to the respondent and, after providing ample opportunity of hearing to the parties, the Service Appeal should have been decided on merits as opposed to a technical knock-out.

9. As a result of the above discussion, this Civil Petition is converted into an appeal and allowed. The impugned judgment of the learned Federal Service Tribunal is set aside and the matter is remanded back to decide the appeal afresh after providing a proper opportunity of hearing to both the parties.

Chief Justice

Judge

Islamabad, the
4th April, 2023
Khalid
Approved for reporting