SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 76 of 2015
(PLA filed on 16.12.2014)

1. Deputy Inspector General Police, Muzaffarabad.
2. Principal Police Training School, Muzaffarabad, AJ&K.
3. Registrar Police Department, Central Police Office, Muzaffarabad, AJ&K.

…. APPELLANTS

VERSUS

1. Muhammad Asif Khan, Retired Sub-Inspector Police c/o Principal Police Training School, Muzaffarabad.

…… RESPONDENT

2. Accountant General, Azad Jammu and Kashmir, Muzaffarabad.

….. PROFORMA RESPONDENT

(On appeal from the Judgment of the Service Tribunal dated 04.10.2014 in Service Appeal No. 98/2013)

FOR THE APPELLANTS: Mr. Asghar Ali Mallik, Advocate.

FOR THE RESPONDENTS: Syed Shafqat Hussain Gardezi, Advocate.

Date of Hearing: 05.04.2016

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court has been filed from the judgment of the Service Tribunal dated 04.10.2014 through which the appeal filed by respondent No. 1, herein, has been accepted.

2. The facts forming the background of this appeal are that respondent No. 1, a civil servant of Police Department, was retired from service vide order dated 15.03.20123. He challenged the retirement order before the learned Service Tribunal on 02.02.2013 on different grounds. The learned

Service Tribunal admitted the appeal for regular hearing on 04.02.2013. After necessary proceedings, vide impugned judgment dated 04.10.2014, the learned Service Tribunal accepted the appeal filed by respondent No. 1 and set-aside the retirement order while reinstating him in to service with all back benefits. Feeling aggrieved, the appellants have now filed the instant appeal by leave of the Court.

3. Mr. Asghar Ali Malik Advocate, the learned counsel for the appellants, after narration of facts mostly stressed on the point that the appeal filed by the respondent before the Service Tribunal on the face of it was hopelessly time barred. An objection in this regard was raised before the Service Tribunal but the same has not been attended and resolved which resulted into handing down the impugned judgment in an incompetently filed appeal. To substantiate his arguments, he has referred to plaragraph-4 of the impugned judgment and submitted that despite incorporation of this point in the impugned judgment, it has neither been attended nor resolved by the Service Tribunal. Thus, it is obviously clear from the

impugned judgment that Service Tribunal failed to apply its judicial mind and resolve the important proposition which was precondition for entertaining the appeal. It is now almost settled that for entertaining an appeal or cause, a party has firstly to cross the barrier of limitation and thereafter the merits have to be considered. He further submitted that according to the respondent's own averments made in the memo of appeal before the Service Tribunal especially, ground 'E', the appeal on the face of it is time barred and no other proof in this regard is required.

4. Conversely, Syed Shafqat Hussain Gardazi, Advocate, the learned counsel for the respondent forcefully defended the impugned judgment and submitted that by acceptance of appeal, it will be deemed that Service Tribunal has condoned the limitation, therefore, this point cannot be reopened before this Court. He further submitted that respondent had approached the Civil Court, thus, according to the statutory provisions the time spent at wrong forum has to be deducted while computing

limitation for filing of appeal. The impugned judgment is well reasoned calling for no interference, therefore, this appeal having no substance is liable to be dismissed.

5. We have paid our utmost attention to the respective arguments of the learned counsel for the parties and also examined the record made available. According to the pleadings of the parties, the arguments advanced at bar and contents of the judgment, in our opinion the foremost point which requires resolution is of limitation. The respondent himself in ground 'E' of the memo of appeal filed before the Service Tribunal has admitted that he has challenged the retirement order in the Civil Court. Thereafter he has approached the Service Tribunal through the appeal. The appeal was filed on 2.2.2013 against the order dated 15.3.2012 which obviously is hopelessly time barred by months' period. The only explanation furnished is the filing of civil suit. Although, under the provision of section 9 of the Azad Jammu and Kashmir Service Tribunals Act, 1975, only the provision of sections 5 and 12 of the Limitation

Act, 1908 has been made applicable. Thus, section 14 of the Limitation Act has not been made applicable to the proceedings before the Service Tribunal. In this regard, the statutory provisions of section 29 of Limitation Act, 1908 are very much clear which speak that the provisions contained in sections 4, 9 to 18 and 22 shall apply only in so far as, and to the extent which they are not expressly excluded by such special or local law. Under the provisions of section 9 of the Azad Jammu and Kashmir Service Tribunals Act, the provisions of sections 5 and 12 of the Limitation Act have been mentioned ad non-mentioning of section 14 excluded its application.

6. Leaving aside this aspect, according to the statutory provision of section 14 of the Limitation Act, for seeking condonation on the ground of wrong forum, the basic condition is prosecution of the case with due diligence, in good faith, whereas regarding the matter as is involved in the case there is no legal ambiguity regarding jurisdiction of the Courts. Relating to the matters of terms and conditions of service, under the Constitutional provisions of

section 47 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the jurisdiction of all the civil Courts is excluded by conferring the same conclusively on the Service Tribunal.

6. In the Azad Jammu and Kashmir since decades' time, it is well established and recognized practice that the matters relating to terms and conditions falls within the jurisdiction of the Service Tribunal. Thus, prosecution of any civil suit in such matters cannot be deemed or treated to be in good faith, with due diligence or with proper care and caution. Even in this regard the superior Courts have enunciated the principle of law that wrong advice of counsel for approaching wrong forum cannot be treated as valid ground for condonation of delay.

7. Another celebrated principle of law in relation to the condonation of delay is that the party who approaches the Court, after prescribed limitation has to explain the delay of each and every day. In the instant case, according to the respondent's own produced record, his suit was dismissed by the trial Court on 19.5.2012, but even then he has not

bothered to approach forum. Same like his appeal was dismissed by the first appellate Court on 1st December, 2013, but he remained mum for month's time and there is no explanation for two months' delay.

8. The trial Court in its judgment dated 19.5.2012 has clearly recorded the findings that proper forum in the matter is Service Tribunal. This point has been clearly agitated in the pleadings of the parties before the Service Tribunal. Not only this but the Service Tribunal itself in paragraph 4 of the judgment has also observed that on behalf of respondent, objection is raised that the appeal is not filed within the prescribed limitation. Amazingly, this matter has neither been discussed nor resolved in the impugned judgment which remained unattended. It is now almost settled that before embarking upon the merits of the case, the resolution of the question of limitation is necessary. Without crossing the bar of limitation, the lis cannot be attended on merits.

9. As discussed hereinabove, in view of the stated facts, the appeal filed by respondent before

the Service Tribunal was hopelessly time barred. Moreover, he failed to bring on record any legal satisfactory explanation for condonation of delay. Thus, without dilating upon other merits of the case, we are constrained to hold that the appeal filed by the respondent was hopelessly time barred, hence not maintainable.

In view of the above while accepting this appeal, the impugned judgment is set-aside. Consequently the appeal filed by the respondent before the Service Tribunal being time barred is hereby dismissed with no order as to costs.

Muzaffarabad,
15.4.2016. J U D G E CHIEF JUSTICE