

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W.P. No.33240 of 2021

Province of Punjab & another

Versus

Sajida Zaheer & others

J U D G M E N T

Date of hearing:	15.09.2021.
Petitioners by:	Barrister Ameer Abbas Ali Khan, A.A.G.
Respondent No.1 by:	Rana Abdul Sattar Khan, Advocate.
Research by:	Mr. Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC. Mr. Muhammad Imran Sh. Addl. District Judge / Senior Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioners have assailed order dated 07.02.2017 and judgment dated 14.12.2020, passed by learned Punjab Labour Court No.5, Sargodha (“**Labour Court**”) and Punjab Labour Appellate Tribunal, Lahore (“**Appellate Tribunal**”), respectively, whereby grievance petition, filed by respondent No.1, was accepted and appeal filed by petitioners was dismissed on the ground of being barred by time.

2. Brief facts of the case are that respondent No.1 filed grievance petition before learned Labour Court against her termination, which was accepted *ex parte* vide order dated 07.02.2017. Feeling aggrieved, petitioners filed appeal before learned Appellate Tribunal, which was dismissed on the ground of limitation, vide judgment dated 14.12.2020. Through instant petition, the aforesaid order as well as judgment have been assailed.

3. Learned Law Officer, appearing on behalf of petitioners, submits that grievance petition, filed by respondent No.1, was time-barred by 10-years, however, without taking into consideration the

said aspect of the matter, learned Labour Court directed to reinstate respondent No.1 in absence of petitioners. He adds that appeal filed by petitioners has been dismissed as time-barred without properly appreciating the real controversy in issue. He further submits that copy of order dated 07.02.2017 should have been sent to the petitioner-department under Section 46 of the Punjab Industrial Relations Act, 2010 (“**PIRA, 2010**”), however, same was not dispatched to it, therefore, on this score alone, aforesaid order dated 07.02.2017 had become null and void. He adds that petitioners came to know about the order of learned Labour Court when respondent No.1 filed application for implementation of order dated 07.02.2017, whereupon they obtained its certified copy and filed appeal before learned Appellate Tribunal. He further contends that limitation is to start from the date of communication of the order, therefore, delay in filing appeal was liable to be condoned. In the end, he submits that impugned decisions of learned Courts below are unsustainable.

4. Conversely, learned counsel for respondent No.1 defends the impugned order as well as judgment, passed by learned fora below, by contending that compliance of the provision of Section 46 of the PIRA, 2010 was not mandatory, as rightly held by learned Appellate Tribunal.

5. Arguments heard. Available record perused.

6. According to Section 46 of the PIRA, 2010, two copies of the decision of the Labour Court shall be forwarded forthwith to the Government, who shall within a period of thirty days from the receipt of copies of decision, publish it in the official gazette. It has also specified time of thirty days from communication of final decision to prefer appeal to the Tribunal. For facility of reference, Section 46 is reproduced hereunder:-

46. Awards and decisions of Labour Court.- (1) An award or decision of a Labour Court shall be given in writing and delivered in open Court and two copies thereof shall be forwarded, forthwith to the Government, provided that if the Federal

Government is a party, two copies of the award or decision shall be forwarded to that Government as well.

(2) The Government shall, within a period of thirty days from the receipt of the copies of the award or decision, publish it in the official Gazette.

(3) Any party aggrieved by a final award, decision or sentence under section 33, section 42 or section 44, except an interim order, may, within thirty days of the communication of the final award, decision or sentence, prefer an appeal to the Tribunal, whose decision thereon shall be final.

(4) Save as otherwise expressly provided in this Act, all awards, decisions and sentences of a Labour Court shall be final and shall not be called in question in any manner by or before any Court or other authority.

7. It is manifestly clear from bare reading of afore-referred provision of law that the Labour Court is required to immediately forward two copies of its decision to the Government, which is under obligation to publish it in the official gazette. The above provision also provides remedy of appeal against decision of Labour Court along with its limitation, which has been linked with communication of the final decision. Section 46 *ibid* clearly suggests that communication of decision to the Government is mandatory in nature, therefore, its strict compliance is imperative and was to be strictly construed.

8. In some other laws of this country i.e. The Land Acquisition Act, 1894, The Registration Act, 1908, The Service Tribunals' Act, 1973, Income Tax Ordinance, 1969 and The Industrial Relations Act, 2012 etc., limitation for next course of action available to an aggrieved party has been linked with happening of a specific event or performance of a particular action, which has been judicially recognized by august superior Courts. Some examples are listed below:-

Income Tax Ordinance, 1979

Section 130(2) of the Income Tax Ordinance, 1979, prescribed that appeal before Additional Commissioner shall be filed within 30-days from the date of notice of demand relating to any assessment or penalty; and in any other case, the date on which intimation of the order to be appealed against is served. This

Court, while dealing with a matter involving said question, in the case reported as Messrs Gujranwala College Employees Cooperative Housing Society Ltd., Gujranwala v. Deputy Commissioner of Income Tax and 2 others (2007 PTD 2389), observed that where assessment or penalty had not been served upon the assessee or any other person liable to pay tax on his behalf, the period of limitation would not commence as service on an authorized representative was not service in terms of Section 85 of the Ordinance *ibid*.

The Arbitration Act, 1940

Hon'ble Islamabad High Court in the case reported as Messrs Telecom Foundation v. Messrs Asko Enterprises (2020 CLC 1605), observed that notice in terms of Section 14(1) of the Arbitration Act, 1940, to parties as to making of award is mandatory and party's knowledge as to making of award from a source other than a notice in writing from arbitrator in accordance with Sections 14(1) and 42 of the Arbitration Act, 1940, would not be terminus a quo / starting point of limitation under Article 178 of First Schedule to the Limitation Act, 1908. Limitation period of 90 days provided in said Article was to commence from the 'date of service of notice of making of the award'. It was further observed that in absence of notice from Arbitrator as to rendering of award, limitation period for application for filing award in Court would be governed by residuary provisions of Article 181 of the Limitation Act, 1908, which provided a limitation period of three years. Reference can also be made to Indian Rayon Corpn.Ltd. v. Raunaq and Company Pvt. Ltd. (1989 MLD 1489) and Waheed Ahmad Malik v. Messrs Usman & Sons (2000 YLR 183).

The Land Acquisition Act, 1894

As per Section 12(2) of the Land Acquisition Act, 1894, the Collector is required to issue notice of his award to interested persons as they were not present personally or by their

representatives when the award was made. Hon'ble Peshawar High Court in the case reported as Hazrat Wali v. Land Acquisition Collector, Mardan and 5 others (2020 CLC 1202) observed that limitation for filing reference would start from the date of knowledge of the Award and not from the date of passing of award.

The Registration Act, 1908

Section 77 of the Registration Act, 1908 provides limitation of 30-days for filing suit against refusal of the Registrar to register the document from such refusal. This Court in the case reported as Sohaj Khan and 2 others v. Registrar, District Jhelum (1988 CLC 973) held that limitation would run from the date of communication of order of refusal.

The Service Tribunals' Act, 1973

Section 4 of the Service Tribunals' Act, 1973, provides limitation for filing appeal against the order passed by departmental authority before Tribunal, within 30-days from the date of communication of such order, or within six months of the establishment of the appropriate Tribunal, whichever is later. The Hon'ble Supreme Court in the case of Muhammad Rafique and others v. Pakistan Telecommunication Company Ltd. and others [2009 PLC (C.S.) 114] observed that such limitation would run from the date of communication of the order. Reference can also be made to Muhammad Latif v. Assistant Chief of Air Staff (Personnel) and others (2005 SCMR 335)

The Industrial Relations Act, 2012

Section 33(4) of the Industrial Relations Act, 2012, provides remedy of filing grievance petition before N.I.R.C., within a period of 60-days from the date of communication of employer's decision or the expiry of 15-days of issuance of grievance notice. In Khalid Hussain v. Full Bench National Industrial Relation Commission and others (2020 PLC 204), Hon'ble Islamabad High Court declared that grievance petition before the N.I.R.C., without the

service of a grievance notice on the employer, was not maintainable.

9. The Hon'ble Superior Courts have time and again laid down various principles and tests to determine whether a provision in a statute is directory or mandatory in nature. The integral test is to ascertain the legislative intent and purpose to be achieved by the application of the provision of law rather than literal approach, and would prefer an interpretation which advances the object of the enactment over that which defeats it. The intention of legislature must govern, and is to be ascertained not only from the phraseology of the provision but also by considering its nature, the object and the consequences which would follow from construing it one way or the other. Reference can be made to Province of Punjab through Secretary Excise and Taxation Department, Lahore and others v. Murree Brewery Company Limited (MBCL) and another (2021 SCMR 305), Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328), Mafizauallah v. Mana Ullah and others (PLD1963 Dacca 318) and Muhammad Asghar and 3 others v. Station House Officer and 2 others (PLD 2020 Lahore 87).

10. In Indian jurisdiction, the Industrial Disputes Act, 1947 (“Act of 1947”) is analogous to Pakistan’s Industrial Relations Act, 2012. Sub-section (3) of section 10A of the Act of 1947 enjoins that a copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer and the appropriate Government shall, within one month from the date of receipt of such copy, publish the same in the Official Gazette. The Kerala High Court in Kathayee Cotton Mills Ltd. v. District Labour Officer and others [(1989) ILLJ 417 Ker] held that the requirement of section 10(3) of the Act was mandatory and a failure to comply with those provisions would vitiate the award. Similar view was also taken by the Division Bench of Madhya Pradesh

High Court in case titled K. P. Singh v. S. K. Gokhale [(1970) 1 Lab LJ 125], by observing that procedure prescribed by Section 10A, as is clear from the wording, is mandatory; that it is incumbent on the parties to forward a copy of the arbitration agreement to the appropriate Government, on receipt of which the appropriate Government is required to publish the same in the official Gazette; that sub-section (4) positively lays down that the award has to be submitted to the appropriate Government; that if mandatory provisions as prescribed by sub-section (3) and sub-section (4) of Section 10A of the Act, were not followed, the machinery for enforcement of the award would not be available to the parties.

Moreover, under Section 17 of the Act of 1947, the Government is required to publish every arbitration award or award of a Labour Court, Tribunal or National Tribunal within thirty days from the date of its receipt and Section 17A provides that such award would become enforceable on the expiry of thirty days from the date of its publication under Section 17 *ibid*. This requirement has also been held to be mandatory by a Full Bench of Madras High Court in Krishnaveni Transports v. Spl. Dy. Commr. of Labour, Madras [AIR 1990 (Madras) 29].

11. Needless to say that when a Statute provides an act to be done in a particular manner or form, it must be performed in such manner alone as nobody should try to be wiser than law, otherwise the same would be termed as illegal and the proceedings unsustainable. Reference can be made to Zia ur Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015), The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), Shahdost Dashti v. Federation of Pakistan through Secretary Ministry of Inter-Provincial Coordination Government of Pakistan, through Secretary, Pakistan Secretariat, Islamabad and 5 others (2019 CLC 1750), Muhammad Hanif v. Revisional Authority and others (2020 CLC Note 36), Muhammad

Ameer v. The State and another (2020 MLD 876) and Muhammad Sajid v. Judge Family Court and others (2020 CLC 1524).

12. The Appellate Tribunal has failed to appreciate the aforementioned legal aspects of the matter and in the given circumstances, if the impugned observations are accepted, it would render Section 46 *ibid* ineffective and redundant, which would be against the wisdom of legislature and express intent of law.

It is settled law that Constitutional Courts are under an obligation to give effect to statutory law as opposed to interpreting text such that it renders provisions of law redundant. No provision of the instrument is to be considered meaningless. There is a consistent view of the superior Courts that an interpretation of law, which renders any provisions of the law redundant or nugatory has never been favoured with. Reference can be made to Muzaffar Hussain v. The Superintendent of Police, District Sialkot [2002 P L C (C.S.) 442], Aftab Ahmad Raja v. Malik Faizullah Khan Afridi and others (2011 YLR 2205), Federal Government Employees Housing Foundation and others v. Malik Ghulam Mustafa and others (PLD 2019 Islamabad 1), Syed Hussain Haider v. Government of the Punjab through Chief Secretary, Lahore and others (PLD 2020 Lahore 858) and Qazi Zaheer Ahmad v. Federal Ombudsman Secretariat for Protection against Harassment at Workplace, Islamabad and 2 others [2021 P L C (C.S.) 839].

The literal rule of interpretation of the Constitution and statutes, also known as the golden rule of interpretation, is that the words and phrases used therein should be read keeping in view their plain meaning and the Courts while interpreting the provision of a statute are required to remain within the intention of law maker. Reliance is placed upon Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 Supreme Court 260), Baz Muhammad Kakar and others v. Federation of Pakistan through

Ministry of Law and Justice and others (PLD 2012 Supreme Court 923) and Avari Hotels Limited through Controller v. Department of Excise and Taxation Government of the Punjab, through Secretary and 5 others (2009 CLC 1399 Lahore).

13. In view of the above, instant petition is hereby allowed. Consequently, the impugned judgment dated 14.12.2020, passed by learned Appellate Tribunal, is declared to be illegal and without lawful authority, thus, same is set aside. The matter is remitted to learned Appellate Tribunal with direction to re-adjudicate the same on merits strictly in accordance with law, through a speaking judgment, after providing opportunity of hearing to petitioners and all concerned, preferably within a period of thirty days from the date of receipt of certified copy of this order. Compliance report shall be furnished to this Court through Deputy Registrar (Judicial).

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVE FOR REPORTING

Judge

Sultan