

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1991 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.233/19 (U/O VII rule 11 CPC)
2. For hearing of CMA No.14930/18.

25.02.2019.

Mr. Khawaja Shamsul Islam, Advocate for Plaintiff.
Mr. Zafar Imam, Advocate for Defendant No.1.
Mr. Osman A. Hadi, Asstt. Attorney General.
Mr. Pervaiz A. Memon, Advocate for Defendant No.5.
Ms. Samina Iqbal, Advocate for NADRA.
Ms. Mehmooda Suleman, State Counsel.
Dr. Zulfiqar Ahmed Malik, Plaintiff in person.

After being confronted as to lack of jurisdiction of this Court in respect of the issue in hand, which pertains to the terms and conditions of the service of the Plaintiff in view of the observations of the Hon'ble Supreme Court in the case of ***Ali Azhar Khan Baloch and others v. Province of Sindh and others***) reported as **2015 SCMR 456**, learned Counsel for the Plaintiff makes a request in the interest of justice that instead of rejecting and or returning the Plaint, the same may be remitted to the Federal Services Tribunal as in view of the incorrect date mentioned in the service record; the Plaintiff is to retire on 31.05.2019; whereas, in the record of the Accountant General of Pakistan Revenue, the correct date is mentioned by virtue of which the Plaintiff is supposed to retire on 7.12.2020; hence he will also be deprived of his retirement and pensionary benefits, due to delay in presenting the case before the said Tribunal.

This request is vehemently opposed by the learned Assistant Attorney General as well as Departmental Counsel on the ground that

plaint is liable to be rejected being barred in terms of law i.e. Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and limitation will also be involved. However, I am not inclined to entertain these objections of the Departmental Counsel as well as the learned Assistant Attorney General due to peculiar facts of this case. Firstly, it is not a case of rejection of plaint simplicitor. To my understanding it is a case of return of the plaint for lack of jurisdiction as observed by the Hon'ble Supreme Court in the aforesaid case, as the appropriate jurisdiction vests in the Federal Service Tribunal. Secondly, if a Court does not have any jurisdiction, then it cannot pass an order of rejection of plaint in terms of Order 7 Rule 11 CPC, as this requires appreciating the merits of the case as well. Therefore, at the most this could be a case of returning the plaint and not outright rejection of the same. Notwithstanding, even in case of rejection of plaint, it could always be presented again for a fresh Suit can be filed in terms of Rule 13 *ibid*. If any support is needed one may refer to the cases of ***Haji Abdul Karim v Florida Builders (Pvt.) Limited (PLD 2012 SC 247)*** and ***Abdul Hamid & another v Dilawar Hussain alia Bhalli (2007 SCMR 945)***.

The Judgment of the Hon'ble Supreme Court, as above, itself provides a mechanism of remitting Plaints to the Federal Services Tribunal and it would be advantageous to refer para-157 of the said Judgment, which reads as under:-

“157. Likewise, the Hon'ble Chief Justice of High Court of Sindh shall also constitute a Special Bench comprising the Senior Judge of the Court, who will examine the nature of Civil Suits filed by the Civil Servants and transfer them to the Sindh Service Tribunal or the Federal Service Tribunal, as the case may be, in case such suits pertain to the terms and conditions of their service including disciplinary proceedings, forthwith under intimation to this Court. The Federal Service Tribunal or the Sindh Service Tribunal, on receipt of the R&PS of the Constitution

Petitions or Suits, shall treat them as Appeals deemed to have been filed before them on the date when presented before the High Court of Sindh and decide them in accordance with law. The question of limitation, if involved, will be considered by the respective Tribunals, in accordance with law, in the peculiar facts and circumstances of the cases.”

Though the aforesaid directions were in respect of the matters pending at the relevant time; however, in the interest of justice and because of the facts involved in this case, I do not see any justifiable reason not to pass similar order(s) and reject the contention of the Plaintiff's Counsel. The Plaintiff is about to retire in three months' time, on the basis of his service record, and if the request so made is refused; he will be seriously prejudiced and left remediless at least for the time being, whereas, even on retirement he will not be able to get his retirement benefits and pension immediately due to recording of another date of birth in his service record, as against the AGPR's record. And lastly, this will not, in any manner, prejudice the Defendants, who are even otherwise public functionaries and are supposed to act in accordance with law. It is settled proposition that law is not to cause prejudice and frustrate proceedings; but to facilitate. None should be non-suited on the basis of hyper technicalities, and in the interest of justice relief can always be molded by the Court; more so, when no serious prejudice is caused to the other party.

In view of hereinabove facts and peculiar circumstances of this case, and while exercising inherent powers of this Court; I accede to the request of the Plaintiff's Counsel and instead of returning the Plaint out rightly, direct the office to remit the same alongwith all annexures and response(s) / replies filed by the Plaintiff as well as the Defendants to the Federal Services Tribunal within seven days from today

positively after retaining copies on record, at the cost of the Plaintiff. Once Plaint and annexures are received by the Federal Services Tribunal, the same may be treated as an Appeal against the Order of the Department and shall be decided strictly in accordance with law as well as the pronouncements of the Hon'ble Supreme Court, as may be relevant, after attending to the objections of the Defendants, if any, in respect of limitation and applicability of Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

J U D G E

Ayaz P.S.