

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**  
**Mr. Justice Adnan Iqbal Chaudhry**

High Court Appeal No. 163 of 2016  
National Refinery Limited & another  
Versus  
Syed Niaz Ahmed

Date of Hearing: 07.10.2019 & 08.10.2019

Appellants: Through Mr. Javed Asghar Awan Advocate

Respondent: Through M/s. Aga Zafar Ahmed and Hummul S. Zubedi Advocates.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- Appellants i.e. National Refinery Limited and NRL Management Staff Pension Fund have impugned judgment dated 22.04.2016 of learned Single Judge passed in Suit No.1203 of 2006 whereby pension claim of respondent was decreed, hence the appellants preferred this appeal.

The grounds of appeal, as incorporated, mainly are confined to:-

- i) That the departmental representation itself was barred by time hence the appeal before Services Tribunal ought to have been dismissed on that count;
  - ii) That the service of the respondent with the parent employer (National Motors Ltd.) was not pensionable and hence the transfer of respondent with the appellant No.1 was in fact a date of fresh appointment to calculate his retirement benefits.
2. With this background the appellants have preferred this appeal challenging the reasoning and findings of the learned Single Judge.
3. We have heard the learned counsel and perused the material available on record.

4. Let us first discover as to whether appellants have any right to raise the objection regarding the departmental representation being barred by time. It is the grievance of the appellants that since the departmental appeal/representation was barred by time, therefore, this contention ought to have been considered by the Tribunal and it should have been dismissed by Service Tribunal; but since the appeal was abated, this question was still alive before the learned Single in the suit. The reason, as claimed by the appellants was that the respondent admittedly retired from service of the appellant No.1 on 10.09.2000 and was duly paid all his retirement benefits including amount of provident funds on 02.10.2010. Aggrieved of the fact that the time he served at National Motors Ltd. was not counted as pensionable service, the respondent preferred departmental representation on 22.02.2001 which was rejected on 12.04.2001 by the appellant No.1. It is not the case that the appeal before the Services Tribunal was barred by time but in fact the departmental representation itself was barred by time.

5. We have perused the departmental order which is dated 12.04.2001 available at page 393. The representation/grievance petition of the respondent was disposed of in the following terms:-

*“Your Grievance Petition, dated February 22, 2001, was reviewed by the Management, who are of the view that since your separation benefits were paid to you in accordance with company rules and policies, no further action is considered necessary.”*

6. At the very outset it is not disclosed by the appellants that such objection was taken by the department/management against the grievance petition/representation. Secondly the grievance petition itself was never disposed of as being barred by time. It was disposed of on merits. Even before Service Tribunal, the objection of the appellant No.1 was not that the grievance petition/departmental representation was time barred but that the appeal before the Service Tribunal was

time barred. As regards the latter, learned Counsel for the appellants conceded that if time is computed from the decision on the departmental representation then the appeal before the Service Tribunal was not time barred. Therefore, this contention is not borne out of the pleadings that the departmental representation was dismissed as being barred by time. This is a mixed question of law and facts and the appellant ought to have pleaded to have finding on the point.

7. In terms of Section 4 of the Services Tribunal Act, 1973, party aggrieved of a final order of departmental authority may prefer an appeal to the Service Tribunal within 30 days of the communication of such order. The departmental appeal was decided by appellant No.1 on 12.04.2001. The appeal to the Service Tribunal was filed by the respondent on 25.05.2001. Per the memo of that appeal, the order on the departmental representation was received by the respondent on 29.04.2001 and therefore, per the respondent, the appeal to the Service Tribunal was within time. That appeal abated on the pronouncement of the Supreme Court in Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602) and then the respondent filed suit. For the purposes of computing limitation for the suit, the period consumed before the Service Tribunal stood condoned by Mubeen-us-Salam itself. With this background the findings of learned Single Judge that the suit was filed soon after appeal was abated were in consonance with the judgment of Hon'ble Supreme Court in Mubeen-us-Salam. Learned counsel for the appellants was unable to point out to us any provision or rule which prescribed the limitation for the respondent's departmental representation. It was also not the case of the appellants that there was an 'order' of the appellant No.1/department within the meaning of Section 22 of the Civil Servants Act, 1973 against which the respondent could have filed a departmental 'appeal' within 30 days. Be that as it

may, the appellants' argument that the departmental representation was time barred, could at best be premised on Section 22 of the Civil Servants Act, 1973. In our view, once it was declared in Mubeen-us-Salam that persons such as the respondent were not civil servants and their remedy was not before the Service Tribunal, then any period of limitation prescribed in the Civil Servants Act, 1973 or in the Service Tribunal Act, 1973, was not attracted.

8. The next ground of the appellants is in relation to the services rendered by the respondent with National Motors. It is the case of the appellants that it was not pensionable service and hence cannot be counted towards entire length of service rendered by the respondent. The record disclosed that on 06.08.1991 an application of the respondent was forwarded by parent department of respondent to the appellants. On 08.03.1992 the respondent was issued a letter whereby services of respondent were confirmed as that of Senior Management Executive.

9. Besides, many other facilities, at Sr. No.8 of confirmation letter the respondent was entitled to company benefits such as company's contribution to provident fund at the rate of 8%, supervisors pension or gratuity scheme as per rules. This was ensured to respondent No.1 at the time of his transfer. It was declined only on account of a decision taken in the Board of Directors of PERAC in its meeting on 06.02.1997. The appellant No.1 was a corporation under the control of PERAC. In 1997 by way of the Boards meeting the appellants realized that a number of employees have been transferred to PERAC from other public sector corporations and agencies and the amount these employees brought along with them in shape of gratuity and pension was not enough to cover their past service as per applicable PERAC pension rules. The Board further observed that in order to allow them full benefits of their

service as per PERAC pension funds rules, the PERAC is required to pay 6.5 Million into PERAC Pension Funds. They have further realized that previously employees of other corporations got themselves transferred into PERAC before retirement in order to avail higher benefits.

10. It is perhaps at this belated time that the Board realized and decided not to make any payment on these accounts. These decisions taken after the transfer of the respondent with the appellants cannot have retrospective effect. The terms of the service were ensured at the time of his (respondent's) transfer, which cannot be lifted unilaterally depriving an employee of his post-retirement benefits or any of the terms of transfer, to which he was entitled at the time when he was inducted/transferred. The Board's decision suggest that it was a case of transfer and not a fresh appointment.

11. The transfer confirmation letter dated 08.03.1992 does suggest variance in Scheme for employees but the board's decision has prospective application as far as lifting of any beneficial arrangements are concerned. Wisdom should have prevailed at the time when employees were being transferred and not at the twilight of their career when they (employees) only hoped to get their retirement benefits.

12. Thus we do not see any error in the judgment. No interference as such, is required. The appeal as such, is dismissed with no order as to cost.

**Judge**

Dated: 07.11.2019

**Judge**