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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No. S-64 of 2018.

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| DATE OF HEARING | ORDER WITH SIGNATURE OF HON'BLE JUDGE |
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1. For orders on office objection 'A'.
2. For orders on CMA No.406/2019.
3. For hearing of main case.

05.10.2020.

Mr. Muhammad Ibrahim M. Sahito, advocate for the Applicant.

Mr. Abdul Rasheed Abro, Assistant Attorney General.

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This Civil Revision Application is directed against judgment dated 27.08.2018, passed in Civil Appeal No.80/2017 by the Additional District Judge, Mehar, through which the order dated.13.09.2017, passed by Senior Civil Judge, Mehar, rejecting the plaint of the appellant in F.C Suit No. Nil of 2017 has been maintained.

Learned Counsel for the Applicant submits that the trial Court as well as the Appellate Court have erred in law in rejecting the plaint of the Applicant inasmuch as the Suit was for declaration and to the extent of prayer clause (a), it was maintainable and not barred in law; that the Applicant was appointed by respondents on 15.06.1989; however, due to some mistake the name in the appointment order was mentioned as S. Qurban Ali Shah, whereas, the name of the Applicant is S. Ibrahim Shah, but the parentage is same; that all along the Applicant has been working with the respondent Department without any objection; however, after computerization and payment of salary directly into the Bank Account the issue arose and pursuant to letter dated 03.08.2017, the Applicant was required to obtain judgment and decree for correction of his name;

hence the Suit was competent and both the Courts below have erred in law and, therefore, the Civil Revision Application be allowed.

On the other hand, learned Assistant Attorney General has supported the impugned order and submits that the Applicant has no case on merits.

I have heard both the learned Counsel and perused the record. It appears that the Applicant filed Suit for declaration and necessary correction of his name seeking the following prayer :

- a) To decree the Suit of the plaintiff against the defendants and declare that the real and correct name of plaintiff is Syed Ibrahim Shah and not Syed Qurban Ali Shah, therefore, the same is liable to be corrected.
- b) The defendants may be directed to make correction in order regarding correct name of plaintiff as Syed Ibrahim Shah instead of incorrect name Syed Qurban Ali Shah.
- c) Any other relief deems fit and proper may also be awarded to the plaintiff.

The plaint in the said Suit was rejected by the trial Court vide order dated.13.09.2017 and the relevant order reads as under :

"After hearing and perusing the averments of the plaint, the documents annexed with the plaint particularly appointment order bearing NO.730-E/2/5182-PRP Karachi dated.15.06.1989, annexed at Ex-01-J which indicates that issuance of the date of appointment order is 15.06.1989, thereby more than twenty eight years had been expired after the issuance of appointment order by the defendants.

Further, the correction in appointment order comes within the definition of terms and conditions of the service and in such situation the Civil Court cannot entertain and try the Suit, in view of the Article 212 of **Constitution of Republic of Pakistan**.

Based on the above facts and circumstances, the Suit of plaintiff is not maintainable and not within the law of limitation, therefore, the plaint presented by the plaintiff is hereby summarily rejected with no order as to costs.

Such order was impugned before the Appellate Court which maintained the same. Perusal of the aforesaid order reveals that the plaint has been rejected on two counts: *firstly*, due to lack of jurisdiction in view of Article 212 of the Constitution and *secondly*: on Limitation. Even if the arguments of the Applicant's Counsel regarding jurisdiction of the Court for a declaratory relief is accepted; the question of Limitation and the Suit being hopelessly time barred, will still remain as an obstacle in the very maintainability of the Suit. It is

not denied; rather admitted, that from the day one, the Applicant knew that his name is incorrect in his appointment order and all along he had worked with the respondents with a different name. Perusal of the appointment order dated.15.06.1989 reflects that it is in the name of S. Qurban Ali Shah son of S. Azim Shah, whereas, the Applicant's name is Ibrahim Shah son of Azim Shah. On bare perusal there does not seem to be any confusion that both these names are altogether different and there is no similarity. The Counsel while confronted has argued that Qurban Ali Shah was his nick name or alias as given by the family and the father while obtaining service with the respondents had mentioned this name. Even if that be so, from day one the Applicant knew that his name is incorrect and for such purposes the limitation of a declaratory Suit is six years. The Suit was hopelessly barred in limitation and such limitation could not be cured or condoned. Besides this, no justifiable ground has even been made out. The argument that the cause of action was recurring and only accrued when the Applicant was asked to file a case before the Court of law and obtain a decree pursuant to letter dated 3.8.2017 is entirely misconceived inasmuch as this was only in response to his application for correction of his name submitted before the respondent Department. As noted earlier, the Applicant knew from day one that the cause of action had accrued and he ought to have applied immediately for correction of his name or even as early as possible; but he failed to do so, and only approached the Court after more than two decades. Such conduct of the Applicant cannot be appreciated as he has involved himself in frivolous litigation and has made an effort to misuse the process of the Court to obtain a decree in his favour. It is not that if someone has asked for a decree of the Court, a cause of action can accrue and the Court must entertain a Suit on the basis of

some requirement by the concerned department. The cause of action / limitation could not have been enlarged in this manner as it started accruing from the date the Applicant was appointed. It was his personal duty to have the name corrected if so warranted. Such conduct on the part of the Applicant to use the process of the Court for obtaining a decree is to be deprecated and warrants imposition of cost; however, restraint has been shown as a grace.

In view of hereinabove facts and circumstances of this case, this Civil Revision Application being meritless and misconceived as well as an attempt to abuse the process of the Court was dismissed by means of a short order on 05.10.2020 with pending application and these are the reasons thereof.

M.Y.Panhwar/ **