

1996 SCMR 645

[Supreme Court of Pakistan]

Present: Zia Mahmood Mirza Muhammad Bashir Khan Jehangiri, J

Syed IMRAN RAZA ZAIDI, SUPERINTENDING & INEER, PUBLIC HEALTH ENGINEERING CIRCLE-I, GUJRANWALA---Appellant

versus

GOVERNMENT OF THE PUNJAB through Services, General Administration and Information Department, Punjab Secretariat, Lahore and 2 others---Respondents

Civil Appeals Nos. 742 and 743 of 1994, decided on 26th April, 1995.

(On appeal from the judgment dated 18-5-1994 of Punjab Service Tribunal in Appeal No. 67 of 1994).

(a) Civil Procedure Code (V of 1908)---

---O. XXXIX, Rr. 1 & 2---Constitution of Pakistan (1913), Art. 212(3)---Leave to appeal was granted to consider whether Service Tribunal was possessed of power to make order in the nature of temporary injunction; mandatory and prohibitory; during pendency of appeal pending before it.

(b) Limitation Act (IX of 1908)---

---S. 5---Constitution of Pakistan (1973), Art. 217 Service Tribunals Act (LXX of 1973), S. 5---Condonation of delay in filing appeal by Government--Erroneous view of departmental authorities that remedy of review was available and that Government was contemplating to file review until it was informed that review before Service Tribunal was not competent, would not constitute valid ground for condoning delay---Order of Service Tribunal impugned to appeal also forming subject-matter of a connected appeal which was within time, leave was granted in both the petitions to consider identical question coupled with the fact that respondent did not press objection now being raised at the time of grant of leave although he was duly represented by counsel who was present in Court, therefore, it would not be fit and proper to dismiss such appeal on ground of limitation---Delay in filing appeal was thus, condoned by Supreme Court in the interest of justice.

PLD 1989 SC 449 rel.

(c) Service Tribunals Act (LXX of 1973)---

---S. 5---Civil Procedure Code (V of 1908), O. XXXIX. Rr. 1, 2 & O.XLI. R. 5---Constitution of Pakistan (1973), Art. 212---Service Tribunal's powers to issue temporary injunction, during pendency of appeal---Service Tribunal is deemed to be Civil Court in terms of S. 5(2), Service Tribunals Act, 1973, having all the powers vested in Civil Court under C.P.C.---Such powers would include jurisdiction of Civil Court under O. XXXIX, Rr. 1 & 2, C.P.C. to grant temporary injunction and that of Appellate Court under O.XLI, R. 5. C.P.C. to stay execution/operation of decree/order appealed against---Such provisions could be invoked by Service Tribunal for purpose of granting temporary injunction/interim relief pending final disposal of appeal---Even in absence of any express provision for grant of interim relief, Appellate Court/Tribunal having power to grant main relief by suspending wholly or partially, operation of order under appeal before it would have all such power which was reasonably incidental or ancillary to main appellate jurisdiction---Service Tribunal in appeal filed before it could set aside, vary or modify any order appealed against, after full and final hearing of appeal---That being so, Service Tribunal could grant interim relief during pendency of appeal on basis of said principle---Service Tribunal, thus, had jurisdiction and power to grant interim relief/temporary injunction during pendency of appeal.

Sindh Employees' Social Security Institution and another v. Adamjee Cotton Mills Ltd. PLD 1975 SC 32 rel.

PLD 1989 SC 449; S.A. Rizvi v. Pakistan Atomic Energy Commission and another 1986 SC Mk 965; Muhammad Umar Beg v. Sultan Mahmood PLD 1970 SC 139; Province of West Pakistan v. Asghar Khan 1971 SCMR 569; Allah Rakha and another v. Government of the Punjab and others 1980 PLC (C.S.) 397; Afzal Ahmad Hydari v. Secretary, Defence Production Division, Ministry of Defence, Rawalpindi and 3 others 1991 SCMR 477; Nazir Hussain (Ex-Director, Excise and Taxation), Administrator, Auqaf, N.-W.F.P., Peshawar v. N.-W.F.P. through the Chief Secretary/Secretary, Services and General Administration Department, Government of N.-W.F.P., Peshawar and 2 others 1992 SCMR 1843 and AIR 1986 SC 1955 ref.

(d) Punjab Civil Servants Act (VIII of 1974)---

---S. 9---Specific Relief Act (I of 1877), S. 56(2)---Civil Procedure Code (V o: 1908), O. XXXIX, Rr. 1 & 2---Constitution of Pakistan (1973), Art. 212--Civil servant---Grievance against transfer---Grant of interim relief by Service Tribunal---Validity---Civil servant was liable to be transferred from one place to another and to any post as specified in S. 9, Punjab Civil Servants Act, 1974 subject, of course, to condition that terms and conditions of his service were not waived to his disadvantage and he could not raise any legal objection to such transfer---Assuming that civil servant had some legitimate grievance and he could be deemed to have prima facie case for purpose of interim relief, yet he could not satisfy the other two conditions i.e., irreparable loss if operation of transfer order was not suspended, for in case of acceptance of his appeal, he would be restored to his parent department from which he had been uprooted and his arrears of pay would be paid to him---Even balance of convenience was not in civil servant's favour which in fact lay in favour of Government in terms of S. 56(2), Specific Relief Act, 1877---Order of Service Tribunal suspending operation of transfer order was set aside iii circumstances.

Muhammad Umar Beg v. Sultan Mahmood PLD 1970 SC 139 ref.

Gul Zarin Kiani, Advocate Supreme Court for. Appellant (in Civil Appeal No. 742 of 1994).

Sh. Zia Ullah, Advocate Supreme Court for Respondent No. 3 (in Civil Appeal No.,742 of 1994).

Faiz Muhammad Bhatti, Advocate Supreme Court with Rao Muhammad Yusuf Khan, Advocate-on-Record for Appellant (in Civil Appeal No.743 of 1994).

Sh. Zia Ullah, Advocate Supreme Court for Respondent No. 1 (in Civil Appeal No. 743 of 1994).

Dates of hearing: 24th, 25th and 26th April, 1995.