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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present: Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ch. Ijaz Ahmed
Mr. Justice Ghulam Rabbani

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C.P.No.470-K-2008

(On appeal from the order dated 30.10.2008 passed by the High Court of Sindh, Karachi, in C.P.No.D-2105/2006)

Amanullah Soomro ... Petitioner(s)

VERSUS

PIA thr. Managing Director/Chairman & another ... Respondent(s)

For the Petitioner : In person

For the Respondent(s) : Mr. Khalid Javed, ASC a/w
Mr. Shiraz Iqbal Chaudhry, AOR
Abdul Rasheed, Sr. HR Office and Fayyaz
Ali Shah, Assistant Manager, Legal, PIA

Date of Hearing : 11.03.2010

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ:- On the last date of hearing on accepting the review petition for the reasons mentioned in order dated 08.03.2010, following directions were issued to the PIA:-

"In the meanwhile, PIA is directed to place on record all the relevant record, if any, showing the justification for transferring the petitioner to the surplus pool and if pursuant to the policy noted hereinabove, he has been deprived from promotion and other service benefits, how much loss he has sustained on account of such acts of the PIA and for that if the responsibility is to be fixed, then the details of the officers responsible for the same be supplied."

2. Learned counsel for the PIA concedes that on the basis of the documents made available to him, there was no justification for transferring the petitioner Amanullah Soomro to Surplus Pool. The other directions mentioned therein have, however, not been complied with, particularly about quantum of loss the petitioner suffered on account of an illegal act, for which, on the basis of

documents, no justification exists nor the responsibility has been fixed on the functionary transferring him to Surplus Pool. It is to be noted that according to the circular/Administrative order dated 19.04.2004, the contents of which have already been reproduced in earlier order dated 08.03.2010, the members of PIA Organization transferred to Surplus Pool are not considered for promotion and foreign postings, therefore, we are of the opinion that injustice has been caused to the petitioner, for which he is required to be compensated accordingly.

3. Thus, considering the foregoing in view of the argument of the learned counsel for PIA, administration is directed to promote the petitioner to the next group, which is statedly would be Group-V or any other higher Group and make payment of difference of pay along with other perks, if available, and similarly the pensionary benefits of his service may also be calculated on the same basis which shall be paid to him. It appears that transfer of the petitioner to Surplus Pool was based on no justification, therefore, the official/officer, who had transferred him, in fact had caused loss to the PIA - may be - for his personal satisfaction of ego etc, whatever amount which shall be paid to the petitioner, in view of the directions of this Court, has to be recovered from the officer, who had acted illegally. Thus, the Competent Authority of PIA, after making payment of the dues of Group-V or any other higher Group and other perks as well as pensionary benefits, shall issue notice to the said officer and after hearing him, consider to burden him with the liability for which PIA has suffered unnecessarily. The exercise of promotion and payment of dues i.e. balance etc as noted above, shall be completed within a period of three weeks, after receipt of this order. The compliance report shall be sent to the Registrar of this Court, for our perusal in Chambers.

4. With the above directions, this petition is converted into appeal and allowed.

Karachi

11th March, 2010

Hashmi

Not approved for reporting

16/3/10

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C.A 19 K/2010

18th Nov 2008 + (3/18)
Mr. Amanullah Soomro
(P. Impersi)

IN THE HONOURABLE SUPREME COURT OF PAKISTAN
KARACHI

(Constitutional Appellate Jurisdiction)

CIVIL PETITION NO: 475-K OF 2008

SUPREME COURT OF PAKISTAN
18/11/08

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Amanullah Soomro
Flat no Dx-101 First Floor Soneri Apartment
Sindh Baloch Society Block 12,
Gulstan-e-Johar Accounts Supervisor
(LPR) PIAC Karachi.

Petitioner
TEL: 0300-3656124

Versus

1. Pakistan International Airline Corporation
Through its Managing Director/chairman
Having their office at P.I.A Building
Head Office Karachi
Air port Karachi.

2. The secretary Ministry of Defence
Rawalpindi.

Respondents

Court Appealed From:

Order Dated 30.10.2008 Passed by the
High Court Sindh in C.P NO:D-
2105/2006.

Petitioner in person:

Mr.Amanullah Soomro..

Counsel for Repondents:

Mr.

800/AG/41
CANCELLED
18/11/08

**CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 185 (3) OF CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973 READ WITH ORDER XIII
RULE OF SUPREME COURT RULES 1980.**

Humbly Submitted:

A. Points for consideration.

JAC
EPB

1. Whether the impugned order of the Honourable High court is in accordance with the law under the circumstances of the case.
2. Whether the division Bench of the High Court has applied its mind properly to the facts and circumstances of the case or the impugned order is based on mere surmises and conjectures, which led to miscarriage of justice.
3. Whether petitioner can be punished for mistake of the counsel.
4. Whether the Honourable Court has power to grant the condonation of delay even suo muto by exercising powers.
5. Whether the condonation of delay can be granted even without moving an application for condonation on implied request of the petitioner.
6. Whether the condonation can be granted particularly in visible rights, legitimate rights of service matters when the date of the retirement of the petitioner is due on 30.11.2008 requires the consideration.
7. Whether the dismissal of constitutional petition is on fault of non appearance of the petitioner's counsel who also did not intimated to petitioner to file the proper application for restoration in time.

8. Whether if delay is caused for filling restoration application is on account of fault of the petitioner's counsel.
9. Whether the affidavit filed by the petitioner in support of restoration application was not considered by the Honourable High Court.
10. Whether the Order of the Honourable High Court being perverse is liable to be set aside in the interest of justice.

B. FACTS INVOLVED IN THE PETITION:

Being aggrieved with and dissatisfied by the order dated 30.10.2008, passed by the Division Bench of Honourable High Court Sindh, Karachi, the Appellant prefers this Leave to Appeal before this Hon'ble Court for dismissed the High Court Petition C.P NO:D- 2105/2006.

1. The brief facts of this leave to appeal assailed from the order are that appellant is employee of PIA working as Accounts Supervisor in Finance Department with effect from 25.03.1987. The appellant is deprived of increase of salary, yearly increments or increase in salary, Hajj and foreign posting on merits and also promotion for the reasons that appellant had intimated to respondent management for tracing the fraud in the Medical department of Respondent NO.1 certified by the Chief Internal Auditor.

2. That These facts are admitted by the respondent NO:1, even recommended by the legal department of the Respondent No.1, in the July 2008 mentioned in the letters which I can produce with leave of this Honourable Court .

3. That the appellant was aggrieved from the orders passed by the respondent NO:1, the appellant filed the case before the Federal service Tribunal, same was abated by the Honorable supreme court of Pakistan on 27.06.2006 after the 3 years course of litigation, then appellant availed the remedy by filling Constitutional petition under Article 199 of the constitution of the paksitan, 1973.

4. That such Constitutional Petition was filed on 23.09.2006 after the abatement of my case from the Federal Service Tribunal on 27.06.2006, I was appeared regularly, When the Constitutional Petition was fixed on 20 .09.2007, I was at my native place, I was unaware about the fixation of the petition, unfortunately the counsel was also not appeared, the CP was dismissed in non prosecution on 20 .09.2007, mean while, I asked the Status of the case from the Counsel he reply me that there is progress in status of the case. I become total Unaware about there facts on 20 .09.2007, when I inquired about case from the office of the court I was intimated that the CP has been dismissed in the non prosecution and the restoration application has been filed my counsel on 01.11.2007, without intimating me. I sustained a shock to listen such bad news.

list of the High court which was out of my reach I was at my native place. When the restoration application was filed by my counsel by filing his personal affidavit such fact was also not in my knowledge that such application is also filed as about laps of the 11days barred. Hence, I personally made hearing of the case along with my advocate freshly appointed in my case by me but my arguments were not considered by the learned Bench of the High Court being lay man.

4. That the Honourable court has vast powers to consider the verbal request even without moving an application for granting condonation even verbal application as reported in 1971 SCMR 148 the relevant placitum at page 150 is reproduced as under

“The grievance of the petitioner that no formal application was made under section 5 of the limitation act has no far reaching effect on the merits of the case. The high court was perfectly justified in observing that an oral application was made and that was quit sufficient to consider the question of condonation of the delay” this prayer was not appreciated by the learned Division bench.

5. That the law says that Honourable court has ample of powers to condone the delay even in suo muto as reported in 1980 CLC110. But such request is not appreciated by the learned court.

6. That I have been regularly appearing in the matter since last almost 6 years, but such date was unfortunately counsel could not

5. That I have also filed the complaint against my previous Counsel before the Secretary Sindh Bar Council for conducting disciplinary proceedings against his willful professional negligence.

6. That when the case was fixed for hearing on 30.10.2008 again my counsel remained absent. I alone appeared before the Honorable High court by filling my personal affidavit, I made the hearing of the case but the high Court gave the certain observations.

7. That the Petitioner/I have already served the notice of this leave to appeal proceedings upon the respondents but no answer is yet received by me, hence this, leave to appeal on the following grounds.

C. G R O U N D S:

1. That the learned division bench of High Court has erred to appreciate the grounds urged in the personal affidavit of the counsel & Petitioner.

2. That the matter is involving service benefits of the appellant as seniority, who is on LPR and retirement is due on 30.11.2008, but the learned bench, did not consider such ground as mentioned in the affidavit of the appellant.

3. That the dismissal of the Constitutional petition is on account of the fault my counsel, I was remained unaware from the facts of fixation of the petition for the reason that same is given in the cases

intimated me. Otherwise I could have been appeared before the Honourable court for saving my interests.

7. That there is no will full absence/non appearance in the matter being employee on the verge of the retirement how it could be possible for me to avoid for appearance.

8. That the complaint is pending before the disciplinary committee against the previous counsel the proceedings are in development this also a genuine ground for condonation of delay and restoration in the prime interest of justice & equity.

9. That appellant is deprived of increase of salary, yearly increments or increase in salary, Hajj and foreign posting on merits and also promotion, having interest of monetary benefits which requires the indulgence of this Honourable Court.

10. The law says that Client is not supposed to be punished against the mistake of the counsel, so lordship same is happened in my case. I have been penalized on account of the negligence of my counsel same is liable to be considered in restoration application even verbally but the learned division bench has not considered the ground for condonation of delay.

11. That if the condonation is not allowed I shall be seriously prejudiced & will be deprived of from my legitimate monetary benefits which are for my family survival sources being an old man.

12 The other grounds will be urged at the time of the Hearing of the case.

PRAYER

- a) I respectfully prayed that this Honourable Court may be graciously pleased to grant leave to appeal in the matter.
- b) This Honourable Court may graciously be pleased to direct (Respondent NO.1) for issuing me card to me and my dependents for availing medical treatment and other facilities which are available for the retired employees my retirement date is due on 30.11.2008.

KARACHI

DATED: 17-11-2008

Drawn and Filed By Me



PETITIONER IN PERSON