

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan

C.P.2717-L of 2015

*(Against the order of Federal Service Tribunal
dated 14.09.2015, passed in MP No. 23/2015
in Appeal No. 99(L)CE/2004)*

Regional Operation Chief, National Bank of Pakistan, Human
Resource Department, Regional Office, Sargodha, etc.

.....Petitioner(s)

Versus

Mst. Nusrat Perveen, etc.

.....Respondent(s)

For the petitioner(s): Mr. M. Qamar-uz-Zaman, ASC.

For the respondent(s): N.R.

Research Assistance: Mr. Hasan Riaz, Civil Judge cum
Research Officer at SCRC.¹

Date of hearing: 23.12.2020

ORDER

Syed Mansoor Ali Shah, J.- We consider in this petition whether the appeal filed by a civil servant in the Federal Service Tribunal ("Tribunal") would abate on his death or his legal heirs could pursue the same.

2. Brief facts of the case are that decedent predecessor of the respondents, Rana Ejaz Ahmad, while working as Officer Grade-III was departmentally proceeded against by the petitioners and was awarded major penalty of reduction to a lower stage of pay by three steps. The decedent challenged the imposition of penalty but died during the pendency of his appeal before the Tribunal. Rejecting the objection of the petitioners that the claim of the decedent did not survive after his death, the Tribunal allowed legal heirs of the decedent to be impleaded as party in the appeal

¹ Supreme Court Research Centre, SCP, Islamabad.

pending before it. The petitioners have sought leave of this Court under Article 212(3) of the Constitution to appeal against the order of the Tribunal.

3. It has been contended by the learned counsel for the petitioners that an employment grievance does not survive the civil servant's death. No remedy, he argues, has been provided to the legal heirs of a civil servant under the Service Tribunals Act, 1973 ("Act") and, therefore, the respondents could not be permitted to pursue the claim initiated by the decedent. The learned counsel has resorted to two judgments of this Court i.e. *Muhammad Nawaz v Ministry of Finance* (1991 SCMR 1192) and *Muhammad Ashfaq v Member (Revenue) Board of Revenue* (PLD 2008 SC 703) to support his argument. Additionally, he submits that in view of the judgment delivered in *Muhammad Tariq Badr v National Bank of Pakistan* (2013 SCMR 314), the Tribunal had limited jurisdiction as regards the terms and conditions of the employees of the petitioner bank which extinguished with the demise of the decedent.

4. We have heard the learned counsel for the petitioners at length and perused the judgments relied upon by him minutely. The matter in issue relates to the survival of the right to sue following the death of a civil servant. The appeal of the decedent on a matter relating to some terms and conditions of service at the time of his death was undoubtedly pending before the Tribunal in accordance with the decision² of this Court. The only question begging determination is the survivability of the claim of the decedent. It is seen that the Act or the rules³ framed thereunder do not contain any reference to the question of devolution of the right to sue in case a civil servant dies during the pendency of service appeal nor do they provide for abatement of appellate proceedings initiated by an aggrieved civil servant on his death. Adverting to the case law developed on this subject, it is apparently correct that the appeals filed by civil servants were held by this Court to have abated with their death in the cases of *Muhammad Nawaz* and *Muhammad Ashfaq*. However, these two judgments were distinguished subsequently by a three Member

² *Muhammad Tariq Badr v National Bank of Pakistan* 2013 SCMR 314.

³ The Service Tribunals (Procedure) Rules 1974.

Bench of this Court in *Chief Secretary Punjab v Ch. Iftikhar Ahmad*⁴. It was held therein that peculiar benefits to which the legal heirs would become entitled would not allow the lis to abate on the death of a civil servant. The writ petition of the husband of the deceased ad hoc civil servant was entertained and the right of late civil servant regarding the benefits of terms and conditions of service was considered to have devolved on her husband.

5. It is significant to observe that service disputes are not always attached merely with the person of a civil servant as an individual but more often than not with some benefits which could potentially be enjoyed by the successors of the civil servant in accordance with law which are contingent on the adjudication of the controversy. This consideration attracted the attention of this Court in *Federation of Pakistan v Syed Afzal Muhammad Farooq*⁵ where the civil servant whose grievance related to the issue of promotion had passed away during the pendency of appeal. It was observed that his legal heirs had no cause of action to the extent of promotion yet in the event of success of his claim, they would be entitled to enhanced pensionary benefits. The Court did not consider it appropriate to dilate upon the merits of the case in the absence of legal heirs. The Federation of Pakistan was directed to re-consider the case and if late civil servant was found to be entitled to promotion, enhanced pensionary benefits be extended to his legal heirs. Relying on the case of *Syed Afzal Muhammad Farooq*, this Court in the case of *Mehar Muhammad Nawaz v Managing Director, Small Business Finance Corporation*⁶ did not entertain the objection that the right to sue did not survive following the death of a civil servant. Legal representatives of the deceased civil servant were held entitled to the pensionary benefits admissible under the law.

6. In the case in hand also, the decedent in addition to assailing penalty imposed on him was seeking payment of wages which would have been due had he not been punished in departmental proceedings. And, if the departmental decision is

⁴ 2013 SCMR 392.

⁵ 2005 PLC (CS) 1424.

⁶ 2009 SCMR 187.

overturned in appeal, the heirs of the decedent would at least inherit back benefits which their predecessor would have got, had he succeeded in appeal in his lifetime. It is noteworthy that the heirs' entitlement to service benefits may sometimes transcend usual gains like pension, gratuity etc. For instance, in the province of Punjab, the family of a civil servant who dies in service is entitled to salary which the deceased civil servant was drawing, along with annual increases, till the date of superannuation of the deceased civil servant after which family pension is allowed as per rules.⁷ Imagining a hypothetical situation in this backdrop, if the claim of wrongful dismissal from service of a civil servant in Punjab is allowed to abate without adjudication on his death, legitimate expectancy of his family about substantial monetary benefits would be prejudiced without any adjudication.

7. Although the Court in this case is seized of a matter particularly governed by service law, the issue pertains to the larger question of the survival of a claim emanating from an employment dispute. This Court in *Itrat Zahida v President ABL*⁸ has held that the writ petition of an employee who has assailed the decision of Labour Appellate Tribunal does not abate on his death and his legal heirs have a right to continue the proceedings for a decision on merit. Employment claims have been held to have survived the death of the employee in different foreign jurisdictions. It has been held that the cause of action in a claim for overtime pay survives the death of the employees when statutory law does not specifically refer to the question of survival of actions⁹; a county employee's claim for back pay survives his death¹⁰; a claim for pecuniary compensation for discrimination brought before the employment tribunal could survive the death of the employee and it is immaterial that the discrimination Acts do not expressly confer rights on a personal representative to pursue a deceased's claim for compensation for discrimination, rather, the critical question is whether the discrimination Acts contain

⁷ Notification No. FD-SR-I/3-10/2004, Dated 15th August 2017, Finance Department, Government of the Punjab, Serial No. 2.

⁸ 2006 SCMR 1287.

⁹ *Acebal v United States* 60 Fed. Cl. 551.

¹⁰ *Rendek v Sheriff of Bristol County* 440 Mass. 1017.

anything which takes away such rights¹¹; a labour complaint will not extinguish as the causes of action i.e. violations of law survive the plaintiff's death¹²; a claim that an employee was wrongfully dismissed in violation of law survives the employee's death¹³; "[t]he death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman. . . ."¹⁴; and the right to get the benefits, which would have been due to the deceased civil servant, would devolve on his legal representative.¹⁵

8. The question whether after the death of the plaintiff or the petitioner proceedings would abate would primarily depend on the nature of cause of action¹⁶ and the relief claimed in the peculiar facts of each case¹⁷. Service benefits may be enjoyed by the successors of the deceased civil servant. Some of those are inheritable which form part of the estate of the deceased while others are grants to be distributed among his family members according to law.¹⁸ The respondents in the instant petition would receive some benefits in case they are able to vindicate their stand before the Tribunal. Such a claim does not extinguish with the death of civil servant. Letting the claim lapse on the basis of an ultra textualist interpretation of the Act would be denying the heirs the right to seek adjudication on merits. The Tribunal is deemed to be a civil court for the purpose of deciding an appeal and has the same powers as are vested in such court under the Code of Civil Procedure, 1908 ("CPC").¹⁹ Rule 33 of Order XLI of CPC empowers a Court of Appeal to pass any decree and make any order which ought to have been passed or made and this power may be

¹¹ *Harris (suing as personal representative of Andrews (deceased) v Lewisham & Guy's Mental Health NHS Trust* [2000] 3 All ER 769.

¹² *McFeeley v Jackson Street Entm't, LLC* 2014 U.S. Dist. LEXIS 114767, 2014 WL 4182231.

¹³ *Gasior v Mass. Gen. Hosp.* 446 Mass. 645.

¹⁴ *Rameshwar Manjhi v Management of Sangramgarh Colliery* AIR 1994 SC 1176.

¹⁵ *Sudha Shrivastava v Comptroller and Auditor General of India* AIR 1996 SC 571.

¹⁶ *Itrat* (n 8).

¹⁷ *Rameshwar* (n 14).

¹⁸ *The Government of Pakistan v General Public* PLD 1991 SC 731; *Zaheer Abbas v Pir Asif* 2011 CLC 1528; *Dawa Khan v The Government of Pakistan* 2015 PLC (CS) 1255; *Amtul Habib v Musarrat Parveen* PLD 1974 SC 185.

¹⁹ The Service Tribunals Act 1973, s 5(2).

exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal. In addition, Rule 1 of Order XXII CPC provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. And, by virtue of Rule 11, provisions of Rule 1 of Order XXII CPC have been made applicable to appeals.

9. The object of establishing Service Tribunals was to take out the adjudication of disputes relating to the terms and conditions of service of civil servants from the hands of tradition bound civil courts and place it before specialized tribunals exclusively dealing with the issue without being hamstrung by intricate procedural rules of pleadings, trial, admissibility of the evidence and proof of facts.²⁰ In addition to reducing the burden of regular civil courts, a very important purpose was to provide to the civil servants expeditious adjudication in respect of their grievances.²¹ Notwithstanding that CPC is not as a whole strictly applicable to the proceedings before the Tribunal, the Tribunal is bound to follow the basic norms of justice.²² It has been observed by this Court that the provisions of CPC may not *stricto sensu* apply in proceedings under a special law yet its equitable principles will always be applicable in order to do complete justice between the parties and meet the ends of justice.²³

10. Not all legal rights terminate on death.²⁴ A claim by a civil servant for his promotion or better terms and conditions or for reinstatement in service, is survivable claim and passes on in the shape of pecuniary and pensionary benefits to his legal heirs. Such a claim may arise under the service laws but also enjoys constitutional underpinning. "The right to employment and to earn a living free from undue molestation is a property right affecting

²⁰ *Vatchirikuru Village Panchayat v Deekshi Thulu Nori Venkatarama* 1991 (2) SCR 531; *Government of Bangladesh v Sontosh Kumar Shaha* 13 ADC (2016) 853.

²¹ *A.K. Behra v Union of India* (2011) 1 SCC (LS) 101; *Asadullah Khan Tareen v Government of Balochistan* 2016 PLC (CS) 195.

²² *Ali Khan Subanpoto v Federation of Pakistan* 1997 SCMR 1590.

²³ *Sheikh Saleem v Shamim Atta Ullah Khan* 2104 SCMR 1694 (The case arose out of a rent matter).

²⁴ Fred O. Smith, Jr., 'The Constitution After Death' (2020) 120 Colum. L. Rev. 1471, 1531; Kirsten Rabe Smolensky, 'Rights of the Dead' (2009) 37 Hofstra L. Rev. 763, 764.

the estate of plaintiff. Such right does not abate upon his death.”²⁵ Abatement of appeal on the death of the decedent would impinge upon the property rights of the respondents. Also, shutting eyes to their potential property rights would hurt their right to dignity. “Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued. . . .”²⁶

11. Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Fundamental right to life including right to livelihood ensures the security of the terms and conditions of service;²⁷ fundamental right to property ensures security of the pecuniary and pensionary benefits attached to the service;²⁸ fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion etc;²⁹ and fundamental right to fair trial and due process, *inter alia*, safeguards and protects the survivable interest and ensures continuity of the legal proceedings even after the death of the civil servant, equipping the legal heirs to pursue the claim³⁰. Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs. It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one’s reputation is also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family.

12. For the foregoing reasons, we take no exception to the impugned order and are of the view that it does not warrant any

²⁵ *Bilanow v United States* 159 Ct. Cl. 93.

²⁶ *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497.

²⁷ The Constitution of the Islamic Republic of Pakistan 1973, art 9.

²⁸ *ibid* arts 23 and 24.

²⁹ *ibid* art 14.

³⁰ *ibid* art 10 read with art 4.

interference. Leave is, therefore, declined and this petition is dismissed.

Judge

Judge

Lahore,
23rd December, 2020.
Approved for reporting
Iqbal

Judge