JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.155/2016
Tanvir Hussain
Versus.
Managing Director, Overseas Pakistanis Foundation and others

Date of Hearing:	21.12.2017.
Petitioner by:	M/s Muhammad Shabbir Ahmed Nasir, Advocate.
Respondent by:	Sheikh Muhammad Nusrat Ullah Waleem, Advocate for respondent No.1. Mr. Irfan Farooq, Additional Director (Law), O.P.F. Raja Ahsan Mehmood Satti, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:-Through the instant civil revision petition, the petitioner, Tanvir Hussain, impugns the order dated 19.12.2015, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the judgment and decree dated 25.05.2015, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide said judgment and decree dated 25.05.2015, the learned civil Court had dismissed the petitioner's suit for recovery of Rs.1,65,000/- which he had claimed against respondents No.1 and 2 on account of holding additional charge of the post of PRO to the Federal Minister for Overseas Pakistanis.

2. On the strength of the decision taken by the Board of Governors of the Overseas Pakistanis Foundation ("O.P.F.") in its 58th meeting, the petitioner claims to be entitled to an amount of 20% of his basic pay, in addition to his own salary, for holding the additional charge of PRO to the Federal Minister for Overseas Pakistanis between 2004 to 2008.

3. Learned counsel for the petitioner submitted that the concurrent orders passed by the learned Courts below suffer from material and jurisdictional irregularities inasmuch as the suit instituted by the petitioner was not time barred; that the learned Courts below did not take into account the fact that the petitioner's departmental appeal/representation was turned down on 04.04.2011; that the cause of action accrued to the petitioner on 04.04.2011, and therefore, the suit instituted by the petitioner on

28.03.2012, was well within limitation period. Learned counsel for the petitioner prayed for the civil revision petition to be allowed, and for the concurrent orders of the learned Courts below, to be set aside.

4. On the other hand, learned counsel for respondents No.1 and 2 assisted by Mr. Irfan Farooq, Senior Law Officer of respondent No.1 submitted that the suit for recovery instituted by the petitioner was barred by limitation; that the petitioner's claim in his suit pertained to the payment of an additional allowance for the period between October, 2004 to March 2008, he should have filed his suit within a period of three years from the accrual of the cause of action i.e. 31.03.2008; that Article 102 of the first schedule to the Limitation Act, 1908, provides a limitation period of three years for the institution of the suit for the recovery of wages; that Regulation No.11.09 of the O.P.F Service Regulations, 1993, permits the grant of special allowance to the extent of 20% of an employee's pay only for a period of six months in cases where an additional charge is entrusted on such an employee; that the petitioner has already been paid the special allowance in accordance with Regulation No.11.09 of the said Service Regulations; that any further payment to the petitioner would be violation of the said Service Regulations; that although the petitioner's departmental representation/appeal was turned down on 04.04.2011, the letter dated 04.04.2011, whereby the petitioner's representation/appeal was turned down, was never exhibited during the trial before the learned civil Court; that the petitioner has filed yet another application for reconsideration before respondent No.2. Learned counsel for respondents No.1 and 2 further submitted that since the concurrent judgments of the learned Courts below do not suffer from any jurisdictional infirmity, the instant civil revision petition is liable to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. It is an admitted position that the petitioner was given an additional charge of PRO to the Federal Minister for Overseas Pakistanis from October 2004 to March, 2008. It is also an admitted position that the petitioner has been paid special allowance at the

rate of 20% of his pay for holding the said additional charge. However, the said allowance has been paid only for a period of six months.

7. Since the petitioner was not paid special allowance for the entire period during which he had the said additional charge, the cause of action at best accrued to the petitioner, when he stopped holding the additional charge. The limitation period of three years for filing of a suit for the recovery of wages under Article 102 of the Limitation Act, 1908 would commence when the payment of wages is due. Since the petitioner held the said additional charge until March, 2008, the limitation period for filing of the suit would commence on 31.03.2008. Since the suit was instituted by the petitioner on 28.03.2012, the same was clearly barred by limitation. Indeed, the petitioner's departmental representation/appeal was turned down on 04.04.2011, but the letter dated 04.04.2011, whereby the petitioner's representation/appeal was turned down, was never exhibited during the trial before the learned civil Court. Therefore, I do not find any jurisdictional infirmity in the appellate judgment dated 19.12.2015. Consequently, this civil revision petition is liable to be dismissed with no order as to costs.

8. Before parting with this judgment, I cannot help, but observe that the petitioner has been treated most unfairly by his employer. Learned counsel for respondents No.1 and 2 admitted that the petitioner was given the additional charge of PRO to the Federal Minister for Overseas Pakistanis between October, 2004 to March, 2008. On the strength of Regulation No11.09 of the O.P.F Service Regulations, it is asserted on behalf of respondents No.1 and 2 that the payment of special allowance to an employee for holding an additional charge can be made for a period not exceeding six months. No plausible answer could be given by the learned counsel for respondents No.1 and 2 when asked by the Court as to whether it was justified to entrust an employee with an additional charge for a period of almost three and a half years, and pay him allowance for the additional charge only for a period of six months. In the case at hand, the petitioner had been entrusted with an additional charge for almost three and a half years. To pay him special allowance only for six months despite having obtained services (while on the

additional charge) from him for almost three and a half years, is a travesty of justice. This is moreso when the Board of Governors of respondent No.1 in its 58th meeting held on 16.04.1996, had decided that the post of PRO to the Minister of State for Overseas Pakistanis when appointed would be entitled to draw staff allowance at the rate of 20% of his pay "for the period of his duty". Apparently, the petitioner had earlier served as PRO to the Federal Minister for Labour, Manpower and Overseas Pakistanis, for which service he was held to be entitled to draw staff allowance at the said rate from the date of the assumption of his duty as PRO until the termination of his duty.

9. Learned counsel for respondents No.1 and 2 had submitted that the applicable Regulations do not permit the entrustment of an additional charge for more than six months. No plausible explanation was given, when asked as to whether the additional charge was withdrawn from the petitioner on the lapse of six months or whether the Federal Minister for Overseas Pakistanis was informed by the legal department of respondents No.1 and 2 that the petitioner could not be kept on an additional charge beyond a period of six months. Respondents No.1 and 2 in their written statement did not deny the entrustment of an additional charge to the petitioner for a period between October, 2004 to March, 2008.

10. Apparently, the petitioner's application dated 22.04.2011 for reconsideration of the decision in the appeal is still pending. It is expected that the said application would be decided fairly and justly, and in accordance with the law and equity. The mere fact that the petitioner's suit was dismissed does not prevent respondent No.2 to give consideration to the petitioner's application for reconsideration. It is well settled that the law of limitation does not extinguish a right, but only bars the remedy before a Court of law.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in an open Court on _____.

JUDGE

Sanaullah*

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