

**P L D 2002 Supreme Court 381**

**Before Sh. Riaz Ahmed and Javed Iqbal, JJ**

**GHULAM RASOOL and others---Petitioners**

**Versus**

**GOVERNMENT OF BALOCHISTAN and others---Respondents**

Civil Petitions Nos.97 and 98-Q of 2000, decided on 26th July, 2001.

(On appeal from the judgment, dated 14-9-2000 passed by Balochistan Service Tribunal, Quetta in Service Appeals Nos. 18 and 19 of 1991).

**(a) Civil Servants Act (LXXI of 1973)-----**

--S. 8--Seniority---Fixation of seniority with retrospective effect ---Scope-- Seniority cannot be conferred with retrospective effect unless such right is established---Seniority cannot be determined without reference to continuous appointment in a particular grade.

**(b) Civil Servants Act (LXXI of 1973)---**

----S. 8---Service Tribunals. Act (LXX of 1973), S.4---Constitution of Pakistan (1973), Art.212(3)---Seniority---Fixation of---Services of the civil servants were terminated during their initial training---Review Board reinstated the civil servants and the seniority was fixed from the date of their reinstatement---Contention of the civil servants was that their seniority be fixed from the date of their initial appointment---Validity---Civil servants, in the present case, had remained out of service, during the years from 1973 to 1978 having no concern whatsoever with the cadre of their service and the said period was never taken into consideration by the Review Board and the civil servants were treated on duty by granting extraordinary leave without pay---Omission on the part of the Review Board was not accidental, but the same was deliberate and calculated action which had attained finality and the civil servants could not claim any benefit for the intervening period---Had the civil servants been reinstated with retrospective effect, such fact could have been mentioned in the order passed by the Review Board---Service Tribunal, after in-depth scrutiny of entire record, had dismissed the appeals preferred by the civil servants and the findings of the Tribunal being unexceptionable did not warrant any interference---Supreme Court declined to fix seniority retrospectively in view of the orders passed by the Review Board---Leave to appeal was refused.

**(c) Constitution of Pakistan (1973)-----**

----Arts. 185(3) & 212(3)---Grant of leave to appeal by Supreme Court--Scope---Leave to appeal can only be granted by Supreme Court if the case involved a substantial point of law of public importance.

Muhammad Iqbal v. Secretary to Government of Punjab 1986 SCMR 1; Karamat Hussain v. Province of the Punjab 1982 SCMR 897; Miss Razia Sultana v. Government of Punjab 1981 SCMR 715; M. Yasmin Qureshi v. Islamic Republic of Pakistan PLD 1980 SC 22; Irtiga Rasool Hashmi v. WAPDA 1980 SCMR 722; Dilbar Hussain v. Province of Punjab 1980 SCMR 148; Dilbar Hussain Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar 1976 SCMR 268; Muhammad Azhar Khan v. The Service Tribunal, Islamabad 1976 SCMR 262; M.A. Majid v.

Government of Pakistan 1976 SCMR 311 and Muhammad Azam v. Chief Irrigation 1991 SCMR 255 ref.

Mohsin. Javed, Advocate Supreme Court and W.N. Kohli, Advocate-on-Record (in C.P. No.97-Q of 2000) for Petitioner.

Basharatullah, Senior Advocate Supreme Court (in C.P. No. 98-Q of 2000) for-Petitioner.

Nemo for Respondents.

Date of hearing; 26th July, 2001.

## **ORDER**

**JAVED IQBAL, J.**---Two petition for leave to appeal have been preferred on behalf of Ghulam Rasool and Mir Ali Akbar Mengal against judgment of learned Baluchistan Service Tribunal, dated 14-9-2000 whereby appeals filed by the petitioners were dismissed. By this common order we propose to dispose the said petitions leaving, arisen out of the common judgment.

2. Briefly stated the fact of tire case are that Mr. Ghulam Rasool and Mir Ali Akbar Mengal were selected as Tehsildars on 27-12-1972 and 21-9-1972 respectively. They were sent for training but their services were terminated before completion of the training. After constitution of a Review Board, they preferred representations which were accepted and once again they were sent for training and after completion whereof they were posted as Tehsildars with effect from 10-9-1980. Being dissatisfied with their seniority position learned Service Tribunal was approached, but their appeal was dismissed by means of impugned judgment and consequently these petitions for leave to appeal have been filed.

3. It is mainly contender by Mr. Basharatullah, learned Senior Advocate Supreme Court that the impugned judgment is contrary to facts and law because the legal and factual aspects of the controversy have not been appreciated in its true perspective which resulted in serious miscarriage of justice. It is urged emphatically that learned Service Tribunal has erred while holding that seniority of petitioners should be reckoned with effect from 10-9-1980 instead of 27 12--1972 and 21-9- 1972. i e the dates of induction of the petitioners as Tehsildars. It is also contended that the provisions as enumerated in Rules 8, 9 and 10' of West Pakistan Tehsildars and Naib Tehsildar Rules, 1962 were never .considered, but on the contrary a conflicting view has been taken in contravention of the said Rules by determining the seniority with effect from 10-9-1980 which caused a serious prejudice and ruined the career of petitioners without any rhyme and reason. It is also pointed out that after their reinstatement by the Review Board there ig no lawful justification whatsoever to determine the seniority of the petitioners with effect from 10-9-1980 and it should have been fixed with retrospective effect, i.e., the date of their induction in service. It is pointed out that the order passed by learned Review Board has been misinterpreted and misconstrued because only the monetary benefits Review Board which was quite clear regarding the position of petitioners insofar as their seniority vis-a-vis their other colleagues is concerned and no embargo whatsoever has been imposed by virtue of the said order that the petitioners cannot claim their seniority with retrospective effect.

4. Mr. Mohsin Javed, learned Advocate Supreme Court appeared on behalf of Mr. Ghulam Rasool and adopted the arguments as adduced by Mr. Basharataullah, learned Senior Advocate Supreme Court.

5. It is worth while to mention here that there is a complete similarity in factual and legal aspects of the case. It is, however, to be noted that one additional factor was also

pressed into service by Mr. Basharatullah on behalf of Mir Ali Akbar Mengal by arguing that a representation was preferred by Mir Ali Akbar Mengal which was accepted by the then Chief Minister with specific direction that seniority of the petitioners be fixed with retrospective effect, i.e. 21-9-1972.

6. We have carefully examined the respective contentions as agitated on behalf of the petitioners in the light of the relevant provisions of law and record of the case. We have minutely perused the impugned judgment. The case of the petitioners is that their seniority should be reckoned from 27-12-1972 and 21-9-1972, i.e. the dates of their initial recruitment as Tehsildars because they were reinstated by the Review Board and accordingly the intervening period could have been treated as leave without pay. It is also the case of petitioners that they cannot be deprived from their seniority which is to be tiled with retrospective effect after their reinstatement by the Review Board. A careful examination of the entire record would reveal that Mr. Ghulam Rasool was selected as Tehsildar on 23-12-1972 but his regular appointment as Tehsildar was subject to the completion of training successfully. This condition was also applicable to Mr. Mir Ali Akbar Mengal who was selected as Tehsildar on 21-9-1972. It is an admitted feature of the case that their services were terminated on 30-5-1973 during training and they were ousted from service and hence the question of consideration of their seniority from 27-12-1972 and 22-12-1972 does not arise. Had the training been completed successfully the position would have been different. It would be pertinent to mention here that they had remained as "trainees" for a few months. The order, dated 12-10-1978 passed by Member-I, Board of Revenue, Balochistan is indicative of the fact that Mir Ali Akbar Mengal had remained as "trainee" from November, 1972 to May, 1973 (six months) while Mr. Ghulam Rasool had enjoyed the status of trainee with effect from January, 1973 to May" 1973 (four months). They were re-instated vide order, dated 2-10-1978 and on the basis of a few months' training how their seniority could 'have been determined retrospectively? In our considered view conferment of seniority with retrospective effect cannot be done unless such right is established. The petitioners have failed miserably to establish such a right on the basis whereof their seniority could be determined retrospectively. It is well-settled by now that seniority cannot be determined without reference to continuous appointment in a particular grade. Admittedly their services were discontinued with effect from 30-5-1973 and it is also an admitted feature of the case that they could not complete their training and remained ousted from service till 1978. There is no denying the fact that they were reinstated by the Review Board vide order, dated 20-10-1978 wherein it has been clarified categorically that no back benefits would be given and it was a reinstatement simpliciter without any sort of back benefits. This order, dated 20-10-1978 was neither further assailed nor any review was made to get the back benefits inserted which does not mean financial benefits alone, but also include seniority which is the real benefit. It can thus simply be inferred that the order of Review Board was accepted as it is and now it is too late to get it modified by making any deletion, addition, insertion or amendment as a specific task was assigned to Review Board and' after its accomplishment it is no more available to do the needful. Admittedly the petitioners had remained out of service during 1973 to 1978 having no concern whatsoever with the cadre of Tehsildar and the said period was never taken into consideration by the Review Board and the petitioners could have been treated on duty by granting extraordinary leave without pay. It was not an accidental omission but a deliberate and calculated action of the Review Board which by now has attained finality and thus the petitioners cannot claim any benefit for the intervening period.

7. Mr. Basharatullah, learned Senior Advocate Supreme Court has laid much stress on the order of Chief Minister whereby representation of Mir Ali Akbar Mengal was accepted with the direction that his seniority should be determined retrospectively, but Mr. Basharatullah learned Advocate Supreme Court could not meet the objection that how any benefit could be claimed on the basis of a "Non-existent" order as it was withdrawn by the then Chief Minister on 15-6-1991 being contrary to the relevant rules. Mir Ali Akbar Mengal had approached the Chief Minister directly and his

representation was never routed through Board of Revenue and thus it amount4 to serious misconduct on his part. Be as it may no importance can be given to the order passed by the then Chief Minister which was subsequently withdrawn and rightly so as it had been passed earlier in an arbitrary and whimsical manner without knowing the factual position and without having the comments of the Board of Revenue.

8. We have also examined the order, dated 27-12-1972 passed by Board of Revenue concerning the appointment of petitioners which is reproduced hereinbelow for ready reference:--

**"ORDER BY THE MEMBER, BOARD OF REVENUE BALOCHISTAN**

(Administrative Branch)

Dated Quetta, the 27th December, 1972.

No. 10925/66-Admn-1/71(11).--M/s. Ghulam Rasool son of Mir Karim Bakhsh, caste Raisani, resident of Dhadar (Karachi District) and Muhammad Nasir son of Nek Muhammad, caste Mengal resident of Wadh (Kalat District) are hereby accepted as direct Tehsildar. They will undergo necessary training as prescribed in the West Pakistan Tehsildari and Naib-Tehsildari Departmental Examination and Training Rules, 1969 against the newly-created two posts of Tehsildars for Settlement training during the current financial year 1972-1973;

- (2) During the training period, they will be entitled to such pay and allowances as admissible under Rules. They are required to undergo the training and to pass the Departmental Examination of Tehsildars, within the period of their training as specified in the above Rules.
- (3) On successful completion of training and passing the Departmental Examination they should be declared as qualified to hold the post of Tesildar. Thereafter on the availability of a vacancy they will be posted as officiating Tehsildar.

4. Before joining training they are required to:--

- (1) Appear before the Medical Board for Medical Examination.
- (2) Produce Certificates c)t Character from a First Class Magistrate.

(Sd.)  
Capt. Saleh Muhatnamd Khan, PCS,  
Member, Board of Revenue, Balochistan. "

9. A careful perusal of the said order would reveal as follows:--

- (a) The petitioners were neither appointed as Tehsildar nor posted as such but only their candidature as Tehsildar was accepted.
- (b) They were required to undergo necessary training as prescribed in the West Pakistan Tehsildars and Naib-Tehsildars Departmental Examination arid Training Rules, 1969 and only after successful completion of training and passing Departmental Examination they could claim the post of Tehsildar.
- (c) Even after the completion of training their postings as Tehsildar was subject to availability of posts.

On the basis of abovementioned order it can be said safely that the petitioners were neither appointed nor posted as Tehsildar, but only accepted as a candidate for the post

of Tehsildar.

10. We have not been persuaded to agree with Mr. Basharatullah, learned Senior Advocate Supreme Court that no embargo whatsoever had been placed regarding conferment of seniority with retrospective effect by Review Board for the simple reason that order, dated 2-10-1978 is free from any ambiguity and it is implicit that the petitioners were reinstated in service with immediate effect with specific direction that their reinstatement shall not entitle the petitioners to any damages, compensation or arrears of emoluments or other benefits for the period they remained out of service. Had they been reinstated with retrospective effect it could have been mentioned in the said order and accordingly no seniority could have been conferred retrospectively in view of the order passed by Board of Revenue and as discussed hereinabove.

11. In our considered view the learned Service Tribunal after an in depth scrutiny of entire record has dismissed the appeals preferred on behalf of the respondents and its findings being unexceptionable do not warrant any interference. It is worth mentioning that leave to appeal can only be granted by this Court if the case involves a substantial point of law and public importance. In this regard we are fortified by the dictum laid down in Muhammad Iqbal v. Secretary, to Government of Punjab (1986 SCMR 1), Karamat Hussain v. Province of the Punjab (1982 SCMR 897), Miss Razia Sultana v. Government of Punjab (1981 SCMR 715), M. Yasmin Qureshi v. Islamic Republic of Pakistan PLD 1980 SC 22, Irtiqah Rasool Hashmi v. WAPDA (1980 SCMR 722) Dilbar Hussain v. Province of Punjab (1980 SCMR 148), Dilbar Hussain Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar (1976 SCMR 268), Muhammad Azhar Khan v. The Service Tribunal, Islamabad (1976 SCMR 262), M.A. Majid v. Government of Pakistan (1976 SCMR 311). No substantial point of law is involved in the matter. The findings of Service Tribunal being the findings of fact do not warrant any interference by this Court. If any authority is needed "Muhammad Azam v. Chief Irrigation (1991 SCMR 255)" can be referred.

12. We have also perused the judgment of Balochistan Service Tribunal (Appeal No.2 of 1981), dated 20-5-1984 which cannot be made applicable as the facts are quite distinguishable. It is noteworthy that neither the service of the petitioners in the above unreported judgment was terminated nor any reinstatement order was ever passed by the Review Board. In such view of the matter the question of interpretation of Service Rules would be nothing but an academic exercise and would have no bearing on merits of the case.

13. In the light of foregoing discussion the petitions being devoid of merits are dismissed.

Q.M.H./M.A.K./G-79/S Petitions dismissed.

