

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 179 of 2015

S.M Ali Zaman Gardezi v/s. Fed. Tax Ombudsman (F.T.O) & others

Suit No. 178 of 2015

Muhammad Iqbal Muneeb v/s. Fed. Tax Ombudsman (F.T.O) & others

Suit No. 350 of 2015

Muhammad Iqbal Muneeb v/s. Fed. Tax Ombudsman (F.T.O) & others

Suit No. 351 of 2015

S.M Ali Zaman Gardezi v/s. Fed. Tax Ombudsman (F.T.O) & others

Plaintiffs in all four Suits: Through Mr. Khawaja Shams-ul-Islam, Advocate.

Federation of Pakistan: Through Mr. Osman A. Hadi, Assistant Attorney General.

Federal Board of Revenue: Through Mr. Muhammad Khalil Dogar, Advocate.

For hearing of maintainability of Suit(s)

Date of hearing: 16.12.2019.

Date of Order: 16.12.2019.

ORDER

Muhammad Junaid Ghaffar J. In these Suits, an objection of maintainability was raised by the office when Plaintiff(s) were presented on 02.02.2015 and 05.03.2015 respectively, and the Court, while passing ad-interim order(s), had also recorded certain observations; but thereafter, for some unknown reasons, this objection could not be taken up and or decided; as apparently, Office while placing the matter before the Court, never again endorsed any such objection; though the same was not overruled by the Court, but was to be taken up later. It further appears that

this matter was coming up with Suit No.149/2019 on numerous dates, whereas, on 2.10.2019 this objection was again raised by the Court and Counsel for the Plaintiffs was confronted and he had sought time to respond to it. It further appears that insofar as Suit No.149/2015 is concerned, the same has become infructuous due to retirement of the Plaintiff and today while confronted as to the office objection as well as the objections of the Court for lack of jurisdiction of this Court in respect of the issue, which pertains to the terms and conditions of the service of the Plaintiffs (who are Civil Servants) in view of the observations of the Hon'ble Supreme Court in the case of ***Ali Azhar Khan Baloch and others v. Province of Sindh and others***) reported as **2015 SCMR 456**, learned Counsel for the Plaintiffs makes a request that in the interest of justice, instead of rejecting and or returning the Plaint, the same may be remitted to the Federal Services Tribunal. In support he has also relied upon order dated 25.02.2019 passed in Suit No. 1991/2018 and submits that a person should not be non-suited on the basis of hyper-technicalities, and in the interest of justice, this Court can remit these matters directly to the Federal Service Tribunal.

Learned Counsel appearing on behalf of the Department has though made an attempt to argue merits of the case; however, since only an objection regarding maintainability or otherwise is to be decided, I am not inclined to entertain any such objection on merits.

I have heard both the learned Counsel and perused the record. Insofar the Judgment of the Hon'ble Supreme Court, as above, is concerned, though it provides a mechanism of remitting Plaints to the Federal Services Tribunal; however, it was in the

context when various Suit filed by Civil Servants, on the Original Side of this Court were pending and it would be advantageous to refer para-157 of the said Judgment, which reads as under:-

“157. Likewise, the Hon'ble Chief Justice of High Court of Sindh shall also constitute a Special Bench comprising the Senior Judge of the Court, who will examine the nature of Civil Suits filed by the Civil Servants and transfer them to the Sindh Service Tribunal or the Federal Service Tribunal, as the case may be, in case such suits pertain to the terms and conditions of their service including disciplinary proceedings, forthwith under intimation to this Court. The Federal Service Tribunal or the Sindh Service Tribunal, on receipt of the R&PS of the Constitution Petitions or Suits, shall treat them as Appeals deemed to have been filed before them on the date when presented before the High Court of Sindh and decide them in accordance with law. The question of limitation, if involved, will be considered by the respective Tribunals, in accordance with law, in the peculiar facts and circumstances of the cases.”

It needs to be appreciated that when these Suits were filed, the objection was already there as raised by the office in view of the Hon'ble Supreme Court's judgment in the case of **Ali Azhar Khan Baloch (s)** and perhaps in my humble view the Plaint ought not to have been entertained as there were clear directions of the Hon'ble Supreme Court regarding maintainability of these Suits. Nonetheless, the Court as an indulgence, though ordered issuance of summons and notices and also passed an ad-interim order; however, that was naturally, always subject to satisfaction of this objection. Learned Counsel for the Plaintiffs has also relied upon the order passed on 25.02.2019 in Suit No. 1991/2018, wherein, instead of returning the Plaint, this Bench while exercising inherent powers, had given directions to the office to remit the plaint along with annexures to the Federal Service Tribunal. However, I am of the view that in that case, facts so warranted as the Plaintiff was about to retire and had come before the Court in respect of correction of his date of birth and for such reasons, the Plaint, instead of being returned, was remitted and such facts are

not available in the present cases. It may further be observed that Para-157 of the aforesaid judgment was more specifically in respect of those cases, which had already been pending and were entertained by this Court, whereas, instant Suit was filed after pronouncement of the judgment of the Hon'ble Supreme Court, as above. Even otherwise, there appears to be no such facts available to exercise any inherent powers, or for that matter any discretion in favour of the Plaintiffs; as apparently, this Court in view of the above lacks jurisdiction, which appropriately, if at all, vests with the Federal Service Tribunal,

In view of hereinabove facts and circumstances of these cases, I am of the view that this Court lacks jurisdiction for entertaining these matters, and therefore, the Plaints in the above Suit are hereby returned by exercising powers under Order VII Rule 10 CPC, whereas, the Plaintiffs may approach and present the same before the Federal Services Tribunal, which shall act strictly in accordance with law.

Office shall retain copies of the Complaint(s), its annexures and the replies at the cost of the Plaintiff(s).

J U D G E