

IN THE FEDERAL SHARIAT COURT  
( Original Jurisdiction )

PRESENT:

Mr. Justice Gul Mohammad Khan                      Chief Justice  
Mr. Justice Dr. Syed Shujaat Ali Qadri  
Mr. Justice Ibadat Yar Khan  
Mr. Justice Allama Dr. Fida Mohammad.

SHARIAT PETITION NO.12/I OF 1988.

Abdul Majeed Mirza    .....Petitioner

Versus

Government of    .....Respondent  
Pakistan

Counsel for the    Mr. Iftikhar Hussain  
Federal Government    Chaudhry, Advocate.

For the Government    Syed Sajjad Hussain Shah,  
of Punjab.    A.A.G, Punjab.

For the Government    Mr. Muhammad Bashir Kiyani,  
of Baluchistan.    Advocate.

Juris-consults:    Dr. Muhammad Tufail.  
    Dr. Muhammad Tufail Hashmi.

Dates of hearing    18.4.1989 and 19.4.1989.

Date of decision:    29.6.1989.



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JUDGMENT:

GUL MOHAMMAD KHAN, CHIEF JUSTICE.- The

petitioner challenges through this petition, the section 15 of the Payment of Wages Act (IV) of 1936 and The Payment of Wages(Federal Railways) Rules, 1938. The sections reads as follows:-

15.(1) .....

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages or of any dues relating to provident fund or gratuity payable under any law has been delayed, such person himself or any legal practitioner, or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or of any heirs of an employed person who has died or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for direction under sub-section (3).

Provided that every such application shall be presented with three years from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of three years when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

The import of paragraph 8 of Form IV of above Rules is to the same effect.

2. The objection taken is that the wages of a worker is a right which the legislature cannot deny and mere lapse of time will not extinguish it. Reliance is placed on a Tradition of the Holy Prophet that the wages of a labourer shall be paid before his sweat dries.

"اعطوا لاجير اجرة قبل ان يجف عرقه"

(Sunnan Ibne Maja, Vol.II, p.76 Deeni Kutab Khana, Lahore)

It is urged that as a deduction is made by the employer he cannot benefit for his own lapses just for the reason that the labourer did not press for it in some specified time. No verse of the Holy Quran and no Tradition of the Holy Prophet (PBUH) other than the one quoted above have been cited in support of the proposition.

3. It is to be noted that the relevant law in its section 7 provides certain deductions that may be made. Sections 8-13 explain the conditions under which they are permitted. None of these sections have been challenged. Thus the deductions shall be deemed to be validly and lawfully made unless their genuineness and correctness is challenged. It is here that time limitation comes in. It is thus not a denial of payment of wages but the question whether the deduction was justified or not. Thus the extinguishment of a right will be claimed only after the deduction is found illegal.

4. The law of limitation of time wherever applied does not always mean to extinguish a right. It rather operates on the principle that if a claimant does not press his claim in the time specified by law through an authority appointed for the purpose by law, it will be presumed that either the claimant waived his right or was not serious and rather indolent. The concept is only this that the authority created or appointed for helping a claimant in such a situation will not help if the claimant knowing the position of law did not ask for it within the prescribed period.

5. The arguments raised before us by Dr. Muhammad Tufail and Dr. Muhammad Tufail Hashmi, the Juris-consults, on the basis of general wisdom, are that Islam does not permit any person and more particularly a State to deny

a worker or labourer his wages or make any illegal or undue deduction therefrom and then rely on lapse of time to avoid payment. They also rely on the general principle that a right will not be allowed to be extinguished. (Mohammad Abdul Jawad: Al-Hayazatee wat Taqadum, p.50 1977). Consequently, it is stated that as no claim of a person can be denied or defeated the present provisions which spell out such a result are against the Holy Quran and Sunnah of the Holy Prophet.

6. The above learned jurisconsults also referred to certain "Ahadith" which go to show that limitation had been placed by the Holy Prophet in respect of certain matters. One is cited as follows:-

" من حاز شيئاً عشر سنين فهو له "

" A thing which remained in the possession of a person for ten years shall become the property of that person." (Al-Mudawannah lil Imam Malik, Vol.V, page 192, Print Al-Saadah, 1323 Hijra).

An explanation of this Tradition has been given by another Jurist of Maliki school and quoted by Rabia in the same book to say that if a person holds immovable property of another, adversely to his knowledge and the true owner does not lodge his claim for ten years, the possessor will become the owner. The only exception appears to be of an absentee owner which also confirms that loss is due to the conduct of the claimant himself. The same view has the support of Imam Malik himself. More discussion is available at pages 173, 186, 187, 191 and 192 of the above book.

7. The same Tradition has been reported in Kanzul Ummal as follows:

" من حاز شيئاً على حصة عشر سنين فهو احق به منه "

"A thing which remained in possession of a person claiming adversely to the claimant for ten years, the right of the possessor shall be superior to that of his claimant opponent."

(Kanzul Ummal, Vol:III, page 898, Hadith No.9088, Print Beirut).

(See also (الفقه الاسلامى وادلة جلد ٣ ص ٦٩)

8. Imam Abu Yusuf, the learned jurist of Hanafi Fiqh, has narrated the following hadith:-

"عابى الارض لىة وللرسول ثم لكم من بعد فمن احيا ارضاميتة  
فهى له وليس لمحتجرق بعد ثلاث سنين" -

"Old and barren land is a property of the State and then of yours. Anyone who cultivates a piece of barren land he will become its owner. But a person who takes in possession a piece of barren land by putting corner stones and did not cultivate the land for three years shall cease his right." (Abu Yusuf, Kitabul Kharaj, page 70).

9. It is quite clear from all that said above that in cases of adverse possession of land even ownership could be extinguished and the adverse possessor can be given the same right and also preference, over the previous owner. Similarly, if a person takes possession of certain 'Mawat' land but does not develop it within three years he loses his right of possession.

10. It has been narrated by Abu Musa Asha'ri that Mu'aviyya bin Abu Sufian told that do you know that the Holy Prophet (PBUH) fixed the date for hearing when the parties came before him with their litigation and one of them came on the fixed date and the other did not come, the Holy Prophet decided the case in favour of the person who came and against the person who did not come."

"عن ابى موسى الاشعري ان معاوية بن ابى سفيان قال له اما علمت ان رسول الله صلى الله وسلم كان اذا اختتم عنده الرجلان فاتعد الموعد ف جاء احد ولم يات الاخر قضى رسول الله صلى الله عليه وسلم للذى جاء على الذى يحيى"

(Mahmood Ahmad Ghazi, Adabul Qazi, page 258, Print Islamic University, Islamabad).

11. The dicta given above was also followed by the Companions after the Holy Prophet. Hazrat Umar had directed Abu Musa Asha'ri in the time of his Caliphate that he should fix a date for hearing of the case. The Qadhi should also allow an opportunity to the party who wants to produce evidence in support of his plea but if he does not produce the same within the specified period, the case should be decided against him. (Adab-ul-Qadhi - Urdu - Islamic Research Institute, pp 128, 248, 258, 352). Similar is the view given in Al-Ahkamus Sultaniyya, Urdu Translation, page 128, Print Lahore. Even Majallah contains a Chapter on limitation في مرور الزمان section 1660 to 1675 supporting the principle of limitation in various cases.

12. Ibne Hajar Asgalani, in his book "al-Diraya-Fi-Takhreeje-Ahadith-il-Hidaya, Vol.II, p.244 quotes Hazrat Umar as saying that if a grantee of a land does not cultivate it for three years and another enters upon thereafter to do so; the latter gets a better title to it than the earlier grantee. The same view is by Yahya Ibne Adam in his book 'Kitabul Khiraj, page 103.

13. The precedents given above clearly establish the principle that a time limit can be placed both in respect of extinguishment of right and for the purpose of proving a claim. In fact it will be seen that Islam does not permit usurpation of one's right and rather protects and preserve. However, Islam also recognises that an owner or a holder of a right has the authority and discretion either to transfer the same by sale, gift etc or acquiesce and ignore if someone takes that away without his express authority or consent. Thus if the facts of a case show that the owner or the holder having knowledge of the fact of time limit did not claim or challenge, it will be presumed that he waived his right.

14. Thus emphasis in respect of such a matter is on the conduct of the person who seeks to press his claim. If the facts show that he knew the situation and he neglected or chose not to press it within the prescribed period, the machinery of law will refuse to help him. In fact he had already been forewarned by law that if he does not press his claim within the prescribed time he has to blame himself as the machinery of State is prohibited from helping him. The Islamic jurisprudence also embodies the principle known as "Tamadi".

15. The provision challenged before us also contains no more than what is permissible. We, therefore, are of the view that fixing a time limit in presentation or proving a particular claim is not repugnant to the Injunctions of Islam. No exception, therefore, can be taken against it. This is the view taken also in Muhammad Amin-Vs-Islamic Republic of Pakistan (PLD-1981-FSC-23(75)).

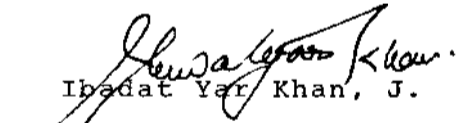
We find no merit in the petition and so it is dismissed.



Gul Mohammad Khan, C.J.



Shujaat Ali Qadri, J.



Ibadat Yar Khan, J.



Fida Mohammad Khan, J.

Approved for reporting.

Announced at  
Islamabad, the 29<sup>th</sup> June 1989.  
M. Khalil.