

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

228-1

CWP-23169-2018

SAMEYDEEN

... Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

... Respondents

A N D

228-2

CWP-1693-2019

Date of Decision: 02.02.2023

ANIL KUMAR JALANDHARA

... Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ghulam Nabi Malik, Advocate
for the petitioner in CWP-23169-2018.

Mr. V.K. Arya, Advocate for
Mr. B.S. Badhran, Advocate
for the petitioner in CWP-1693-2019.

Mr. Vivek Chauhan, AAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

This common order shall dispose of both above mentioned petitions as common question arises for consideration in both the petitions. For facility of reference, the facts have been noticed from CWP No.23169 of 2018 titled as 'Sameydeen Vs. State of Haryana and another.'

As per the averments contained in the petition, the appointment of petitioner was made as Member of the Waqf Tribunal vide Notification

Dated 25.07.2014 (Annexure P-1). It has been averred that even though the Waqf Tribunals were constituted in the State, however, terms and conditions of the appointment including the salary and allowances payable to the Chairman and the Members had not been prescribed as required under Section 83 (4-A) of the Waqf Act, 1995. As a result of the aforesaid, the Waqf Tribunals could not be made functional. Thereafter, the Notification of 'The Haryana State Waqf Tribunals (Terms and Conditions of Appointment of Members) Rules 2016 was issued on 22.12.2016. After the framing of the abovesaid Rules, the State of Haryana submitted a request to the High Court for making the Waqf Tribunals functional and vide letter dated 05.04.2017, the High Court issued letters to District and Sessions Judges in the State of Haryana for making the Waqf Tribunals functional and directed them to transfer all the Waqf related litigations to the respective Waqf Tribunals. It is further averred that the petitioner thereafter joined as Member of the Waqf Tribunal, Rohtak Division, Rohtak on 10.05.2017. A report in this regard was also sent by respondent No.2. It is thus argued that the tenure of the petitioner must thus commence from 10.05.2017 i.e. the date on which he joined as Member of the Waqf Tribunal. It is further averred that he was precluded from joining as a Member of the Waqf Tribunal on account of failure of the respondent-State to notify the statutory Rules. The present petitions have thus been filed for seeking issuance of directions that the petitioners may be permitted to continue as Member of the Waqf Tribunals for the complete period of three years as per the Rule w.e.f. the date of their assuming office.

Per contra, learned State Counsel contends that the Waqf Tribunals were constituted by the State of Haryana vide Notification dated

25.07.2014 and the petitioners were appointed as Members thereof in exercise of the powers conferred under Section 83(1) and (4) of the Waqf Act, 1995. The relevant provisions of the said Act read thus:

“83...Constitution of Tribunals, etc. (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute question or other matter relating to a waqf of waqf property, eviction of a tenant or determination of rights and obligations of a lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) XXX

(3) XXX

(4) Every Tribunal shall consist of—

(a) One person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class-1, who shall be the Chairman;

(b) One person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) One person having knowledge of Muslim law and jurisprudence, member;
and the appointment of every such person shall be made either by name or by designation.

4(A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other member other than persons appointed as ex-official member shall be such as may be prescribed.....”

He further submits that the Government had notified “The Haryana State Waqf Tribunal (Terms & Conditions of Appointment of Members) Rules, 2016 on 22.12.2016. As per Rule 6 of the above Rules of

2016, a “Member” of the “Tribunal” was to hold office for a period of three years from the date of “appointment.” The relevant Rule reads thus:

“Term of office of members of Tribunal. 6. The terms of office of the members of the Tribunal appointed under clause (c) of sub-section (4) of section 83 of the Act shall be of three years from the date of appointment which may be further extended for a period of two years.”

It is thus argued that the period of appointment under the Rules being three years, the notification would thus come to an end on the expiry of the said period.

It is further averred that since the legislature has fixed the tenure of a Member for a period of three years from the date of appointment, hence, the period of three years in terms of the Notification read with the statutory provisions has to be construed w.e.f. the date of appointment and not from the date of joining.

Counsel for the petitioner controverts the aforesaid submission that in the event the respondents construe the date of appointment as the crucial date for the purpose of determining the tenure, the petitioner would be entitled to necessary perks as have been prescribed in the Notification for the complete tenure.

I have heard learned counsel for the parties and have gone through the documents appended alongwith the present petition.

The primary question which thus arises for consideration is as to whether the petitioners were entitled to continue as Members of Waqf Tribunal for a period of three years from the date of their joining especially

when they could not join due to failure of the State to notify the statutory rules.

The same would thus require meaning of the words ‘appointment’ and ‘joining’. Both these words are different when used in the service jurisprudence, while an order of appointment causes accrual of a right in favour of a person to claim ‘joining’; ‘Joining’ is an act which is subsequent to issuance of an order of ‘appointment’. Hence, even though the process may be inter-related, however, the terms have different and distinct meanings. The same cannot be used interchangeably to mean one and the same.

As per the fundamental rules of interpretation, the literal rule mandates that firstly the plain meaning of the letter of Statute has to be given effect unless such interpretation is likely to lead to an absurd and incongruous interpretation or runs contrary to the scheme. The choice of expression used by the Legislature is not without wisdom or an act of default and is rather a conscious selection. Meaning has to be assigned to them in the way in which the Legislature intended it to be. A Court, in exercise of its powers of judicial review, cannot assign an interpretation, which is not supported by the letter of law.

In **‘B. Premamand & others Vs. Mohan Koikal & others’** reported as **2011(4) SCC 266** the Hon’ble Apex Court has observed as under:

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible

results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI.

10. *As held in Prakash Nath Khanna v. CIT the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency. vide Delhi Financial Corpn. v. Rajiv Anand. Where the legislative intent is clear from the language, the Court should give effect to it, vide Govt. of AP v. Road Rollers Owners Welfare Assn., and the Court should not seek to amend the law in the garb of interpretation.*

11. *As stated by Justice Frankfurter of the US Supreme Court (see Of Law & Men: Papers and Addresses of Felix Frankfurter):*

"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitations. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew

interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

12. As observed by Lord Cranworth in *Gundry v. Pinniger*: (ER p. 648)

"... to adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

13. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's *Principles of Statutory Interpretation*, 9th Edn., pp. 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

14. As the Privy Council observed (per Viscount Simon, L.C.):

"...Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."

15. As observed by this Court in *CIT (Ag) v. Keshab Chandra Mandal* (AIR p. 270, para 20)

"20. ...Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute...."

(emphasis supplied)

16. *Where the words are unequivocal, there is no scope for importing any rule of interpretation (vide Pandian Chemicals Ltd. v. CIT). It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction (vide Nasiruddin v. Sita Ram Agarwal). Where the words of a statute are plain and unambiguous effect must be given to them (vide Bhaiji v. SDO).*

17. *No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction. Heydon mischief rule, etc, but that should only be done in very exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible (vide JP Bansal v. State of Rajasthan's and State of Jharkhand v. Govind Singh). It is for the legislature to amend the law and not the court (vide State of Jharkhand v. Govind Singh).*

18. *In Jinia Keotin v. Kumar Sitaram Manjhi (SCC p. 733, para 5) this Court observed:*

"48.... The court cannot legislate under the garb of interpretation."

Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

19. *In Shiv Shakti Coop. Housing Society v. Swaraj Developers this Court observed: (SCC p. 669, para 19)*

"19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature The language employed in a statute is the determinative factor of legislative intent."

20. *Where the language is clear, the intention of the legislature has to be gathered from the language used (vide*

Grasim Industries Ltd. v. Collector of Customs and Union of India v. Hansoli Devi). 21. In *Union of India v. Hansoli Devi* this Court observed: (SCC p. 281, para 9)

"9. It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

22. The function of the court is only to expound the law and not to legislate (*vide District Mining Officer v. TISCO*). If we accept the interpretation canvassed by the learned counsel for the private respondents, we will really be legislating because in the guise of interpretation we will be really amending Rule 27(c) of the Rules.

23. In *Gurudevdatto VKSSS Maryadit v. State of Maharashtra*, this Court observed: (SCC pp. 552-53, para 26)

"26. it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound

principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

The same view has been taken by this Court in Harshad S. Mehta v. State of Maharashtra (vide SCC para 34) and Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh.

24. *The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."*

The word "appointment" or "joining" have not been defined under the Waqf Act, 1995 or the Rules framed thereunder. Hence, it is necessary to understand the ordinary meaning thereof. As per the 9th Edition of Oxford Advanced Learner's Dictionary "appointment" means the act of choosing a person for a job or position of responsibility, "Join" on the other hand is "to become a member of an organization." Ordinarily, service

jurisprudence uses the said phrases where the act of appointment precedes the act of joining.

The word used in the Rules is “appointment” and not “joining”. Since both these words have distinct meanings and cannot lead to an absurd comparison, the plain meaning based on literal interpretation thus needs to be adopted. Even though the Notification uses the word “constitute” instead of “appointment”, however, its import can be gathered from the communication sent by the State to the Registrar, Punjab and Haryana High Court on 27.03.2017 (Annexure P-3), wherein the respondents state that the petitioners have been appointed as Members of the Waqf Tribunal vide Notification of 25.07.2014 and even the petitioners, in their letter of joining have referred to the above Notification as their appointment. Hence, the Notification dated 25.07.2014 has been held interpreted and accepted as “appointment” and must be understood to be so.

Even though the petitioners may rightly be aggrieved of not being able to discharge duties, however, the same cannot be the basis to interpret “appointment” as “joining” as it would amount to legislation and doing violence to Statute. The petitioners may, however, be admissible to all such perks/allowances as are admissible to them for the said period of appointment, under the Rules. The Right cannot travel any further than this and to given an extension of life to a Notification beyond the period prescribed under the Rules.

In view of the above, this Court has no option but to safely assume that the statutory provision keeps the Notification of appointment alive only for the tenure of three years. Thereafter, a member cannot be

deemed to continue unless an extension has been granted as per the statutory scheme.

The present petitions are accordingly dismissed.

The petitioners would, however, be at liberty to take recourse to appropriate remedy available to them in accordance with law for seeking release of dues, admissible to them, if any, as per Rules for the period of their appointment.

02.02.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*