

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-3362 of 2021
(Imdad Ali Soho v General Manager (Thermal) PEPCO WAPDA & others)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 25.02.2026

M/s Hussain Bux Saryo and Amanullah advocate for the petitioner.
Mr. Usman Tufail Shaikh advocate for the respondent
Ms. Wajiha Mehdi, DAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s): -

- a) *This Hon'ble Court may kindly be pleased to pass an order to grant/allow the Constitution petition and order impugned herein may kindly be set aside, and the petitioner may be granted the right sanction under the law, and alternatively any relief in the circumstances which this Court deems fit and proper in the subsequent circumstances/prevaling situation;*
- b) *That this Court may be pleased to remand the matter to Respondent No. 04 to decide the matter afresh after recording the evidence of the respective parties.*

2. The case of the Petitioner is that he was initially appointed as an Electric Fitter (BPS-07) on 08-02-1986 regularly and subsequently upgraded/promoted through fresh appointment on merit as Attendant (BPS-11) by the Respondent Department. After successful completion of the probation period and verification of his character and antecedents, the Petitioner was confirmed in service and his service was governed under the Efficiency & Discipline Rules as a regular employee. The Petitioner rendered clean, satisfactory, and unblemished service for more than twenty-two (22) years at TPS Guddu without any adverse remarks on his service record. In terms of the Revised Leave Rules, 1980, the Petitioner earned leave during the course of service and applied for earned leave from 14-12-2007 to 14-03-2008 on account of domestic affairs, which was duly sanctioned by the competent authority. After expiry of the sanctioned leave, the Petitioner resumed his duties; however, shortly thereafter, a tribal clash erupted in his native area due to which the Petitioner, along with his family members, was compelled to shift to Karachi to save their lives. Owing to the emergent and serious circumstances, the Petitioner could not

immediately inform the competent authority about his inability to attend duties. Subsequently, the Respondents imposed a major penalty upon the Petitioner and removed him from service vide order dated 30-09-2008 without issuance of a show cause notice, conducting a fair enquiry, or affording him an opportunity of personal hearing. Being aggrieved, the Petitioner preferred a departmental appeal dated 29-10-2008, which was rejected on unfounded grounds. Thereafter, the Petitioner approached the Federal Service Tribunal, Karachi by filing Service Appeal No.23(K) CE/2009, which was abated vide order dated 07-12-2010 in view of the judgment of the Hon'ble Supreme Court of Pakistan in *Executive Council, Allama Iqbal Open University vs. Dr. M. Tufail Hashmi & others*, and the Petitioner was directed to approach the appropriate forum. Consequently, the Petitioner filed Constitutional Petition No.76-D of 2011 before the Hon'ble High Court, Larkana Bench, which was dismissed vide order dated 06-11-2018 on the principle of master and servant. Thereafter, the Petitioner filed a grievance petition under Section 33 of the Industrial Relations Act, 2012, before the learned NIRC, challenging the termination order dated 30-09-2008. The learned Single Bench of NIRC dismissed the grievance petition vide order dated 13-10-2020 on the ground of limitation. The Petitioner then filed an appeal under Section 58 of the Industrial Relations Act, 2012, before the learned Full Bench of NIRC, which was also dismissed in limine vide impugned order dated 17-02-2021 on the ground that the appeal was filed beyond the prescribed period of limitation.

3. Learned counsel for the petitioner argued that the impugned order is illegal, unlawful, and unjustified as the learned NIRC failed to consider that the Petitioner had been bona fide pursuing his remedy before different forums, including the Federal Service Tribunal and this Court, and the delay was liable to be condoned in terms of Section 14 of the Limitation Act. He argued that the learned forum below dismissed the grievance petition as well as the appeal on technical grounds of limitation without deciding the matter on merits, thereby depriving the Petitioner of his valuable rights. It is further submitted that the Federal Service Tribunal had not adjudicated upon the merits of the case and had directed the Petitioner to approach the proper forum. He added that the earlier dismissal of the Constitutional Petition on the principle of master and servant does not bar the Petitioner from seeking relief in accordance with law. He emphasized that the question of limitation ought to have been considered liberally in the interest of justice, particularly when the Petitioner had been diligently pursuing his remedies before competent forums. He prayed to allow this petition.

4. Learned counsel for the respondent supported the impugned orders and submitted that the learned Full Bench of NIRC, vide order dated 17-02-2021, held that under Section 58 of the Industrial Relations Act, 2012, an appeal against the

order passed by the Single Bench was required to be filed within thirty (30) days. However, in the present case, although the Petitioner applied for a certified copy of the order dated 13-10-2020 on 16-10-2020 and received the same on 04-01-2021, the appeal was filed on 29-01-2021 after the lapse of the prescribed period. Consequently, the appeal was dismissed in limine, being barred by time. He also prayed for the dismissal of this petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. It is well settled that limitation is a procedural rule, not a substantive right, and courts must condone delay where the petitioner has bona fide pursued remedies in the interest of justice. Section 14 of the Limitation Act, 1908, and settled principles mandate a liberal approach where delay arises from circumstances beyond a party's control. The petitioner's genuine pursuit of remedies before competent forums constitutes sufficient cause for condonation.

7. In the present case, the Petitioner has acted in good faith at all stages, diligently pursuing his remedies before the Federal Service Tribunal, this Court, and the NIRC. The delay in filing the grievance petition and subsequent appeal before the NIRC arose due to circumstances beyond his control and, therefore, falls within the scope of condonation under Section 14 of the Limitation Act, 1908. The impugned orders dated 13-10-2020 and 17-02-2021, which dismissed the Petitioner's grievance petition and appeal solely on the technical ground of limitation without considering the merits of the case, are legally unsustainable and unjust. The period spent by the Petitioner in obtaining certified copies of earlier orders cannot be counted for the purposes of limitation.

10. In the interest of justice, procedural bars of limitation must yield to the Petitioner's fundamental right to service and livelihood. Accordingly, the impugned orders are set aside, and the matter is remanded to the learned Bench of the NIRC for a fresh decision on the merits within one month.

JUDGE

JUDGE