

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:  
Mr. Justice Syed Hassan Azhar Rizvi  
Mr. Justice Adnan-ul-Karim Memon

## C.P No.D-7339 of 2017

Independent Media Corporation  
(Pvt) Ltd and another .....Petitioners

Versus

Raja Tariq Mehmood and others.....Respondents

**Date of hearing: 08.12.2017**

Chaudhary Azhar Ellahi and Syed Samiullah Shah Advocates for  
the Petitioners.

Raja Tariq Mehmood, Respondent No.1 present in person.

## J U D G M E N T

**ADNAN-UL-KARIM MEMON,J:-** The Petitioners have Impugned Orders dated 23.07.2014, passed by Presiding Officer Sindh Labour Court No. V Karachi, in Application No. 14 of 2014, (old No. 232 of 2003) whereby grievance Petition of Respondent No.1 was allowed and dismissed the Appeal of the Petitioners by Full Bench of NIRC at Karachi vide Order dated 01.08.2017.

2. Brief facts of the case are that Respondent No.1 was appointed on 11.01.2003 as Production Assistant on contract basis in the Petitioner's Establishment and was terminated from service on 01.07.2003 by the Petitioners. The Respondent No.1 filed Grievance Petition under Section 46 of the Industrial Relations Ordinance 2002 against his termination from service before Sindh Labour Court No. V at Karachi. The learned Presiding Officer of Sindh Labour Court after adducing respective evidence of

parties the Grievance Petition was dismissed vide Order dated 20.12.2006, against which the Respondent filed Appeal before Sindh Labour Appellate Tribunal. The learned Sindh Labour Appellate Tribunal set aside the Impugned Order passed by the learned Presiding Officer of Sindh Labour Court and reinstated the Respondent No.1 in service with all back benefits. The aforesaid Orders were assailed before this Court and this Court vide Order dated 07.11.2013 set aside the Judgments of Courts below. The learned Sindh Labour Court after hearing the parties directed the Petitioners to reinstate Respondent No.1 in service. The learned Sindh Appellate Tribunal has returned the said Appeal to the Petitioners vide Order dated 02.09.2014 with the direction for filing the same before proper forum. The Petitioners filed Constitutional Petition bearing No. C.P. No. S-1207 of 2014 before this Court, Subsequently the aforesaid Constitutional Petition was not pressed by the learned Counsel for Petitioners and the same was disposed of by this Court with direction to the NIRC to proceed with the Appeal No.12 (II) of 2014 as expeditiously as possible preferably conclude within 120 days; that the learned Full Bench of NIRC at Karachi passed Order dated 01.08.2017 in Case No. 12(11)/2014-K 24(10)/2014-K, whereby dismissed the said Appeal of the Petitioners. Petitioners being aggrieved by and dissatisfied with the Impugned Order dated 01.08.2017 has approached this Court on 27.10.2017.

3. Subject to maintainability of the instant Petition, notice was issued to the Respondent No.1.

4. Chaudhary Azhar Ellahi, learned counsel for the Petitioners has argued that both the learned lower forums have

failed to appreciate the law laid down by the Hon'ble Supreme Court, hence the Impugned Orders are nullity, thus the same are liable to be set aside; that the learned Respondent No.2 despite holding the applicability of Standing Orders Ordinance, 1968 has ignored that the Respondent No.1 was a "Contract Worker" for a specific period and specific work, therefore, could not be trusted upon after the expiry of said contract and specific work; that the learned Respondent No.2 despite repeated arguments and submissions that the Petitioners are Trans-Provincial Establishments has exercised its jurisdiction, which otherwise was not vested upon it; that the order of the learned Respondent No.2 is also violative of Section 87 of IRA 2012; that the learned Respondent No.2 has treated the pleadings of Respondent No.1 as gospel truth and seriously erred in law by not applying its own mind with regard to its competence and jurisdiction and locus standi of Respondent No.1; that the order of Respondent No.2 is contrary to the law laid down by Division Bench of Quetta High Court, Full Bench of this Court and the Hon'ble Supreme Court, thus the same is liable to be set aside; that the learned Respondent No.2 even has failed to apply its mind that on the point of granting of back benefits, the law laid down by the Hon'ble Supreme Court is that the workman is to establish through evidence by bringing material on record that he remained unemployed and had wherefrom he fed himself and his family. This aspect is totally missing in the pleadings of Respondent No.1; that Impugned Order being without competence and jurisdiction, offending the provisions of law and law laid down by the Superior Court and without proceeding on merit, therefore is liable to be set aside; that the

learned Respondent No.3 failed to appreciate the contents of application for condonation of delay that the Petitioner had approached to the Sindh Labour Appellate Tribunal well within time against the Order dated 23.07.2014 passed by the Respondent no.2 which was returned to the Petitioners and then appeal Under Section 58 of IRA, 2012 was filed before the Respondent No.3, hence the order passed by Respondent No.3 on technical ground of limitation is not tenable in the eyes of law, therefore the same is liable to be set aside. Learned counsel in support of his contention has placed reliance upon the case of Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), PTCL through its Chairman Vs. Iqbal Nasir (SBLR 2011 SC 219) Pakistan Telecommunication company Ltd Vs. Member NIRC and others (2014 SCMR 535), Khushal Khan Vs. Muslim commercial Bank Ltd and others (2002 PLC (C.S.) 907, Pakistan International Airlines Vs. Sind Labour court No.5 and others (PLD 1980 323), Iftikhar Ahmed Hammad Vs. Punjab Labour Appellate Tribunal Lahore and 3 others (2014 PLC 331), Pakistan Workers Federation Baluchistan and others Vs. Government of Pakistan and others (2014 PLC 351), Chief Manager of Planning and Installation Telephone Industries of Pakistan Vs. Muhammad Saleem (2003 TD (Labour) 411), Metro Garments Industries, Karachi Vs. Sindh Labour Appellate Tribunal and others (1993 PLC 303)

5. Raja Tariq Mehmood, Respondent No.1 present in person has supported the order dated 01.08.2017 passed by the learned Full Bench of NIRC at Karachi as well as the learned Sindh Labour Court after hearing the parties directed the Petitioners to reinstate

Respondent No.1 in service; that the order was assailed before the learned Sindh Labour Appellate Court and the learned Sindh Appellate Tribunal returned the said Appeal to the Petitioners vide Order dated 02.09.2014 with the direction for filing the same before proper forum, but the same order was not complied with, rather the Petitioners filed Constitutional Petition bearing No. C.P. No. S-1207 of 2014 before this Court, Subsequently the aforesaid Constitutional Petition was not pressed by the learned Counsel for Petitioners and the same was disposed of by this Court with direction to the NIRC to proceed with the Appeal No.12 (11) of 2014 as expeditiously as possible preferably conclude within 120 days; that time spent in wrong forum cannot be condoned as the petitioners were wrongly advised as observed by the full bench of NIRC; He next stated that the Petitioners have failed in all legal forums thus not entitled for any preferential right in the instant petition. He further added that Appeal of the Petitioners before learned Full Bench of NIRC was time barred, therefore a vested right has been created in his favour; that so far as the legal issue of jurisdiction of NIRC is concerned he relied upon the decision dated 04.08.2014 rendered by the Full Bench of this Court in C.P. No. D-3195 of 2010 and other connected petitions (PLD 2014 Sindh 553) and stated that Industrial Relations Ordinance 2012 is a valid piece of Legislation and under that law NIRC was competent to decide the issue in hand being Appellate Court; that learned Full Bench of NIRC considered the case of the parties as per direction given by this Court in C.P. No. S-1207 of 2014 vide Order dated 10.10.2016, therefore the grounds agitated by the Petitioners in the instant petitions are of no consequences, the same may be

discarded by this Court. He asserted that he has suffered the agony of trial and proceedings since his termination from service in the year 2003, therefore, prays for dismissal of the instant petition.

6. We have heard learned counsel for the Petitioners Establishment and Respondent No.1 respectively and carefully perused the material placed on record and case law relied upon by the parties.

7. Upon perusal of the pleadings and arguments extended thereon by the Parties, three basic primordial questions require our determination, which are as follows:

***i) Whether the Petitioners are Trans-Provincial establishments under section 87 of IRA 2012 and whether the learned Full Bench of NIRC has jurisdiction to adjudicate the matter between the parties?***

***ii) Whether the order dated 23.07.2014 passed by the learned Presiding Officer of Sindh Labour Court No. V. is within the parameters of law?***

***iii) Whether Respondent No.1's case can be reopened when all forums below have non-suited the petitioners after considering the matter on merit as well as being barred under the law?***

8. We would, first address the question of jurisdiction of Full Bench of NIRC to adjudicate the matter between the parties; As per record Petitioners are Trans-Provincial Establishments, therefore, in the light of decision rendered by the Hon'ble supreme Court of Pakistan in the case of Pakistan Telecommunication Company Limited Vs. Members of NIRC and others (2014 SCMR 535) and judgment dated 04.08.2014 passed by the Full Bench of this Court in C.P. No. D-3195 of 2010 and other connected petitions (PLD

2014 Sindh 553). We are of the considered view that, NIRC was competent to decide the issue in hand. The grievance of Petitioner-Establishment in respect of legal plea taken in the instant matter is answered accordingly.

9. Second proposition with regard to validity of Order dated 23.07.2014 passed by the learned Presiding Officer of Sindh Labour Court No. V. reference may usefully be made to the Order dated 7.11.2013 passed by this Court in C.P D-710 of 2012, set aside the Judgments of Courts below and directed that the Respondent No.1 to file amended title petition by impleading both the companies as party and thereafter fresh notice shall be issued by Sindh Labour Court on their addresses. Perusal of record shows that that the amended petition was filed before Sindh Labour Court No. V by the Respondent No.1. The learned Sindh Labour Court after hearing, accepted Grievance Petition and directed the Petitioners to reinstate Respondent No.1 in service vide Order dated 23.07.2014. Record further reflects that the aforesaid order was assailed before Sindh Labour Appellate Tribunal by filing Appeal. The learned Sindh Appellate Tribunal has returned the said Appeal to the Petitioners vide Order dated 02.09.2014 with the direction for filing the same before proper forum. The Petitioners instead filing appeal before proper forum again filed Constitutional Petition bearing No. C.P. No. S- 1207 of 2014 before this Court; that during pendency of above said Petition before this Court the Petitioners filed Appeal before Full Bench of NIRC on 15.10.2014 against Impugned Order dated 23.07.2014 passed by the learned Presiding Officer of Sindh Labour Court No. V. Karachi. Subsequently the aforesaid Constitutional Petition

was not pressed by the learned Counsel for Petitioners and the same was disposed of by the learned Single bench of this Court with direction to the NIRC to proceed with the Appeal No.12 (II) of 2014 as expeditiously as possible preferably conclude within 120 days; that the learned Full Bench of NIRC at Karachi passed Order dated 01.08.2017 in Case No. 12(II)/2014-K, 24(10)/2014-K, whereby dismissed the said appeal of the Petitioners.

10. Third question with regard to point of limitation. This Court was requested to condone the delay to approach NIRC by the Petitioners, but the same request was not acceded to, we are of the considered view that this Court cannot condone the limitation period for filing of Appeal before NIRC. It is well settled law that where the matter is barred by time the Court cannot go into merits of the controversy between the parties. From perusal of pleadings of the parties and orders passed by the learned Sindh Labour Court No. V, Karachi, it is crystal clear that the learned Full Bench of NIRC vide Impugned Order dated 01.08.2017 considered every aspect of the case and rendered the final decision within the parameters set forth in law.

11. On merits, we have notice that the learned Sindh Labour Court has discussed the issue involved in the instant petition in detail as well as considered the termination of the contract of the Respondent No.1. The contents of Impugned Termination Letter dated July 1, 2003 is reproduced below in extensor as follows:-

*“With reference to your letter contract dated January 11, 2003 effective from December 01, 2002, in which you were purely hired on contractual basis for a period of 6 months. You were assisting*



*Mr. Nadeem Jaffery in Program "Duniya Hai Dil Wallon Ki" As you are aware that the above said program has been recorded therefore your contractual assignments in hereby terminated with effect from June 30, 2003.*

*You may collect your dues, if any, from Accounts Department during the working hours on production of clearance certificate from Human Resource Department."*

12. The aforesaid termination order of Respondent No.1 is no more in the field as the same has been set aside by the learned Sindh Labour Court No. V, directed the Petitioners to reinstate the Respondent No.1 in service. The learned Bench of NIRC heard the case and decided against the Petitioners vide Impugned Order 01.08.2017. Upon perusal of the Impugned order 01.08.2017 passed by the learned Full Bench of NIRC which reads as follows:-

*"It is not disputed that Appellants is a trans-provincial establishment having its branches in more than one province within the meaning of Section 2 (XXXII) of the Industrial Relations Act, 2012 and this Commission has exclusive jurisdiction.*

*It is admitted fact that Appeal filed before Sindh Labour Appellate Tribunal by the Appellants Against the order passed by learned Labour Court No.V Karachi which was returned by Sindh Labour Appellate Tribunal to Appellants for filing before proper forum vide order dated 02.09.2014. The Appellants instead of presenting the Appeal before Full Bench of this Commission the Appellants filed Constitutional Petition bearing No. CP-S-107 of 2014 before Hon'ble Sindh High Court, Karachi. During pendency of above said Petition before Hon'ble Sindh High court the Appellants filed instant Appeal before this Commission on 15.10.2014 after lapse more than one month after returning the Appeal by Sindh Labour Appellate Tribunal which is badly time barred. Though the Appellants were legally bound to submit the same on the very next day. The Appellants have also failed to explain plausibly of the delay each and every day. Reliance in this regard is placed 2009 CLC 1290 wherein it has been held as under:-*

*....O.VII. R-10....Return of appeal....Delay in filing before proper Court....Condonation....Court returned memo of appeal for its presentation in High Court which was the proper Court to hear appeal....Incumbent on appellants to present memo of appeal in High Court on the very next day of its return. But appellants retained same with them without any plausible*

*reason....delay of filing appeal in High Court could not be condoned as appellants were themselves responsible for said delay and could not get benefit of wrong advice.*

*The case law relied upon by the learned Counsel for Appellants are distinguished with the facts of the Appeal in hand.*

*It is pertinent to mention here that the learned counsel for Appellants had requested to Hon'ble Sindh High Court to condone delay for filing of Appeal before NIRC but the same was not accepted. It is settled law that where the matter is barred by time the Court cannot go into merits of the controversy between the parties. Limitation shuts the door and bars the remedy.*

*For what has been discussed above this appeal is badly time barred. Hence, the same is dismissed. These are the reasons of our short order of even date. No order as to cost. File be consigned to record room after completion of codal formalizes.”*

13. It is well settled law that, for seeking relief against any grievance within the time specified under the law of Limitation Act, 1908 and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of limitation, same right then vests/accrues in favour of the opposite party. The learned Full Bench of NIRC has dealt with every aspect of the matter and has rightly concluded that the same is barred by law. We concur with a view taken by the learned Full Bench of NIRC, therefore, the instant petition is not maintainable against the Order passed by the learned full Bench of NIRC.

14. The case law cited by the learned counsel for the Petitioners is distinguishable from the facts and circumstances of the case in hand.

15. We are of the considered view that this Court in Constitutional Jurisdiction cannot interfere in the findings on facts arrived at by a competent forum until and unless there is misreading and non-reading of evidence, perversity, illegality or irregularity in the proceedings. In the instant case, we do not see any such illegality, infirmity or material irregularity in the Impugned Order dated 01.08.2017 passed by learned Full Bench of NIRC and Order passed by the learned Sindh Labour Court No. V, Karachi.

16. In the light of above facts and circumstances of the case, Order dated 01.08.2017 passed by Full Bench of NIRC in case No. 12(11)/2014-K and 24(10)/2014-K and Order dated 23.07.2014 passed by Sindh Labour Court No. V, Karachi in the matter of an Application No. 15 of 2014 (Old # 232 of 2003) are upheld and consequently the instant Constitution Petition is dismissed along with pending application(s).

Karachi  
Dated: 15.12.2017.

JUDGE

JUDGE