

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 7604 of 2018

(Syed Shoab Hussain Zaidi V/S National Industrial Relation Commission and another)

Dates of hearing : 04.02.2020 and 24.02.2020.
Date of decision : 24.02.2020.

Mr. Iqbal Ahmed Qureshi, advocate for the petitioner.
Mr. Javed Asghar Awan, advocate for respondent No.2.
Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. : Through this constitutional petition, the petitioner has assailed order dated 12.9.2018, passed by respondent-Karachi Electric (K.E) whereby he was dismissed from service on the charge of misconduct. He being aggrieved by and dissatisfied with the aforesaid dismissal order assailed the same before learned Single Member of National Industrial Relations Commission Karachi Bench (NIRC) by filling grievance petition No. 4A(176)/2018-K (re-S.Shoab Hussain V/S K-Electric), which was dismissed in default vide order dated 12.9.2018. He filed an application for restoration of his petition to its original position but same was disposed of vide order dated 12.10.2018 as having become infructuous on the ground that petitioner stood already dismissed from service.

2. We asked learned counsel to satisfy this Court with regard to maintainability of this petition on the premise that the impugned orders dated 12.9.2018 and 12.10.2018 passed by the learned Single Member of NIRC ought to have been challenged before Full Bench of NIRC, which position has been conceded by him. He, however, states that the matter of the petitioner was dismissed on account of non-prosecution, though sufficient cause was shown in the application for recalling the impugned order, but unfortunately his application was dismissed. He next submitted that the matter ought to have been decided on merits rather than dismissal of his case for non-prosecution ; that the respondent has awarded major penalty of dismissal from service to the petitioner vide termination order dated 12.9.2018 as soon as his petition was dismissed for non-prosecution which was uncalled for. We asked him whether he has challenged his dismissal from service order before the competent forum, he replied in negative.

3. Mr. Javed Asghar Awan, learned counsel representing the respondent-K.E, has candidly suggested that if petitioner assails the order passed by the learned Single Member of NIRC before Full Bench of NIRC, they may be directed to decide the case of petitioner in accordance with law and the question of limitation, if any, may be dealt with sympathetically and in accordance with law.

4. We have heard learned counsel for the parties on maintainability of this petition and perused the material available on record.

5. There is no cavil to what the respondent-K.E says to the extent that case of the petitioner should be decided by the appellate forum i.e. Full Bench of NIRC, if petitioner approaches them with an application for condoning the delay in filing of the case before the NIRC. On the aforesaid proposition, we are fortified with the decision dated 11.06.2019 rendered by the Hon'ble Supreme Court in Civil Appeal No.1007 of 2019. An excerpt of the order dated 11.06.2019 is as under:

“4. With the above observation, this appeal is allowed, the impugned judgment is set aside and the NIRC is directed to decide the case of the respondent in accordance with law but the question of limitation shall be dealt with sympathetically and in accordance with law.”

6. We, in the circumstances, dispose of this petition with no order as to costs with the observation that if petitioner approaches the competent / appellate forum against the impugned orders passed by the respondents, the same shall be decided in accordance with law and the question of limitation, if any, shall also be dealt with in accordance with law and keeping in view the grounds to be urged by the petitioner for condoning the delay.

JUDGE

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