

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D- 31 of 2021**

**Irfan Ali**

Petitioner

through

: Mr. Nadeem A. Farooqi, advocate

Respondents 1 & 2

Though

: Mr. Muhammad Nishat Warsi, DAG

Respondent No. 3

through

: Syed Muhammad Asif, advocate

Dates of hearing

: **02.03.2022**

**ORDER**

Through this petition, the petitioner has assailed the order dated 08.09.2020 passed by the learned Full Bench of National Industrial Relations Commission, Islamabad (**FB-NIRC**) whereby, the order dated 13.12.2018, passed by the learned Member of NIRC, Karachi Bench (**SB-NIRC**) was maintained, with a further prayer that he may be reinstated in service with full back benefits with effect from 10.12.2015.

2. The case of the petitioner in birds-eye view is that he was performing his duties since 1990 in the respondent Habib Bank Limited (**HBL**) on two counters when the alleged incident of shortage of cash occurred and he was served with Show Cause Notice on 11.11.2015 with the allegation of nonpayment of 15 utility bills amounting to Rs. 230347/- of Shaheed-e-Millat Road Branch, the said Show Cause Notice was replied by the petitioner by submitting the factual position but on 23.11.2015 he was served with a letter of inquiry with the direction to appear before the inquiry officer on 30.11.2015. Per petitioner, he appeared before the Enquiry Officer and explained the position and also submitted documents in the defense but without considering the same he was found guilty of the charges and subsequently was dismissed from the service vide impugned order dated 10.12.2015. The petitioner being aggrieved by and dissatisfied with his dismissal from the service order dated 10.12.2015, served upon the respondent-bank, grievance notice dated 22.01.2016 and 09.02.2016 through courier service, which was not attended, compelling him to file a grievance petition before the learned SB-NIRC for his reinstatement in service along with back benefits, inter-alia on the ground that he was condemned unheard; no regular inquiry was

conducted, he was not confronted with the material and not allowed to examine and cross-examine the witnesses. The learned SB-NIRC, after hearing the parties on the Application under Order VI Rule 11 CPC passed the order dated 03.12.2018 in favor of the respondent Bank, and dismissed his case on the analogy that no grievance notice was served upon the respondent-bank; an excerpt whereof is as under:

*“6- Arguments heard and record perused. The objection raised in the application is about service of grievance notice; the representative of the petitioner referred that the petitioner has served an appeal dated 22.01.2016 but has not disclosed the mode of service and even otherwise the perusal of the subject of the same written as “VEHEMENT PROTEST AGAINST ALLEGATION OF NON-ATTENDANCE/ NON-PARTICIPATION BEFORE ENQUIRY COMMITTEE ON 30/11/2015” with a specific prayer to investigate very secretly and confidentially. Which does not appear to be a grievance notice and even also petitioner failed to disclose the mode of service of the same. The service of grievance notice for filing grievance petition is a mandatory requirement and any departmental appeal against dismissal from service cannot be treated as grievance notice and it is the principle that mandatory condition for the exercise of jurisdiction is not fulfilled then entire proceedings which follow become illegal. The upshot of the above discussion is that the petitioner failed to establish service of grievance notice upon the employer therefore the application filed under Order VII Rule 11 CPC is allowed, consequently the main petition is dismissed for want of service of grievance notice. No order as to cost. File be consigned to record room after completion of codal formalities.”*

3. Petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred statutory appeal before the learned FB-NIRC. However, the learned FB-NIRC dismissed the appeal vide order dated 08.09.2020 on the same analogy. An excerpt of the order dated 08.09.2020 is reproduced as under:

“7. We have considered the facts and circumstances of the material available in the file and carefully perused the documents produced along with the petition. Admittedly, the services of the Appellant were terminated, while a letter dated 10.12.2015 which was sent to him on his address available in the record of the Respondent. However, learned Counsel for the Appellant has produced some documents i.e. application dated 22.01.2016 addressed to the President HBL in which the subject is mentioned as “vehement protest against the allegation of non-attendance / non-participation before inquiry committee on 30.11.2015”. In another letter sent by the Appellant is dated 09.02.2016 which also relates to the corrigendum reply sent by the Company to the Appellant. However, another notice which has been treated as grievance notice dated 20.02.2016 which was addressed to the Chairman HBL with regard to the dismissal of the Appellant. However, on the record, there is nothing available from which it can be presumed that the Appellant’s notice was even served upon the Respondent. It is settled law that service of the grievance notice is a mandatory requirement and precondition to invoke the jurisdiction of NIRC under Section 33 of the IRA, 2012 being (condition) (precedent) and in case if such grievance notice is not proved to have been served to the employer it will render the grievance petition incompetent. Previously, letters dated 22.01.2016, 22.02.2016, and 09.02.2016 shows that some were relating to the fact that Appellant was agitated against the enquiry conducted against him, therefore, same were replied by the Respondent and cannot be treated as grievance notice because in the said letters cause of action was not the termination of the Appellant but it relates to the proceedings of the inquiry and as mentioned above the copy of alleged grievance notice produced on record dated 22.02.2016 shows that same was not sent to the employer or received in the office of the employer. Therefore, it cannot be treated as a valid grievance notice. Such controversy came up before Hon’ble Supreme Court of Pakistan in the case titled Khushal Khan Vs Muslim Commercial Bank Limited and others reported as 2002 SCMR 943 wherein it was held as under:

*“Non-service of grievance notice before filing of grievance petition-Effect-Termination of service – petitioner being “ employment of Muslim Commercial bank Limited filed appeal before next higher Authority against this dismissal order, but the same was dismissed – Labour Court dismissed his grievance petition- Labour Appellate Tribunal dismissed his appeal on the ground that he had not served grievance notice on his employer, and that his departmental appeal could not be treated and equated as grievance notice, which was a statutory requirement to be fulfilled by the worker under §25.A, of Industrial Relations Ordinance, 1969 Constitution petition filed petitioner was also dismissed by High Court – Validity – Petitioner had not served grievance notice upon his employer against his dismissal order”.*

8. In view of case law filed by the learned Counsel for appellant and case laws relied by learned Member is relevant, we have reached to the conclusion that appeal has no merits and the same is hereby dismissed. File be consigned to record room after due completion.

File be consigned to record room after due completion.”

4. Mr. Nadeem A. Farooqi, learned counsel for the petitioner, has addressed the aforesaid issue and argued that the orders passed by the learned SB & FB of NIRC are bad in law and on facts and law, against the fundamental rights, and are liable to be set aside in the interest of justice and the same are non-speaking, cryptic, obscure and arbitrary orders and have been passed without any proper appreciation of the material available on record; that both the learned benches of NIRC have failed to appreciate that the mode of service had been established since grievance notice, dated 20.02.2016, along with other grievances notices dated 22.01.2016 and 09.02.2016 were properly served through TCS, to the respective appointing authority of the respondent bank, from which two notices were submitted with reply in Grievance Petition at NIRC Single bench with receiving stamps of "mail received"; that both the learned benches of NIRC have failed to appreciate that the petitioner being a workman, had served grievance notice and not filed any departmental appeal as per rules however they erroneously treated as appeal; that the basic point considered while admitting the appeal and issuing Notice to Respondent by NIRC Full Bench, i.e., without affording an opportunity to adduce evidence which is against the law; that both the learned benches of NIRC have failed to appreciate that Affidavit-in-Evidence of Petitioner along with its complete annexures /documentary proof was filed before the Single Bench NIRC and matter then fixed for Cross-Examination of petitioner but respondent continuously lingered on several dates and then insisted for hearing of Application under Order 7 rule 11 CPC, which decided on technicality; that both the learned Benches of NIRC have failed to appreciate that the Show Cause Notice, dated 11.11.2015 was time barred in accordance with Section 15 (4) of Industrial & Commercial Employment (Standing Orders) Ord. 1968, hence no order of Dismissal from service could be made; that both the learned Benches of NIRC have failed to appreciate that the Dismissal from service Order dated 10.12.2015 was not speaking order along with its Corrigendum dated 2.02.2016, contents of which, still shows ex-parte decision against the petitioner, through which the petitioner was kicked out from services; that both the learned Benches of NIRC have failed to appreciate that the Reply of show cause notice & Documentary proofs filed with Statement in writing, of petitioner before Inquiry Officer on 30.11.2015 was ignored by respondent Bank while issuing Dismissal from service Order & its Corrigendum, as per their malafide practice to deny and later on accepted its mistake i.e. to receive reply and presence (in inquiry), of petitioner at several steps / times; that both the learned Benches of NIRC have technicality knocked him out under Order VII rule 11 CPC. Besides that,

the disciplinary proceedings were conducted against the petitioner in extraordinary haste because he had been serving the respondent bank since 1990 without any complaint. And even he was not allowed to defend himself and the findings given in the inquiry report are ex-facie illegal and self-made, therefore, cannot be relied upon. He also submits that keeping in view the overall case, the punishment awarded to the petitioner is too harsh. In support of his contentions, he placed reliance on the case of the Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid **2011 SCMR 1** and prays for setting aside the impugned orders.

5. Syed Muhammad Asif, learned counsel for the respondent HBL, has supported the impugned Judgments passed by the learned Courts below and contended that the petition is not maintainable under the law and supported the impugned orders passed by learned Benches of NIRC. Per learned counsel, the petitioner has admitted his guilt vide statement dated 28.10.2015. learned counsel relied upon the inquiry proceeding initiated against the petitioner and submitted that petitioner has been found guilty of the charges of pocketing banks funds, indulged in dishonest, defaming the bank's reputation, and committing a breach of rules and regulations of the bank, therefore, he is not entitled to reinstatement in service. Per learned counsel, the learned benches of NIRC dismissed the Grievance Petition of the petitioner on the premise that he failed to serve upon the respondent bank the grievance notice which is a mandatory requirement. He further submitted that irreparable loss was caused to the Bank because Bank depends on the goodwill and reputation of its employee, therefore the petitioner is not entitled to the relief through the instant petition. He next submitted that the question of limitation cannot be considered a technicality as it has got its significance and the law of limitation must be followed strictly. He further submitted that Grievance notice is required to be served upon Appointing Authority and not to the lower/Authority higher. In support of his contentions, he relied upon the cases of Khushal Khan Vs Muslim Commercial Bank Limited and others, **2002 SCMR 943**, District Council, Sargodha v. Sher Muhammad, **1980 PLC 426**, Pakistan Railways v. Sibghatullah Khan, **1980 PLC 514**, Hussain Karim v. Messrs Crescent Pak Industries Ltd. and another, **1976 SCMR 74**, Abdul Qadir Khan and 12 others v. Managing Director, Millat Tractors Private Limited and another, **2005 PLC 438**, Muhammad Islam v. Inspector General of Police, Islamabad, and others, **2011 SCMR 8**, Khalid Hussain v. Full Bench of National Industrial Relation Commission and others, **2020 PLC 204** and Habib Bank Limited v. Gul Muhammad, **2020 PLC 229**. He lastly prayed for the dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

7. We inquired from the learned counsel for the respondent-bank as to why respondent-bank considered it necessary to issue the corrigendum dated 2.2.2016 when the inquiry officer simply recommended that petitioner did not participate in the inquiry proceedings; and he proceeded ex-parte against the petitioner, whereas in the corrigendum a new theory was furnished, which prima-facie, shows the intention of the respondent-bank, just to get rid of the petitioner. Learned counsel reiterated the above submissions.

8. Prima-facie, the respondent-bank changed the stance through corrigendum dated 02.02.2016, which is sufficient to discard their viewpoint, however, they succeeded to get rid of the petitioner on the plea that they were not served with the grievance notice. For convenience sake, an excerpt of the corrigendum dated 02.02.2016 is reproduced as under:-

**"CORRIGENDUM**

This is with reference to our letter, No. MAB/376931 dated December 10, 2015, whereby it has been mentioned in Para No.1 as:

"Since you did not participate in the Inquiry, the Inquiry Officer proceeded ex- Parte and on the basis of documentary evidence has found you guilty of the Charges as mentioned in the Show Cause Notice # MAB/37693 dated: November 11, 2015."

There is a typographical error in the aforesaid.

The above Para be read as under:

"It is to inform that the Inquiry Officer on the basis of documentary evidence has found you guilty of the charges as mentioned in the Show Cause Notice bearing No. MAB/376931 dated: November 11, 2015."

There other contents of the letter under reference will remain the same."

9. Mainly the petitioner has been non-suited by the learned Benches of NIRC on the point that the petitioner failed to serve the grievance notice upon the respondent-bank under section 33 of the Industrial Relations Act,2012, within time.

10. If this is the stance of the respondent bank, it is expedient to have a look at the dismissal from service order dated 10.12.2015, whereby the services of the petitioner were dispensed with, however, the respondent felt in the fitness of the things to issue corrigendum on 02.02.2016, which prompted the petitioner to raise his voice of concern while addressing the letter dated 09.02.2016 to the respondent bank with the assertion that he produced a complete set of documents to the inquiry officer on 30.11.2015. However, his services were dispensed with on 30.11.2015 without looking into the record; and, due to the aforesaid corrigendum, he served upon the petitioner bank notice dated 20.02.2016 through courier and subsequently filed Case No.4B (46)/2016-K on 08.03.2016, the respondent bank filed preliminary objections and reply statement denying the allegations on the analogy that no grievance notice was served upon the bank before invoking the jurisdiction of learned benches of NIRC. The learned SB of NIRC on the application of the respondent bank under Order VII

Rule 11 CPC dismissed the grievance petition of the petitioner vide order dated 03.12.2018 in terms of the application, the same was concurred by the FB of NIRC vide order dated 08.09.2020.

11. The main ground of the petitioner in the present petition is that just after issuance of corrigendum dated 02.02.2016 in respect of the alleged letter of dismissal dated 10.12.2015, the petitioner served upon the respondent bank the grievance notice through courier service and filed the case before the learned NIRC. Besides that, he dispatched another letter dated 22.01.2016 to the respondent bank, which was duly served upon the respondent bank through courier service, which could have been treated as grievance notice on the premise that the respondent bank was put on notice concerning dismissal from service of the petitioner. In principle, the main purpose of serving the grievance notice is just to intimate the employer of the intention of the employee to move further on the subject issue before the competent Court of law, which purpose was served when the notice from the employee was given within stipulated time as provided under the law.

12. Prima facie, the petitioner has been non-suited by both the learned benches of NIRC on technical grounds and merit of the case were ignored; prima-facie the reasoning of the learned Benches does not align with the law for the simple reason that petitioner served upon respondent bank with notice of his intention via letter dated 22.1.2016 (available at page 81 of the file) with the following defense, which could have been treated as Grievance notice and matter ought to have been decided on merit rather than dismissal under order V11 Rule 11 CPC as the matter required evidence to prove the allegations against the petitioner put forward by the respondent-bank:

"I write with reference to the letter No.MAB/376931 dated Dec. 10, 2015, which contents are patently false and fabricated.

In this connection, it is submitted that I personally appeared in the Inquiry Committee, which was headed by the Inquiry Officer named Mr. Muhammad Ashraf Khan, SM-1, RHQ-Faisalabad, and the bank's constituted Prosecutor Mr. Zulfiqar Ali, M-I, RMA, HBL, RHQ Sukkur. Before whom I have very explicitly explained my position and submitted all documentary proofs in my defence and against the persons who have been conspiring victimizing me.

Sir, the above respectable Inquiry Officer & Other members have very minutely listened my defence clarification, checked documentary proofs. It is worth mentioning that I have also handed over them each and every documentary proofs towards my defence and against those who have been conspiring, involving me in baseless allegations, and victimizing me.

Sir, the contents of letter No.MAB/376931 dated Dec. 10, 2015, is absolutely false and fictitious because I have personally attended before the Inquiry Committee on 30/11/2015. Therefore whatever action i.e. ex-parte action and/or dismissal is also a false and arbitrary attempt, which is against the principles of natural justice, but an attempt to violating the ground realities and usurping my fundamental rights.

While repudiating the averments of the above, letter, I would also draw your kind attention to my detailed letter Nov. 20, 2015 (copy enclosed), in which myself requested the constitution of Inquiry Committee. It is very humbly requested that your good self may please minute go

through the contents whereof, which would reveal the complete history/conspiracy that has been going against me.

Sir, I also draw your kind attention to contents of a false and fictitious letter No.MAB/376931 dated Nov. 23, 2015, which states that I did not submit my reply, whereas the fact is that I have submitted my detailed reply/explanation letter on Nov. 20, 2015 (copy enclosed. It is worth mentioning that my reply/explanation was also consulted /referred by the Inquiry Officer named Mr. Muhammad Ashraf Khan, SM-1, RHQ-Faisalabad and the bank's constituted Prosecutor Mr. Zulfiqar Ali, M-1, HBL, RHQ Sukkur. All these facts can be confirmed these functionaries, who also have each and every document that I have produced before and also handed them over a copy thereof.

In view of above actual and factual explanation of the facts and blatant false and fictitious averments of the letter MAB/376931 dt. Dec. 10, 2015 (which falsely speaks of about my non-attendance) and also letter No.MAB/376931 dated Nov. 23, 2015 (Which falsely speaks of that I did not submit my reply thereagainst, whereas in fact I had already submitted my reply/explanation on Nov. 20, 2015).

Concluding my sufferings and heartening, I leave it to your good self to take strict disciplinary action against the above two false, & fictitious letters. Meanwhile, I also request to please call on the above Inquiry Officers and Prosecutors and check the records that I provided.

PRAYER IS MADE SEEKING CONTINUING OF MY SERVICE, IN THE INTEREST OF NATURAL JUSTICE AND STERN PUNITIVE ACTION AGAINST THE PERSONS WHO ATTEMPTED TO ISSUE THE ABOVE FALSE & FICTITIOUS LETTERS.”

13. The record reflects that aforesaid notice was served upon the respondent-bank on 27.01.2016 and the law on the point is very clear that the respondent bank was required to be served with the grievance notice in writing within 90 days as provided under section 33 of the Industrial Relations Act 2012 and prima facie the petitioner succeeded to serve upon the respondent bank with the aforesaid notice through courier receipt on 27.01.2016 which is within the period as provided under the law.

14. From the above facts brought forth in the preceding paragraph, it is pretty much evident that the petitioner has not at all been indolent in his approach and he was following his remedies with all due diligence and bona fide. Besides the above, merits have always been encouraged instead of non-suiting the litigants for technical reasons.

15. It is well settled that the provision of Labor laws should be construed liberally and not be used as a trap. Therefore, we are inclined to treat the letter dated 27.01.2016 as the formal grievance notice as envisaged by section 33 of the Industrial Relations Act 2012. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme Court in the case of *Forbes Forbes Campbell & Co. Ltd., Karachi, and 3 others v. Habibur Rehman and 2 others* (1982 SCMR 651).

16. In this matter, the judicial propriety demands that this matter be remitted to the learned Single Bench of NIRC to decide the matter on merits by recording evidence of the parties within a reasonable time.

17. In view of the discussion above, this petition is accepted. The impugned orders dated 08.09.2020 & 13.12.2018 passed by the learned SB and FB of NIRC are set aside. The case is remanded to the learned Single Bench of NIRC for the decision on merits.

18. This petition stands disposed of in the above terms.

**J U D G E**

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