

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3542 of 2015

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

J U D G M E N T

Date of hearing: 29.3.2018.

Petitioners: M/s. United Bank Limited through Mr. Tariq Mehmood Mughal, Advocate, alongwith M/s. Muhammad Ameen and Syed Zameer Danish, Advocates.

Res. No.1: Muhammad Afzal Solangi through Syed Shoa-un-Nabi, Advocate.

Res. Nos.2 & 3: Full Bench of NIRC, Karachi, & Single Bench of NIRC Karachi through Shaikh Liaquat Hussain, Assistant Attorney General for Pakistan.

IRFAN SAADAT KHAN, J. The instant petition has been filed with the following prayer:-

"In view of the above, it is respectfully prayed that the instant Constitutional Petition may graciously be accepted, the impugned order dated 08.12.2014 passed by learned Member NIRC and impugned order dated 19.5.2015 passed by learned Full Bench of the National Industrial Relations Commission, Karachi in Appeal No.12(27)/2015-K may kindly be set-aside and the petition of the respondent No.1 filed before the learned single Bench of the NIRC Karachi may kindly be dismissed.

Any other relief which this Honourable Court may deem fit and proper in the peculiar facts and circumstances of this case, be also granted in favour of the petitioner bank."

2. Briefly stated the facts of the case are that the petitioners are one of the largest commercial bank in Pakistan having more than 1320 online branches. The Respondent No.1 was appointed in the petitioner-bank as an Assistant in the year 1985. He thereafter was posted as Universal Teller in Khairpur Branch on 18.1.2012. The bank received certain

information about commission of irregularities/mis-appropriation in the said branch by the Respondent No.1. Thereafter, a charge sheet dated 6.12.2012 was served upon the Respondent No.1. The Respondent No.1 then filed his reply and thereafter a Committee was constituted to investigate into the matter and the Respondent No.1 participated in the enquiry proceedings and as per the contention of the bank full opportunity of hearing was provided by the Enquiry Officer to the Respondent No.1. The Enquiry Officer then submitted his report before the competent authority who then vide order/letter dated 8.1.2013 terminated the services of the Respondent No.1. Being aggrieved with the said order the Respondent No.1 filed Petition/Case No.4B(35)/2013-K on 27.3.2013 under Section 33 read with Section 54(h) of Industrial Relations Commission 2010 Sindh (IRO 2010) and Industrial Relations Commission 2012 (IRO 2012) before the National Industrial Relations Commission (NIRC). Thereafter the matter was heard by the Single Bench of NIRC which then vide exparte order dated 8.12.2014 set aside the termination letter dated 8.1.2013 by declaring it to be illegal and unlawful. Thereafter, an appeal bearing Appeal No.12(27)/2015-K under Section 58 of IRO 2012 was filed by the petitioner before the Full Bench of NIRC who vide order dated 19.5.2015 dismissed the appeal in limine by declaring the appeal to be barred by time. It is against these orders that the instant petition has been filed.

3. Mr. Tariq Mehmood Mughal Advocate has appeared on behalf of the petitioner and stated that both the orders passed by the two fora below are illegal and unlawful since proper opportunity of hearing was not provided to the petitioner-bank by the Single Member of NIRC as well as by the Full Bench of NIRC. While elaborating his view point the learned counsel submitted that when the matter proceeded before the Single Bench of the NIRC various legal objections were raised with regard to the

maintainability of appeal filed by the Respondent No.1 since in view of the petitioner-bank the Respondent No.1 does not fall within the ambit of **"workman"** since he was a Chief Teller, hence on the very face of it the appeal was not maintainable, which aspect, according to him, was ignored by the Bench. He further stated that the Single Bench neither granted time to the petitioner to file the affidavit-in-evidence nor granted time to cross-examine the Respondent No.1 on the affidavit-in-evidence filed by him and has incorrectly observed that despite given several chances the petitioner has failed to file their affidavit-in-evidence and cross-examine the Respondent No.1. He stated that both the above mentioned alleged deficiencies, if any, took place due to the fact that the Court was vacant and the succeeding Single Member of NIRC did not issue any fresh notice to the petitioner, thereafter the matter remained unattended due to no fault of the petitioner. He submitted that before the Single Bench even the number of the case was changed from Case No.4B(35)/2013-K to Case No.4B(36)/2013-K and the petitioner was never informed about the said change in the case number.

4. He further submitted that the Single Bench has erred in proceeding *exparte* against the petitioner, hence the said order is liable to be set aside. He also stated that even the Full Bench of NIRC has erred in dismissing the appeal in limine on the ground that it was time barred whereas the delay, if any, caused in the instant matter should have been condoned by the Full Bench looking to the facts and circumstances of the case duly mentioned in the application filed under Section 5 of the Limitation Act alongwith the main appeal. He, therefore, in the end prayed that since the order of the Single Bench was void and that no limitation runs against a void order, hence even if the appeal filed before the Full Bench was time barred they should have entertained the appeal on this very ground. He submitted that since the orders have been passed by

both the authorities without considering the merits of the case, the same are liable to be set aside. In support of his above contentions the learned counsel for the petitioner has placed reliance on the following decisions:-

- a) Fazli Kareem Vs. Secretary State & Frontier Regions Division Islamabad and others (2015 SCMR 795)
- b) Utility Stores Corporation of Pakistan Limited Vs. Punjab Labour Appellate Tribunal and others (PLD 1987 SC 447)
- c) Moulana Ata-ur-Rehman Vs. Al-Hajj Sardar Umar Farooq & o (PLD 2008 SC 663)
- d) Zila Council Lahore through it Chairman Vs. Rehm Dil Khan (PLJ 2002 (Lahore) 1023)
- e) Allah Yar Vs. G.M. Railways H.Q. Lahore and others (2001 SCMR 256)
- f) Crescent Sugar Mills & Distillery Limited Faisalabad Vs. CBR Islamabad and others (PLD 1982 Lahore 1)
- g) Azizullah Khan and others Vs. Arshad Hussain and others (PLD 1975 Lahore 879)
- h) Muhammad Sualeh and another Vs. M/s. United Garments and Fodder Agencies (PLD 1964 SC 97).

5. Syed Shoa-un-Nabi Advocate has appeared on behalf of Respondent No.1 and has vehemently opposed the instant petition by submitting that the Respondent No.1 falls under the definition of **"workman"** since he was a Universal Teller and not Chief Teller as opined by the counsel for the petitioner. He further submitted that the order-sheet of the Single Bench of NIRC would reveal that ample opportunity was provided by the Bench to the petitioner to cross-examine on the affidavit-in-evidence filed by the Respondent No.1 and to file their own affidavit-in-evidence, which they have miserably failed to do. He then invited our attention to the various order-sheet entries in this behalf. He submitted that it was the petitioner who himself was responsible for not appearing before the Single Bench of NIRC despite given several chances, hence the order could by no stretch of imagination be considered as a

void order. He also submitted that how an order could be considered void when nobody appeared before the Single Bench of NIRC to pursue the matter as the Single Bench was left with no option but to proceed *ex parte* against the petitioner-bank. He, thereafter, submitted that none of the decisions relied upon by the learned counsel for the petitioner is relevant in the instant matter since it has not been proved through cogent material that it was a void order whereas if diary-sheet/order-sheet are considered alongwith the cause list of the Single Bench it would become crystal clear that it was the petitioner who failed to make a proper representation by way of cross-examining on the basis of affidavit-in-evidence filed by the Respondent No.1 and to file their own affidavit-in-evidence before the Single Bench to dislodge the averments made by the Respondent No.1 before the Single Bench.

6. He further submitted that there is no change in appeal number and invited our attention to the various diary sheets of the Single Bench of NIRC. Hence, according to him the order passed by the Single Bench is a legal and lawful order and could not be termed as a void order, hence when the same is a legal and proper order limitation does run against the said order. He submitted that lethargic attitude of the petitioner is evident from the fact that the Single Bench passed the order on 8.12.2014 and the petitioner applied for its certified copy on 21.1.2015 which was supplied to them on 22.1.2015 whereas the appeal was filed on 29.4.2015 (incorrectly mentioned as 29.4.2012 in the order by the Full Bench), which was rightly dismissed as hopelessly time barred by three months and twenty two days vide order dated 19.5.2015. He, therefore, in the end submitted that the law helps the vigilant and not the indolent as it is quite clear from the attitude of the petitioner that they were neither interested in pursuing the matter before the Single Bench nor contesting the same by way of filing the appeal in a timely manner before the Full Bench of

NIRC and, hence, the present petition filed by the petitioner is misconceived and not maintainable and is liable to be dismissed with heavy cost.

7. Shaikh Liaquat Hussain, Assistant Attorney General for Pakistan, has appeared on behalf of Respondents No.2 and 3 and has supported the arguments of the learned counsel for the Respondent No.1.

8. We have heard all the learned counsel at considerable length and have perused the record and the decisions relied upon by the learned counsel for the petitioner.

9. Perusal of the record reveals that the petitioner was a Universal Teller and not a Chief Teller, as opined by the learned counsel for the petitioner, which is evident from the employee profile, filed by the learned counsel for the respondent No.1 alongwith the objections as Annexure "A". It is noted that the petition under Section 33 read with Section 54(h) of the IRO 2010 Sindh and IRO 2012 filed by the respondent No.1 before the Single Bench of NIRC clearly show the Appeal number as No.4B(36)/2013-K and not 4B(35)/2013-K as stressed by the learned counsel for the petitioner. Though at page 59 of the file there is some overlapping with regard to 4B(36) and 4B(35) but from the other documents annexed in the instant petition and notices /copy of the cause list of the Single Bench filed by the respondent No.1 it is evident that the appeal filed by the respondent No.1 was assigned the No.4B(36) and not 4B(35), which pertains to some other person, namely, Allah Bux Soomro Vs. Muslim Commercial Bank. Hence, the contention of the learned counsel for the petitioner that there has been a change in the appeal number, of which no intimation was given to the petitioner, is found to be contrary to the record and thus the same appears to be not tenable.

10. It is further seen from the record that on 23.04.2013 neither anyone from the applicant's side nor from the respondent's side appeared before the Single Bench and same was the position on 13.05.2013. However, on 27.05.2013 one Mr. Qamar Abdal Advocate appeared on behalf of the respondent No.1 alongwith the respondent No.1 however nobody appeared on behalf of the Bank. Then on 05.07.2013 the respondent No.1 appeared in person whereas Mr. Farmanullah Khan Advocate filed his power on behalf of the Bank and claimed copy of the plaint, when he was directed to obtain the same from the office. Thereafter, on 23.07.2013 the respondent No.1 appeared in person and Mr. Farmanullah Khan appeared on behalf of the Bank. Again on 06.08.2013 respondent No.1 appeared in person and Mr. Farmanullah Khan Advocate appeared for the Bank. On 28.08.2013 respondent No.1 appeared in person, whereas nobody appeared on behalf of the Bank. On 09.09.2013 Mr. Qamar Abdal Advocate appeared on behalf of the respondent No.1, whereas nobody appeared on behalf of the Bank. Similar was the position on 23.09.2013 and 08.10.2013 when nobody appeared on behalf of the Bank, however, on 24.10.2013 the respondent No.1 appeared in person, whereas on behalf of the Bank junior of Mr. Farmanullah Khan Advocate appeared and it was the date when the respondent No.1 filed his affidavit-in-evidence and copy of the same was supplied to the other side. On 27.05.2014 nobody appeared either for the respondent No.1 or the Bank. On 26.06.2014 Mr. M.A.K. Azmati Advocate appeared alongwith the respondent No.1 and filed his vakalatnama, whereas nobody appeared on behalf of the Bank and the Bench in the interest of justice adjourned the matter by giving last chance for cross of the respondent No.1. On 13.08.2014 Mr. M.A.K. Azmati was present alongwith the respondent No.1, whereas nobody appeared on behalf of the Bank and on the said date the Single Bench duly observed that the

respondents (present petitioner) are not attending the case since many dates which shows that they are not interested in pursuing the matter and thereafter their side for cross examination stood closed and the matter was adjourned for filing affidavit-in-evidence by the respondents (present petitioner). Then on 17.09.2014 the applicant (present respondent No.1) and his counsel were in attendance, whereas nobody appeared on behalf of the Bank (present petitioner) for filing affidavit-in-evidence and thereafter the side was closed for the Bank. Then on 20.10.2014 the respondent No.1 was present since morning but nobody appeared on behalf of the Bank and the matter was put off to 18.11.2014 for final arguments. Again on 18.11.2014 the respondent No.1 was present but nobody appeared on behalf of the Bank and thereafter the matter was put off to 18.12.2014 for orders. The diary sheets discussed above in chronological order clearly demonstrates and depicts the lethargic attitude of the Bank in making the appearance before the Single Bench for which they alone are responsible. It is noted that when the vakalatnama of a counsel has been filed it was the duty of either the counsel or some official from the Bank to at least take some pains to enquire about the status of the case which from the above facts clearly show that proper care and caution was not taken in attending the case and it was not one date on which no representation was made but there were a series of dates on which nobody appeared on behalf of the petitioner to pursue the matter and agitate the same before the Single Bench which, in our view, has passed an erudite order, though exparte, by dilating upon each and every aspect of the case in detail, hence, no interference in this behalf on our part is warranted.

11. So far as the claim of the petitioner that the respondent No.1 does not fall within the category of a workman is concerned. Suffice to state that no evidence was produced by the petitioner neither before the lower

forum nor before us that the respondent No.1 was having supervisory authority or that he was assigned the duty of some administrative and managerial work or he was having the power to hire and fire. Thus it is evident from the facts noted above that no material has been produced to substantiate that the respondent No.1 is not a workman hence did not have the authority under the law to file a representation /appeal before the NIRC hence the claim made by the petitioner on this aspect also is found to be misconceived and is hereby rejected.

12. Apropos, the claim of the petitioner that since the basic order of the Single Bench was void and no limitation runs against a void order is also found to be contrary to the records. Learned counsel for the petitioner has miserably failed to point out any legal flaw in the order passed by the Single Bench to substantiate his claim that the same is a void order. The decision of the Single Bench clearly reveals that the Bench has discussed each and every aspect of the case in a thorough manner by giving the decision on the merits as well as legal objections raised before it and thereafter by discussing each and every point has allowed the appeal by dilating upon all the issues involved in the instant matter. Hence, we do not find any substance, as raised by the learned counsel for the petitioner, that the order passed by the Single Bench in any manner was void and thus no limitation runs against it. We are of the view that firstly it is not a void order since every aspect and angle of the case has thoroughly been discussed through the exhaustive order passed by the Single Bench, comprising of nine (09) odd pages, and secondly it was the petitioner Bank who did not appear before the Single Bench to substantiate their claim and to make effective representation before the Single Bench and thus the Single Bench has rightly decided the case *ex parte* against the petitioner which was based on merits and on the relevant laws. Hence, the decisions relied upon by the learned counsel for

the petitioner firstly are found to be distinguishable from the facts obtaining in the case, since we have observed that the order of the Single Bench is not a void order and secondly the contention of the learned counsel for the petitioner that if the basic structure is illegal the edifice built on the said structure is also illegal does not apply in the present case and the case laws in support of this principle are found to be distinguishable on the simple ground that the basic order, from the facts discussed above, is not found to be suffering from any illegality either on the facts or on the law, which on the contrary is found to be based on proper reasonings and in accordance with law, therefore, the decisions cited in this behalf are not found to be applicable to the facts obtaining in the instant petition. Without prejudice to whatever stated above, we were able to lay our hands on the decision given by the Hon'ble Supreme Court of Pakistan in the case of Messrs Blue Star Spinning Mills Ltd. Vs. Collector of Sales Tax and others (2013 SCMR 587), wherein the Hon'ble Apex Court has observed as under:

"The Court specifically adverted to the argument raised by petitioner's learned counsel that no limitation runs against a void order and held that this is not an inflexible rule; that a party cannot sleep over to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings."

13. So far as the ground taken by the learned counsel for the petitioner that the Full Bench ought to have condoned the delay in filing the appeal is concerned, suffice to say that there has been a delay of 3 months and 22 days in filing the appeal and no plausible explanation was furnished before the Full Bench to condone the said delay. It is a well settled principle of law that delay of each day has to be satisfactorily explained, as after the expiry of limitation period a vested right is created in favour of the other party which could not be easily brushed aside as the law always help the vigilant and not the indolent. Reference in this regard may

be made to the decisions given by the Hon'ble Supreme Court of Pakistan in the cases of Muhammad Din Vs. Muhammad Saleem (1979 SCMR 172), Commissioner of Income-Tax Vs. Rais Pir Ahmad Khan (1981 SCMR 37), Zahoor Elahi Vs. Fazal-ur-Rehman (1969 SCMR 274), Ali Muhammad through legal heirs and others Vs. Chief Settlement Commissioner and others (2001 SCMR 1822) and Gen. (R) Parvez Musharraf Vs. Nadeem Ahmed (Advocate) and another (PLD 2014 SC 585). The perusal of the record further shows that the Single Bench decided the matter on 08.12.2014 and the petitioner applied for certified copy on 21.01.2015 i.e. after limitation period which copy was supplied on the next day i.e. 22.01.2015 but the appeal was filed on 29.04.2015, which is barred by 3 months and 22 days and no plausible explanation was furnished through the application filed under Section 5 of the Limitation Act for such an inordinate delay.

14. The upshot of the above discussion is that the instant petition is found to be wholly misconceived and is, accordingly, dismissed alongwith the listed application.

15. Above are the reasons of our short order dated 29.03.2018 through which we have dismissed the instant petition alongwith the listed application.

JUDGE

JUDGE

Karachi:
Dated: _____.