

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of Judge
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Present: **Mr. Justice Muhammad Iqbal Kalhoro**
Mr. Justice Adnan ul Karim Memon

C.P.No.D-2337 of 2017

Telenor Microfinance Bank Limited
(formerly Tameer Microfinance Bank Limited)

.....
Vs.

Petitioner.

Federation of Pakistan & others

.....

Respondents.

C.P.No.D-1977 of 2013

Tameer Microfinance Bank Limited

.....
Vs.

Petitioner.

Federation of Pakistan & others

.....

Respondents.

Date of hearing & order: **23.02.2023.**

Mr. Asad Manzoor Halepoto, advocate for the petitioner.
Mr. Manzoor Hameed Arain, Advocate for respondent.

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MUHAMMAD IQBAL KALHORO J: Petitioner, Telenor Microfinance Bank Ltd (formerly Tameer Microfinance Bank Ltd), is a private limited company. Respondent No.3, Nawaid Iqbal was its permanent employee. When he was serving in branch of petitioner at Mirpurkhas, he was served with a show cause notice/ charge sheet, which he replied but was terminated on 26.11.2009, allegedly without any inquiry held against him. He served the petitioner with a grievance notice but in vain and finally filed grievance application before National Industrial Relations Commission (NIRC), Karachi which vide order dated 06.03.2013 allowed his application, declared his termination order as illegal and reinstated him in service with

50% of legal dues from the date of termination till he was taken on duty.

2. Petitioner filed Appeal No.12(12)/2013-K against the said order before Full Bench of NIRC, Islamabad. Same was however dismissed for non-prosecution on 06.01.2016 when no one on behalf of appellant/petitioner appeared before the Full Bench of NIRC nor any intimation was sent to it. Petitioner filed application for restoration of appeal on 21.03.2016, on the ground that court clerk of the counsel had wrongly noted the date of hearing as 06.02.2016 instead of 06.01.2016 as such the counsel could not come to know of fixation of the matter on 06.01.2016. This application is available at page 157 and shows that this was second application filed by the petitioner for restoration. What fate befell on first application is, however not revealed anywhere. In any case, this application was dismissed by the Full Bench of NIRC vide order dated 29.11.2016. Petitioner has impugned all the aforesaid three orders in this petition.

3. We have heard learned counsel for the parties. Learned counsel for the petitioner instead of pointing out to any illegality in the impugned order dated 29.11.2016, whereby application for restoration was dismissed, has started arguing merits of the case viz. respondent No.3 does not fall within the definition of a workman etc. We have gently reminded him that merits of the case, he could not pursue before the Full Bench of NIRC in his appeal which was eventually dismissed in non-prosecution. And invoking constitutional jurisdiction of this court requires him to satisfy the court first about any illegality in the impugned order dated 29.11.2016, dismissing application for restoration. In reply, learned counsel has relied upon 2005 SCMR 1049, 2014 PLC 260 Lahore High Court, 2017 PLC 67 (Lahore High Court), 1992 SCMR 227, PLD 1975 Kar 279, 2016 PLC

279 (Peshawar High Court). These case laws are distinguishable and mostly cover explanation about definition of workman

4. His arguments have been rebutted by learned counsel for respondent No.3, who submits that even before the Single Bench of NIRC where respondent No.3 had filed grievance petition, there was no controversy over the status of respondent No.3 being workman.

5. Be that as it may, we have perused the pleadings besides hearing the parties. Learned Full Bench of NIRC in the impugned order dated 29.11.2016 has given cogent and tenable reasons for dismissing the appeal for non-prosecution, leading to dismissal of the application itself. The stance of the petitioner in application was that the court clerk of the counsel had wrongly noted the date of hearing in the diary. But neither a Photostat copy of the leaf of such diary was filed, nor name of the court clerk, who had mistakenly noted the date was revealed, nor his affidavit in support of such contention was filed before the Full Bench of NIRC to justify filing of the application with delay. The appeal was dismissed vide order dated 06.01.2016 and petition was required to file application for restoration in 30 days thereof. But instead the application was filed on 21.03.2016 which is apparently time barred by more than 1 ½ month.

6. Even on its face value, if contention of the petitioner is accepted that court clerk of the counsel had noted the date as 06.02.2016 instead of 06.01.2016, the counsel was supposed to come to know of the dismissal of the appeal for non-prosecution on 06.02.2016, and then was required to file application for restoration within 30 days thereof, on or before 06.03.2016, yet he filed such application only after expiry of 16 days on 21.03.2016 without any cogent explanation. The law on the point is settled that delay of each date has to be explained. The petitioner has miserably failed to

explain the delay of each day in filing of restoration application which, while considering all above facts, has rightly been dismissed.

7. Insofar as merits of the case are concerned, we are of the view that after dismissal of the appeal of the petitioner for non-prosecution, he could not raise the same in constitutional jurisdiction of this court which is discretionary and is not substitute of appeal. For maintaining petition on constitutional jurisdiction, petitioner has to show gross illegality or arbitrariness, floating on record, in the order which petitioner has failed to propound in this petition. This being the position, we do not find any merits in this petition and consequently dismiss it with no order as to costs alongwith pending applications. In view of above, C.No.D-1977 of 2013 stands disposed of alongwith pending application.

JUDGE

JUDGE

A.K