

IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-877 / 2024

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

Petitioner
through

Syed Anayat Hussain Shah, advocate.

Date of hearing and order: 22.02.2024

ORDER

Adnan-ul-Karim Memon, J. Petitioner Darwaish Hameed has questioned the legality of the Order dated 06.11.2023, passed by the learned Full Bench of the National Industrial Relation Commission (F-NIRC) in Appeal No. 12-A (272)/2022-K, and Order dated 19.09.2022 passed by learned Single Member of National Industrial Relation Commission (S-NIRC) dismissing the Grievance Application No. 4-B (105)/2022-K, filed by the petitioner. In the first instance, the relevant portion of the conclusive findings of the learned Single Member of NIRC is as under:

“ 2. Arguments heard and record perused, which shows that the learned Labour Court Karachi returned the petitions to the petitioners on 23.02.2022 for filing the same before the proper forum. The petitioners obtained the copy of the proceedings/ order on 25.02.2022 from the Labour Court and filed the instant petitions before this Commission on 31.05.2022 i.e. after a delay of more than 3 months, which is not in accordance with law/ procedure as the petitioners were required to file the returned petition before this Commission on the very next day after receipt of its copy on 26.02.2022 as it is as it was returned, as it was public documents, not private property. On this basis of going on the wrong forum, it can be concluded that the petitioners were required to file the returned petition as it is, or was returned after obtaining the same from the labour court on the very next day before this Commission. In this regard, reliance is placed on the case reported in 2000 CLC 1290 whereby it has been held by the Honourable Lahore High Court in the titled case Mst Khalida Begum and 2 others versus Mst Yaseen and 4 others:

“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 not be condoned as appellants were themselves responsible for said delay and could not get benefit of wrong advice.”

The Petitioners have chosen to approach the wrong forum and have vested their time. In this regard, the Honourable Supreme Court of Pakistan vide its judgment in the case titled PIAC through Chairman versus Captain M.S.K Lodhi (2002 SCMR 1004) has held as under:-

“Ss.5&14--Fault in approaching the wrong forum from redressal of grievance would not at all be a reasonable cause to condone the delay.”

For what has been discussed above, the instant petitions are not maintainable, as such while allowing the appellations filed by learned counsel for the respondents under Order 7 Rule 11 CPC, the instant petitions are hereby dismissed as being time-barred. There is no order as to the costs. File be consigned to record room.”

2. The case of the petitioner is that he was in the employment of respondent South Asia Pakistan Terminal Private Limited (SAPTL) as an Equipment Operator in Grade-W-3, vide letter dated 23.09.2016, however, during the tenure of his service, he faced disciplinary proceedings, which were culminated into his dismissal from service vide letter dated 02.07.2021. He being aggrieved by and dissatisfied with the dismissal order, served the grievance notice upon the respondent company on 24.08.2021, which was timely replied to the petitioner vide letter dated 06.09.2021 with the assertion that M/s South Asia Pakistan Terminal Private Limited is a Trans-Provincial Establishment and is covered under the provisions of the Industrial Relations Act 2012. However, the petitioner opted to approach the learned Sindh Labour Court No. V, Karachi (SLC) by filing Grievance Application No. 77 of 2021, rather than NIRC, resultantly his Grievance Application was returned to him for submission of the same before the Court having jurisdiction vide order dated 16.11.2021. The petitioner being aggrieved by and dissatisfied with the aforesaid decision approached the Sindh Labour Appellate Tribunal at Karachi (SLAT) by filing Appeal No. KAR/2021 which was disposed of as not pressed vide Order 03.03.2022. Finally, the petitioner approached the Single Bench of NIRC by filing a Grievance Application under Section 33 of the Industrial Relations Act 2012 on 2.11.2021 which was dismissed being time-barred, Appeal preferred thereon before the Full Bench of NIRC was also dismissed on the point of limitation vide order 06.11.2023, an excerpt whereof is as under:-

“ We while relying on the above-mentioned judgments, are of the opinion that the petitions of three appellants/petitioners are badly time barred as the same were returned to them on 23.02.2022 and they presented these petitions on 31.05.2022. we are also of the opinion that the appellants/petitioners neither before the trial court i.e. Single Bench of NIRC nor before this forum has filed an application for condonation under Article 5 read with Article 14 of Limitation Act, 1908, otherwise, the appellants/petitioners were required to explain the delay of each and every day in the filing of grievance petitions, consequently, all three appeals stand dismissed. No order as to cost. Files be consigned to record room after due completion.”

3. At the outset, we asked the learned counsel as to how this Petition is maintainable against the concurrent findings of the two courts below on the point of limitation.

4. The learned counsel for the petitioner has submitted that both the Benches of NIRC failed to appreciate the law on the subject issue and erroneously rejected his claim of reinstatement in service on the ground of Limitation, which is the mixed question of Law and fact and his case required evidence; and, it has been wrongly observed by the NIRC in their impugned Orders that appeal was/is time-barred though the petitioner timely approached the SLC and SLAT in terms of Section 33 of the Sindh Industrial Relations Act, 2013 (SIRA), however, it was incumbent upon the learned SLC to transfer the Grievance Application to NIRC under IRA 2012 rather than returning the Grievance Petition to the petitioner to approach NIRC which was the erroneous decision and the same was appealed before the SLAT but due to bonafide mistake, the petitioner opted to not press the Appeal and thereafter approached the NIRC and the petitioner was wrongly non-suited in both the forums without adjudication. He submitted that the matter of the petitioner needs to be decided on merits rather than dismissal on technical grounds. He prayed for remanding the matter to NIRC for the decision on merits.

5. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance.

6. The question is whether the decisions of both the Benches of NIRC are within the parameters of law. It is well settled that limitation is not a mere technicality that can be overlooked, and for an authoritative pronouncement as to the salient features of the law on the subject, it is appropriate to refer to the case of Khushi Muhammad through L.Rs, and others v Mst. Fazal Bibi and others **PLD 2016 SC 872**, where the principles were extracted from an examination of various relevant judgments of the Superior Courts, as there is no deliberation required on our part on the subject issue that has already been settled.

7. In the present case, it appears from the record that initially the grievance notice under Section 34 of the Sindh Industrial Relations Act 2013 (SIRA) was issued by the petitioner vide courier receipt dated 25.8.2021, effectively served upon the respondent company; and reply thereon was given vide letter dated 6.9.2021 within 15 days and the grievance application

was/is required to be filed within 60 days under Section 33 of the Industrial Relations Act 2012 (IRA 2012), before NIRC, however, the petitioner filed the petition on 31.5.2022 after considerable delay thus the petitioner ought to have approached the NIRC within 75 days from the aforesaid date but unfortunately he filed a time-barred petition before NIRC on 31.5.2022, as the period starts from the date when the petitioner was dismissed from service on 1.7.2021, secondly from the date when he received the reply from the respondent-company on 6.9.2021 disclosing the company to be a Trans-Provincial Establishment, thus the petitioner was required to approach the correct forum in accordance with law which he failed.

8. In principle, for a grievance petition before NIRC, the maximum period as prescribed in IRA, 2012 is 2 months and 15 days after serving the grievance notice and if the grievance notice remains unaddressed by the employer; beyond that prescribed period grievance petition shall be treated barred by time. The delay of each day is to be explained. No plausible explanation has been given by the petitioner as to why he waited to approach NIRC when the respondent company replied in categorical terms that the company is a Trans-Provincial Establishment. The phrase, "trans-provincial" has been defined in clause (xxxiv) of Section 2 of Act X of 2012, which means, "any establishment, group of establishments, the industry having its branches in more than one Provinces."

9. To elaborate further on the subject, we have seen that under Clause (2)(b) of Section 57 of IRA 2012, the Commission has been empowered to withdraw from a Labour Court of a Province any applications, proceedings or appeals relating to unfair labour practice, which fall within its jurisdiction. A proviso has been added to the above provision, to the effect that "no Court, including Labour Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labour practice". Besides, the Act of 2012 does not provide such directions that cases are to be transferred automatically. On the contrary, that mechanism was provided in the judgment passed by this court in the case of *KESC and others vs. NIRC* reported in **2015 PLD 1**, hence the plea taken by the petitioner is misconceived, and thus discarded.

10. In view of the above legal position of the case, the petitioner ought to have been vigilant as it is settled law that ignorance of the law is no excuse, merely approaching the wrong forum is not sufficient to condone the delay as portrayed by the petitioner until and unless it is shown that due to bonafide

intention, petitioner was precluded to approach the NIRC but the case in hand is different as the petitioner was well aware of the factum that respondent company was/is Trans-Provincial Establishment and grievance application lies before the NIRC and not SLC and/or SLAT. It is also well-settled that the Law favours the vigilant and not the indolent.

11. It is well settled that certiorari is available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or over its jurisdiction or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in the exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in the exercise of supervisory jurisdiction, therefore we hold that the concurrent Orders passed by the learned Full Bench of NIRC and Single Bench of NIRC were/are based on correct appreciation of law and within the jurisdiction are hereby maintained. Hence, the instant Petition is found to be meritless and is accordingly dismissed in limini along with the pending application (s).

12. These are the reasons for our short order dated 22.2.2024, whereby we have dismissed the instant petition.

JUDGE

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