

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3663 of 2019  
Syed Manzar Hussain

**Versus**

Capital Development Authority through its Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**10.03.2020**

**Hafiz Farmanullah, Advocate for the petitioner**  
**Ms. Shoeba Akhtar, Advocate for the C.D.A.**

Through the instant writ petition, the petitioner, Syed Manzar Hussain, impugns the order dated 21.08.2019, passed by the learned Full Bench of the National Industrial Relations Commission ("N.I.R.C."), whereby his appeal against the order dated 19.03.2019, passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 19.03.2019, the learned Member, N.I.R.C. had dismissed the petitioner's grievance petition primarily on the ground that the grievance notice was not served by him on his employer within the limitation period provided in Section 33(1) of the Industrial Relations Act, 2012 ("I.R.A.").

2. Learned counsel for the petitioner submitted that at no material stage had the petitioner absented himself from duty; that the petitioner had been paid his salary up to 01.06.2018, and this fact can be verified from his salary receipts; that the grievance notice dated 25.06.2018 was served within the limitation period provided by law; and that the learned Member as well as the learned Full Bench, N.I.R.C. concurrently erred by not appreciating that the grievance notice was served by the petitioner within the limitation period provided by law. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for the C.D.A. submitted that the concurrent orders passed

by the learned Tribunals below do not suffer from any legal or jurisdictional infirmity; that the petitioner did not report for duty between October 2014 and January 2018; that the petitioner's pay was stopped six months prior to 01.06.2018 when he contacted his bank; that the cause of action for serving a grievance notice accrued to the petitioner on 31.01.2018 when his pay was stopped; and that the grievance notice dated 25.06.2018 is beyond the limitation period of ninety days provided in Section 33(1) of the I.R.A. Learned counsel for the C.D.A. prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The sole question that needs to be determined is whether the grievance notice dated 25.06.2018 had been served by the petitioner on his employer within the limitation period of ninety days provided in Section 33(1) of the I.R.A.

6. The contesting parties are at variance on the date when the petitioner's salary was stopped. The position taken by the petitioner was that he had received his salary up to 01.06.2018 whereas the C.D.A.'s stance is that his salary was stopped on 31.01.2018.

7. Section 33(1) of the I.R.A. provides that a worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or by any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the date on which the cause of such grievance arises. Furthermore, under Section 33(4) of the I.R.A., the petitioner could take his grievance to the N.I.R.C.

only if his employer failed to communicate a decision within a period of fifteen days of the submission of the grievance notice, or if the employer had given a decision against the petitioner on his grievance notice.

8. For filing a grievance petition before the N.I.R.C., the *proviso* to Section 33(4) of the I.R.A. provides a limitation period of sixty days from the date of the communication of the employer's decision or the expiry of fifteen days of the issuance of the grievance notice. A grievance petition before the N.I.R.C., without the service of a grievance notice on the employer within the limitation period provided in Section 33(1) of the I.R.A., is not maintainable. This Court, in the case of Pakistan Telecommunication Company Limited Vs. Muhammad Dilpazeer Abbasi (2016 PLC 367), has held *inter-alia* as follows:-

*"A worker/ workman can file a petition for redressal of grievance in the mode or in accordance with the procedure provided in section 33 of the Act. In this behalf a worker/workman is required to bring to the notice of his employer in writing the grievance within 90 days of the cause by which grievance arises and if the employer, under subsection (4) of section 33 fails to make/communicate decision within 15 days of the grievance or the decision rendered is not satisfactory then the matter can be agitated before the Commission. Under proviso to subsection (4) a worker/ workman who desires to take the matter to the Commission shall do so within a period of 60 days from the date of commencement of the employment or as the case may be from expiry of the period mentioned in subsection (2) or subsection (3) as the case may be."*

9. In drawing the said conclusion, this Court relied upon the case law titled Khushal Khan Vs. Muslim Commercial Bank Limited (2002 PLC (C.S.) 907, Allied Bank of Pakistan Limited Vs. Muhammad Iqbal Sipra (2007 PLC Labour Cases 398), and Abdul Rauf Vs. Muhammad Shafiq (2006 PLC Labour Cases 135). In the said case, one of the reasons why this Court set-aside the concurrent orders of the learned

Member and the learned Full Bench, N.I.R.C. was that there was nothing on the record to establish that the employees (petitioners before the N.I.R.C.) had served a grievance notice on their employer.

10. In the case at hand, the cause of serving a grievance notice on C.D.A. accrued to the petitioner when his salary was stopped. Although the C.D.A., in its report/written reply to the petitioner's grievance petition, has pleaded that his salary was discontinued by the Environment Directorate on 31.01.2018 but the letter dated 27.04.2018 issued by the Environment Directorate of the C.D.A. shows that the petitioner's salary was being released *"till now"*. In the said letter, it is also stated that the petitioner's pay and allowance *"is hereby stopped with immediate effect"*. This letter shows that the petitioner's salary was stopped on 27.04.2018 and not on 31.01.2018 as pleaded by the C.D.A. in the said report. If the limitation period of ninety days for serving a grievance notice is counted from 27.04.2018, when as per the contents of C.D.A.'s letter dated 27.04.2018 the petitioner's salary was stopped with immediate effect, then his grievance notice dated 25.06.2018 would be clearly within the limitation period provided in Section 33(1) of the I.R.A. It is well settled that the question of limitation is a mixed question of law and fact. Therefore, the learned Member, N.I.R.C. should have given an opportunity to the petitioner to prove that he had been receiving his salary up to 27.04.2018 or 01.06.2018.

11. In paragraph 5 of the order dated 19.03.2019, the learned Member, N.I.R.C. has made the following observation:-

*"Petitioner was not paid salary from 01.06.2018, who served the respondent with the grievance notice on 25.06.2018 and if petitioner was*

*aggrieved who has to serve the respondent with grievance notice within 90 days of the day on which the cause of action of such grievance accrued to him.”*

12. The above-mentioned observation of the learned Member, N.I.R.C. makes it clear that the petitioner had served the grievance notice dated 25.06.2018 within the limitation period of ninety days provided in Section 33(1) of the I.R.A. from the date when the cause for grievance accrued to him, i.e. on 27.04.2018 or 01.06.2018. In this view of the matter, the petitioner could not have been non-suited on the ground that he had not served the grievance notice within the limitation period provided in the I.R.A.

13. In view of the above, the instant petition is allowed. The impugned orders dated 19.03.2019 and 21.08.2019 passed by the learned Member, N.I.R.C and the learned Full Bench, N.I.R.C. respectively, are set-aside. The matter is remanded to the learned Member, N.I.R.C. with the direction to provide an opportunity to the petitioner to prove that his salary was stopped on a date, which did not make his grievance notice dated 25.06.2018 time barred. In deciding this matter, the learned Member, N.I.R.C. ought to take into consideration letter dated 27.04.2018 issued by the Environment Directorate of the C.D.A.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Qamar Khan\*