

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.2667/2017.**

**Shahid Mehmood etc**                      **Vs.**                      **Pakistan Telecommunication  
Company Limited etc.**

Petitioners by:                                      Mr. Muhammad Amin Farooqi, Advocate.

Respondent No.1 by:                                      Mr. Habib Ahmed Bhatti, Advocate.

Raheel Zafer, Sr. Manager, Legal PTCL.

**Date of Hearing:**                                      **29.01.2020.**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioners have called in question the order dated 18.04.2017, passed by learned Full Bench, NIRC, Islamabad, whereby appeal filed by respondent No.1/PTCL was allowed and order dated 23.11.2012 passed by learned Single Bench, NIRC, was set aside.

2. Brief facts referred in the instant writ petition are that the petitioners are working on daily wages/ad-hoc/work charge basis from 1992 to 1999 without any break and claiming regularization/permanent employees status in accordance with the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that the petitioners have submitted different departmental representations for regularization of their services but they were compelled to accept the offer of appointment under new terms and conditions through New Compensation Package Grades (NCPG) w.e.f. 01.09.2004; that the petitioners served grievance notice to respondent No.1 on 25.10.2010 for regularization of their services, however, at that time Industrial Relations Act, 2008 was not in the field U/S 87(3) of the said act and the interregnum period started from 30.04.2010 to 17.07.2011 as such no Industrial Law was in the field, therefore, the petitioners approached Labour Court, Islamabad through petition dated 29.11.2010, however, after promulgation of The Industrial Relations Ordinance, 2011, the matter was transmitted to NIRC vide order dated 12.09.2011; that NIRC took cognizance of the matter and grievance petition of the petitioners was accepted vide order dated 23.11.2012; that respondent No.1 filed an appeal before learned Full Bench, NIRC, which was allowed and order of learned Single Bench was set aside through impugned order dated 18.04.2017 and grievance petition of the petitioner was also set aside.

3. Learned counsel for the petitioners contends that learned Full Bench, NIRC while passing the impugned order did not take into account the material evidence on record and even passed the impugned order in conflict to the judgment of Hon'ble Supreme Court reported as *2011 SCMR 1254 (Air League of PIAC Employees vs. Federation of Pakistan and others)*; that no Industrial Law was holding the field, therefore, general law came forward to fill in the vacuum but the said proposition was not accepted by learned Full Bench, NIRC; that impugned order has been passed without any basis; that grievance notice is meant to inform employer regarding grievance and it is not necessary to issue grievance notice nor aggrieved person can be non-suited on such hyper technical objection. In this regard learned counsel for the petitioners has relied upon *2009 PLC 44* and *2007 PLC 375*; that services of similarly placed employee namely Syed Saqlain were regularized vide office order dated 05.07.2007 in compliance of judgment of Federal Service Tribunal, which was upheld by the Apex Court as such the petitioners are also entitled for same relief in terms of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Conversely, learned counsel for respondent No.1 contends that grievance notice issued by the petitioner is time barred as requirement of section 33 of The Industrial Relations Act, 2012 were not complied with in strict sense; that the petitioners were already confirmed in service on 01.09.2004 through NCPG without any coercion and duress as the petitioners accepted terms and conditions of the service; that the petitioners have not claimed regularization w.e.f. back date in the grievance notice, therefore, the same cannot be pleaded or considered valid.

5. I have heard learned counsel for the parties and gone through the record.

6. Perusal of the record reveals that all the petitioners filed grievance petition before Labour Court, Islamabad on 29.11.2010 with the claim that their services be regularized w.e.f. the date of their initial appointment on daily wages. The petition was entertained by District Judge vested with powers of Labour Court, however, The Industrial Relations Ordinance, 2011 was promulgated on 18.07.2011 and as such the matter was transmitted to National Industrial Commission constituted U/S 53 of IRO, 2011 vide order dated 12.09.2011, where-after the grievance petition was contested by respondent No.1. The parties led their evidence, wherein the petitioners submitted their affidavits through Exh.P.1 & 2 and claimed that all the petitioners have appointed Shahid Mehmood as their Special Attorney to represent them in these cases. The

petitioners side has relied upon grievance notice appended at page No.89 of the instant writ petition with the following facts:-

*“Respectfully stated that the undersigned was initially appointed as **Telephone Operator** on **18-09-1994** on daily wages basis. The undersigned has been serving on daily wages basis **till the date** without any break.*

*It is worth mentioning here that the undersigned has submitted various applications for regularization of his services but instead of regularizing his services he was compelled to accept offer of appointment as **Telephone Operator-I** under new terms and condition (NCPG-05) w.e.f **01-09-2004** and since then to till date the undersigned is serving without any break devotedly, honestly and up to the entire satisfaction of his superior.*

*In view of above, it respectfully requested that services of undersigned may kindly be regularized with effect from initial date of appointment i.e. **18-09-1994.**”*

7. The above referred notice dated 25.10.2010, if seen in the light of evidence referred as Exh.P.1/2, wherein the petitioners have raised specific stance in evidence in the following manner:-

”یہ کہ من مہلف کو ڈپٹی مینجر کسٹمر کیئر سینٹر (CCC) کے دفتر واقع رضوان سنٹر بلیو ایریا اسلام آباد میں بلا کر کہا گیا کہ آپ کو مستقل کر دیا گیا ہے لہذا مستقل کیے جانے کے احکامات کے نیچے وصول پائے جانے کیلئے دستخط کر دو من مہلف نے ایسا ہی کیا اور اسی طرح باقی 84 شیشیز کو بھی ان کے متعلقہ ڈویژنل دفاتر میں بلا کر مہار کھاد پیش کی گئی اور کہا گیا کہ اپنے مستقل کیے جانے کے احکامات نچلے حصے پر وصولی کی بابت دستخط ثبت کریں۔ ان سب نے بھی ایسا ہی کیا مگر پہنچ کر جب سب لوگوں نے مذکورہ لیٹرز کا بغور مطالعہ کیا تو معلوم ہوا کہ PTCL انتظامیہ نے ان کے ساتھ دھوکہ کیا ہے کیونکہ مذکورہ آرڈر کے مطابق ان کی ملازمت مستقل نہ کی گئی بلکہ ایک ناہاد کیڈر NCPG کے نام سے متعارف کرایا گیا اور مہلف وہ دیگر شیشیز پر مسلط کر دیا گیا۔ NCPG کے آرڈر Grievance Petition کے صفحہ 371 سے لیکر 449 پر بطور ”D“ Annexure لف ہیں جن کی کاپیاں مہلف Exp.PW-1/8 پیش کرتا ہے جو کہ 89 صفحات پر مشتمل ہیں۔

یہ کہ مہلف کی طرح انتظامیہ کے دھوکے کا نشانہ بننے والا PTCL کا ایک ملازم سید ثقلین شاہ جو کہ مستقل بنیادوں کی بجائے NCPG کیڈر کے مطابق Contract کے آرڈر جاری کیے جانے کے خلاف معزز عدالت فیڈرل سروسز ٹریبونل لاہور اپیل نمبری (L) 529/2004 (CS) دائر کی جس میں محکمہ PTCL نے تمام اعتراضات اٹھائے جو کہ PTCL نے مہلف کی Grievance petition میں بھی اٹھا رکھے ہیں۔ مگر معزز FST نے سید ثقلین شاہ کے حق میں فیصلہ مورخہ 05-07-05 کو سنایا۔ PTCL حکام نے معزز عدالت FST لاہور کے فیصلہ کے خلاف عدالت عظمیٰ سپریم کورٹ آف پاکستان میں کیس دائر کیا جو کہ خارج کر دیا گیا اور معزز عدالت FST کے فیصلے کو برقرار رکھا گیا جس پر فوری عمل کرتے ہوئے PTCL نے سید ثقلین شاہ کو مستقل کر دیا ہے اور بقایا جات بھی ادا کر دیئے ہیں۔ سید ثقلین شاہ کے کیس کی روشنی میں PTCL کے ایک اور ملازم سید حماد رضا جو کہ مہلف کی طرح مستقل نہ کیا گیا بلکہ وہ NCPG کے تحت کنٹریکٹ پر کام کرنے پر مجبور کیا گیا نئی پنجاب لیبر کوٹ نمبر 1 لاہور میں کیس نمبری 12/08 دائر کیا جو کہ معزز عدالت نے منظور کر لیا اور مورخہ 12.07.2010 کو سید حماد رضا کے حق میں فیصلہ سنا دیا مذکورہ بالا تینوں عدالتی فیصلہ جات کی کاپیاں مہلف Exp.PW-1/9 پیش کرتا ہے۔

یہ کہ مہلف اور دیگر 84 پیشترز (مختار کنندگان) کو مجبور کر دیا گیا اور PTCL یہ کے مہلف اور دیگر 84 پیشترز کام نے حکم دیا کہ مہلف و دیگر NCPG کے مطابق کنٹریکٹ ملازمت ہی جاری رکھیں ورنہ ان سب کو نوکریوں سے نکال دیا جائے گا۔ مہلف و دیگر 84 پیشترز نے اکتوبر 2010 کی مختلف تواریخ 07, 23, 24, 25, 26 کو respondent کو Grievance Notices بھیجے جو کہ کیس میں صفحہ نمبر 450 سے لیکر 546 پر بطور "E" Annexure لف ہیں ان صفحات پر Grievance Notice کے ساتھ PTCL افسران کے receiving, forwarding letters اور ڈاک کی رسیدیں بھی موجود ہیں کیونکہ کچھ پیشترز کے Grievance Notices PTCL افسران وصول کرنے سے انکاری ہوئے تو انہوں نے بذریعہ ڈاک مجھوا دیئے۔ مہلف مذکورہ Grievance Notices بمعہ forwarding letters اور ڈاک کی رسیدیں Exp.PW-1-10 پیش کرتا ہے جو کہ 97 صفحات پر مشتمل ہیں۔"

8. The above referred evidence of the petitioners clearly spells out that they are aggrieved with NCPG and claim that:-

PTCL انتظامیہ نے ان کے ساتھ دھوکا کیا ہے۔ کیونکہ مذکورہ آرڈر کے مطابق ان کے ملازمت مستقل نہ کی گئی ہے۔

This aspect was not referred in the grievance notice dated 25.10.2010 rather grievance notice simply discloses regularization of their services and no word has been referred against NCPG. It is trite law that the ground, which was not raised in the grievance notice cannot be agitated subsequently, hence, claim of the petitioners against NCPG is not justified. The Industrial Relations Ordinance requires to serve notice within prescribed time. The grievance notice, which has been placed on record refers the date of grievance as 25.10.2004 as NCPG was signed by the petitioners with respondent No.1 but surprisingly grievance notice was served on 25.10.2010 approximately after elapse of 10 years, therefore, this Court considers application of law from the date of grievance i.e. 25.10.2004 and when the grievance notice was issued on 25.10.2010, therefore, this Court comes to the conclusion that when the grievance raised in the year 2004 when NCPG was signed, the applicable law was The Industrial Relations Ordinance, 2002, section 25 of which refers as under:-

**"25. Negotiations relating to differences and disputes.- (1) If at any time an employer or a collective bargaining agent finds that an industrial dispute has arisen or is likely to arise, the employer or, as the case may be, the collective bargaining agent may communicate his or its views in writing to the other party.**

**(2) On receipt of the communication under sub-section (1), the party receiving it shall try to settle the dispute by bilateral negotiations within fifteen days of the receipt of the communication or within such further period as may be agreed upon by the parties and, if the parties reach a settlement, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator and the authorities specified in clause (xxvi) of section 2.**

**(3) Where a settlement is not reached between the employer and the collective bargaining agent, the employer or the collective bargaining agent**

*may, within fifteen days from the end of the period referred to in sub-section (2), serve on the other party to the dispute a notice of conciliation, in accordance with the provisions of this Ordinance."*

Similarly, when the grievance notice was issued on 25.10.2010, the applicable law at the relevant period is not clear as the sunset legislation i.e. The Industrial Relations Act, 2008 in terms of section 87(3) was dysfunctional after 30.04.2010 and the Apex Court has clarified the position in reported case **2011 SCMR 1254 (Air League of PIAC Employees vs. Federation of Pakistan and others)**, in which it was held that:-

*"during the interregnum period w.e.f. 30.04.2010, when no Industrial Relations Law was holding the field, the workers had remedy under the ordinary laws prevailing at that time because in absence of a special law, the ordinary/general laws come forward to fill in the vacuum."*

9. In view of above situation, the petition filed by the petitioners before the Labour Court, Islamabad was not maintainable as it was established in terms of section 41(4) of IRA, 2008 and as such, these facts have been appreciated by the Labour Court vide order dated 12.09.2011. It is settled law that in such type of situation, court of general jurisdiction in terms of Section 9 CPC comes to rescue the grey area as held by *Air League of PIAC Employees Supra*. Even otherwise, the grievance notice if considered valid in terms of Industrial Relations Ordinance, 2011, requires specific procedure to be adopted referred in section 33, which provides specific timeline to initiate the process and to proceed under the said law.

10. I have also attended to similar proposition in terms of section 33(2) of IRA, 2012, wherein the grievance notice, which was issued by the employees/workmen has to be communicated to the employer within 15 days of the grievance and the employer has to communicate the decision in writing to the workers. However, if the employer fails to communicate the decision or the workman is dissatisfied with the decision made by the employer, the workman can take the matter to the Commission within period of 60 days from the date of communication of employer's decision in terms of Section 33(4) of IRA, 2012, however, in this case, the petition was filed without observing timeline, even under the previous law IRO, 2002 and IRA, 2008 as well as in terms of IRO, 2011 and under IRA, 2012. It is trite law that the procedure prescribed in any statute has to be applied in strict sense, if the same was not followed, it is presumed that grievance notice was not served and the same could not be relied upon. Reliance is placed upon **2002 SCMR 943 (Khushal Khan v. Muslim Commercial Bank Ltd.)**,

**2007 PLC 398 (Allied Bank of Pakistan Ltd. v. M. Iqbal Sipra) and 2016 PLC 267 (Karachi Shipyard and Engineering Works Limited v. Talib Hussain).**

11. The above referred concept was also highlighted in **2016 SCMR 183 (Civil Aviation Authority through D.G. v. Mir Zulfiqar Ali)**, therefore, the grievance notice was time barred and even grievance petition was not maintainable. I have attended to impugned judgment of learned Full Bench, NIRC, whereby learned Full Bench has rightly observed that grievance petition filed by the petitioners before the Labour Court, Islamabad is on wrong forum having no jurisdiction, therefore, transfer of the grievance petition of the petitioners vide order dated 12.09.2011 by the Labour Court to NIRC, Islamabad is also illegal, as such the evidence reflects that cause of action accrued to the petitioner is from execution of NCPG dated 10.10.2004, but they raised their grievance on 10.10.2010 after the elapse of six years, even before wrong forum.

12. The last question raised by the petitioners side is the relief granted to one of the employees Syed Saqlain, whose services were regularized vide office order dated 05.07.2007 which was passed on the judgment of Federal Services Tribunal and Apex Court, who immediately approached relevant forum to get redressed his grievance, whereas the petitioners kept silence for six long years, therefore, facts and circumstances of Syed Saqlain are not at par to the case of petitioner, therefore, the petitioners cannot claim same relief. No illegality has been observed in the impugned judgment and learned Full Bench, NIRC has rightly appreciated the law.

13. In view of above discussion, the instant writ petition bears no merits, therefore, the same stands **DISMISSED.**

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in the open Court 11.02.2020.

JUDGE