

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 1253/2019.

Khalid Mehmood

Versus

Islamabad Electric Supply Company (IESCO), Islamabad, etc.

Petitioner by: Mr. Muhammad Adnan Awan, Advocate.

Respondents by: Mr. Muhammad Asif Khan, Advocate.

Date of Decision: 05.03.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the concurrent findings of learned Single Bench, NIRC as well as learned Full Bench, NIRC, whereby grievance petition filed by petitioner was dismissed concurrently.

2. Learned counsel for the petitioner contends that petitioner was employee of WAPDA and joined as Line Superintendent in 1995 and later on he was working with IESCO and he received a show cause notice dated 03.04.2012 with certain allegations, where-after three members inquiry committee was constituted and said inquiry committee has given *ex-parte* findings; that another show cause notice was issued on 31.12.2012, which was replied by the petitioner that his contention has not been appreciated rather he was dismissed from service by imposing major penalty of dismissal from service vide order dated 11.03.2013 despite the fact that petitioner has 28 years unblemished service at his part; that petitioner filed departmental appeal on 03.04.2013, however, the same was rejected by the Chief Executive, IESCO on 17.06.2013; that petitioner again filed review petition on 03.09.2013 but the same was never replied, where-after he approached learned Single Bench, NIRC and filed Grievance Petition in terms of Section 33 of IRA, 2012; that learned Single Bench, NIRC as well as learned Full Bench, NIRC have dismissed his grievance petition concurrently on the ground of limitation, although the review petition filed by petitioner before respondent No.1 has not yet been adjudicated and time period for calculation of grievance notice could only be start from the date of refusal or

rejection of the last review; that both the forums below have not appreciated the law on the subject and non-suited the petitioner on hyper technical reasons which are not admissible under the law.

3. Conversely, learned counsel for respondents contends that petitioner has been charged on the ground of his corrupt practices and allegations have been proved in the inquiry and he has been given fair chance for rebuttal but he could not substantiate his plea and resultantly was dismissed from service but he remained negligent in approaching the forum of NIRC; that both the forums below have rightly dismissed the grievance petition and even petitioner has approached this Court with delay of two years after passing of the impugned order and at this stage principle of *laches* is applicable in this case.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner was employee of WAPDA and later on he was transferred to IESCO after establishments of DISCOs and he was served with show cause notice due to his nefarious activities and resultantly an inquiry was initiated by three members inquiry committee and inquiry findings came against the petitioner. The petitioner was given another show cause notice dated 31.12.2012 but he could not substantiate his defense, resultantly, petitioner has been dismissed from service after imposing major penalty of dismissal from service vide order dated 11.03.2013, passed by Additional Chief Engineer.

6. The petitioner after receiving the said dismissal order filed departmental representation on 03.04.2013, which was rejected on 17.06.2013 but he again filed review petition on 03.09.2013 but the same was not replied by the respondents' department. The petitioner after considerable delay filed grievance petition U/S 33 of the IRA, 2012 before the NIRC, which was dismissed by learned Single Bench, NIRC on the following grounds:-

Since the petitioner has invoked the jurisdiction of the Commission by filing the grievance petition within the meaning of Section 33 of the Act ibid therefore, as per mandate of the law it was essential for the petitioner to have first served the employer with a grievance notice as envisaged by Section 33(1) of the Act Ibid which admittedly has not been followed by the petitioner however; in any case even if, the appeal preferred against the dismissal order be treated as a grievance

notice which was rejected on 17.06.2013 yet, the grievance petition has been presented to the Registrar of the Commission on 10.02.2014 much beyond the prescribed period of limitation. The petitioner has not even filed application for condonation of delay for filing the grievance petition beyond the prescribed period of limitation nor any reason has been given which prevented the petitioner from instituting the grievance petition within the prescribed period of limitation. No ground to condone the inordinate delay is available to the petitioner as he failed to account for the delay of each day by showing a sufficient cause therefore, this grievance petition being hopelessly barred by time is dismissed.

7. The said order of dismissal of the grievance petition by the learned Single Bench, NIRC has been maintained by the learned Full Bench, NIRC vide order dated 24.03.2016.

8. I have gone through the record meticulously and it has been observed that final order of NIRC has been passed on 24.03.2016 and petitioner has received the copy of said order on 04.04.2016 but he kept silent and fell in deep slumber till 18.10.2018 when he filed instant writ petition before this Court.

9. The above referred background of the case clearly spells out that petitioner after getting the order of dismissal from service dated 11.03.2013 filed grievance petition on 07.10.2014, whereas Section 33 of IRA, 2012 provides the complete mechanism to challenge the decision of employer before the Commission within period of 60 days from the date of communication of the employer or, as the case may be, from the expiry of period mentioned in Sub-section 2 or 3 as the case may be.

10. The above referred time frame spells out that petitioner is admittedly not vigilant qua his rights to approach the Commission with delay, in such circumstances his grievance petition is not maintainable being time barred. Reliance is placed upon 2018 PLCN 29 [Sindh] (Independent Media Corporation (Pvt.) Ltd. through Chief Executive and another Vs. Raja Tariq Mehmood and 2 others). Both the forums below have rightly appreciated such position in accordance with law but petitioner again approached this Court with delay of approximately 02 years and 06 months, as such the writ petition is hit by principle of *laches* as every order in constitutional jurisdiction has to be assailed within reasonable time and contemptuous delay

requires the explanation of each and every day delay which is missing in this case, however, this Court is bound to obey the command of law settled through judgment of Apex Court reported as 2004 SCMR 400 (Farzand Raza Naqvi and 5 others Vs. Muhammad Din through Legal Heirs and others).

11. In view of above position, instant writ petition is not maintainable as no illegality has been pointed out in the determination of rights of the petitioner before the NIRC, even his grievance petition is time barred and writ petition in question is also hit by the principle of *laches*, therefore, instant writ petition is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid