

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3580 of 2016

Mst. Nazia Fazal

Versus.

Pakistan International Air Lines Corporation through its Managing
Director and others

Date of Hearing: 28.11.2017
Petitioner by: Mr. M. Bashir Khan, Advocate.
Respondents by: Mr. Muhammad Umer Khan Vardag,
Advocate for respondents No.1 to 3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Mst. Nazia Fazal, impugns the following orders:-

- i. Order dated 23.05.2016, passed by the learned Member, National Industrial Relations Commission ("N.I.R.C."), whereby the petitioner's grievance petition under Section 33 of the Industrial Relations Act, 2012 ("I.R.A."), was dismissed.
- ii. Order dated 22.09.2016, passed by the learned Full Bench of the N.I.R.C., whereby the petitioner's appeal under Section 58 of I.R.A. against the said order dated 23.05.2016, was dismissed.

2. The record shows that the petitioner was serving with Pakistan International Airlines Corporation/respondent No.1 as an Air Hostess since 20.07.2009. On 19.06.2013, the petitioner was issued a show cause notice on the ground that she had committed misconduct by not producing her original intermediate certificate, which had been submitted at the time when she was employed with respondent No.1. Earlier she had been advised vide letters dated 21.02.2013, and 22.05.2013 to produce her original intermediate certificate, but in reply she submitted another original intermediate certificate, which had not been submitted by her at the time when she was employed with respondent No.1. Aggrieved by the said show cause notice, the petitioner filed a grievance petition before the N.I.R.C. under Section 54(e) of the I.R.A. In the said petition, the petitioner had alleged that respondent No.1 had committed an unfair labour practice by issuing the said show cause to her. Vide order dated

19.12.2013, the learned Member, N.I.R.C. restrained the respondents from passing a final order in the disciplinary proceedings that had been initiated against her. Vide order dated 06.02.2014, the said petition was dismissed for non-prosecution. Subsequently, the petitioner filed an application for the restoration of her grievance petition, but the said application was dismissed as withdrawn.

3. On 07.02.2014, the petitioner was dismissed from service. The petitioner's dismissal order shows that the inquiry officer after examining the evidence and the statements of a prosecution witnesses found the petitioner guilty of the charges specified in the statement of allegations. Against the said dismissal order, the petitioner addressed a grievance notice dated 18.02.2014 to respondents No.1 to 3. Having not received any plausible response, the petitioner, on 07.03.2014, instituted a civil suit for declaration and permanent injunction against respondents No.1 and 3 before the Court of the learned Civil Judge, Rawalpindi. In the said suit, the petitioner had challenged the dismissal order dated 07.02.2014. Vide order dated 05.03.2015, the said suit was dismissed as withdrawn, with permission to file a fresh suit. Instead of filing a fresh suit, the petitioner filed a grievance petition under Section 33 of the I.R.A. before the N.I.R.C, challenging her dismissal order dated 07.02.2014. Vide order dated 23.05.2016, the petitioner's grievance petition was dismissed on merits. In addition to dismissing the grievance petition on merits, the learned Member, N.I.R..C held that the petitioner was liable to return the salary drawn by her during her service with respondent No.1. Aggrieved by the said order dated 23.05.2016, the petitioner filed an appeal under Section 58 of the I.R.A. before the learned Full Bench of N.I.R.C. Vide order dated 22.09.2016, the said appeal was dismissed. It was *inter-alia* held that the petitioner's grievance petition was hopelessly time barred. Against the said orders dated 23.05.2016 and 22.09.2016, the petitioner instituted the instant writ petition.

4. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant writ petition submitted that the petitioner's grievance petition filed before the N.I.R.C. on 27.04.2015 was admittedly beyond the limitation period provided in Section 33 of the I.R.A.; that the period during which the petitioner was prosecuting the civil suit before the learned civil Court at Rawalpindi should have been excluded from the limitation period for filing a grievance petition before the N.I.R.C.; that the reason why the petitioner withdrew her civil suit was because she came to know about the fact that her promotion from Pay Group-IV to Pay Group-V had been withdrawn; that even though the said promotion was withdrawn on 08.04.2013, the petitioner did not know about the same until after the filing of the civil suit; that being an employee in Pay Group-IV, the petitioner came within the meaning of a "workman" and could have agitated her grievance before the N.I.R.C.; that if the petitioner's grievance petition before the N.I.R.C. was time barred, her petition should not have been decided on merits, but should have been dismissed on limitation; and that since the petitioner's dismissal order did not require her to return the salaries drawn by her, the learned Member, N.I.R.C., erred by requiring the petitioner to return her salaries. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the concurrent orders dated 23.05.2016 and 22.09.2016, to be set aside.

5. On the other hand, learned counsel for respondents No.1 to 3 submitted that the petitioner was dismissed from service on 07.02.2014; that the petitioner issued a grievance notice against her dismissal on 18.02.2014; that a reply to the petitioner's grievance notice was given by respondent No.2 on 10.04.2014; that under Section 33(4) of the I.R.A., the petitioner could take her grievance to the N.I.R.C. within a period of sixty days from the date on which the petitioner's grievance notice was turned down; that respondent No.2 turned down the petitioner's grievance notice on 10.04.2014; that instead of filing a grievance petition before the N.I.R.C. within sixty days from 10.04.2014, the

petitioner filed a grievance petition on 27.04.2015; that the petitioner's said grievance petition was clearly barred by time; and that the learned counsel for the petitioner did not make any submission regarding the infirmity, if any, in the process culminating in the petitioner's dismissal from service. Learned counsel for respondents No.1 to 3 prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

7. The record shows that after show cause notice dated 19.06.2013 was issued to the petitioner. Respondents No.1 to 3, vide letter dated 10.12.2013, gave a notice of personal hearing to the petitioner. Perusal of the said notice dated 19.06.2013 and letter dated 10.12.2013 shows that the inquiry officer had found the petitioner guilty of submitting a bogus intermediate certificate issued by the Board of Intermediate and Secondary Education, Peshawar, at the time of her induction in service. Before finding her guilty, the petitioner had been asked vide letter dated 11.09.2013 to submit her original intermediate certificate which had been submitted to respondent No.1 at the time of her induction in service. On 22.10.2013, a notice for inquiry was issued to the petitioner requiring her to appear before the inquiry officer on 29.10.2013. Due to an injunctive order initially passed by the N.I.R.C. later by the civil Court, the petitioner was not dismissed from service until 07.02.2014.

8. The essential question that needs to determine in this petition is whether the grievance petition filed by the petitioner before the N.I.R.C. on 27.04.2015 was within the limitation period prescribed in Section 33(4) of the I.R.A. The petitioner was dismissed from service on 07.02.2014. Against the said dismissal order, the petitioner submitted a grievance notice to her employer on 18.02.2014. On 10.04.2014, the petitioner's grievance notice was turned down. The petitioner filed a

grievance petition before the N.I.R.C. on 27.04.2015 i.e. one year after the grievance notice was turned down by her employer.

9. Section 33(4) of the I.R.A. reads as follows:-

“If the employer fails to communicate a decision within the period specified in sub-section (2) or as the case may be sub-section (3) or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to his collective bargaining agent or to the Commission or, as the case may be, the collective bargaining agent may take the matter to the Commission, and where the matter is taken to the Commission, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute:

Provided that a worker who desires to take the matter to the Commission shall do so within a period of sixty days from the date of the communication of the employer or, as the case may be, from the expiry of the period mentioned in sub-section (2), or sub-section (3), as the case may be.”(Emphasis added)

10. Now a copy of respondent No.2's reply dated 10.04.2014 to the petitioner's grievance notice dated 18.02.2014 has been brought on record by the petitioner. In terms of the proviso to section 33(4) of the I.R.A., the petitioner had a period of sixty days from 10.04.2014 to file a grievance petition against respondents No.1 to 3 before the N.I.R.C. under Section 33 of the I.R.A. Admittedly, the grievance petition was filed by the petitioner on 27.04.2015, which is time barred by almost ten months.

11. The explanation being given by the learned counsel for the petitioner was that between 07.03.2014 to 05.03.2015 the petitioner's civil suit against a dismissal from service was pending before the learned civil Court at Rawalpindi. The petitioner wanted this period to be excluded while computing the limitation period for filing a grievance petition before the N.I.R.C. The reason given by the petitioner for the withdrawal of her civil suit was that during the pendency of the civil suit, the petitioner came to know that her promotion from Pay Group-IV to Pay Group-V had been withdrawn, thereby she came within the category of a “workman” and therefore, could file a grievance petition against her dismissal from service before the N.I.R.C. I do not find this explanation to be plausible for the simple reason that the petitioner's promotion from Pay Group-IV to Pay Group-V

was withdrawn by her employer, vide letter dated 08.04.2013, which is two months before the issuance of the show cause notice dated 19.06.2013. For the petitioner to assert that she came to know about the withdrawal of her promotion almost a year and a half after such withdrawal took place, does not appeal to reason. Therefore, the time consumed by the petitioner prosecuting her civil suit before the learned civil Court at Rawalpindi cannot be excluded from computing the limitation period for filing a grievance petition before the N.I.R.C.

12. It is well settled that a Court or a tribunal is bound to notice and consider the question of limitation, irrespective of the fact whether or not it was agitated by the respondent. The question of limitation could not be waived, and even if waived could be taken up again by a party waiving it, and even by the Court itself. Law to this effect has been laid down in the judgments reported as 2007 SCMR 621, 2006 SCMR 170, 2003 SCMR 1815, and PLD 1985 SC 153.

13. Since the petitioner's grievance petition before the N.I.R.C. was admittedly time barred, there was no need for the learned Member, N.I.R.C. to have dealt into the merits of the case. The learned Full Bench of the N.I.R.C. has correctly held that the petitioner's grievance petition was barred by limitation. Assuming that the petitioner's grievance petition was not barred by limitation, the learned counsel for the petitioner made no submissions on whether the order of the learned Member, N.I.R.C. was erroneous. It may also be mentioned that in the petitioner's dismissal order dated 07.02.2014, the petitioner was not required to return the salaries drawn by her during service with respondent No.1. Therefore, there was no occasion for the learned Member, N.I.R.C. to have burdened the petitioner with this liability, especially when respondents No.1 to 3 had not applied for such a relief.

14. In view of the above, the orders dated 23.05.2016 and 22.09.2016, passed by the Member, N.I.R.C. and the Full Bench of the N.I.R.C. respectively, only to the extent of requiring the petitioner to return the salaries drawn by her during her service

with respondent No.1 are set aside. Therefore, this petition is partly allowed. It may be observed that the petitioner's grievance petition before the N.I.R.C. was clearly barred by limitation, and should have been dismissed as such. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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