

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2455 of 2018

Muhammad Iqbal

Versus

NTDC through Chief Executive Officer, WAPDA 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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11.03.2020

Mr. Imran Fazal, Advocate for the petitioner.
Syed Mumtaz Mazhar Naqvi, Advocate for respondents No.1 to 3.

Through the instant writ petition, the petitioner, Muhammad Iqbal, impugns the order dated 23.04.2018 passed by the learned Full Bench, National Industrial Relations Commission ("N.I.R.C.") whereby his appeal under Section 58 of the Industrial Relations Act, 2012 ("I.R.A., 2012") against the order dated 27.09.2017 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 27.09.2017, the learned Member, N.I.R.C. dismissed the petitioner's grievance petition against the order dated 11.07.2009 whereby he was compulsorily retired by the National Transmission and Despatch Company (respondent No.1).

2. The sole ground on which the petitioner was concurrently non-suited by the learned Member and the learned Full Bench, N.I.R.C. was that his grievance petition had not been filed within the limitation period of sixty days provided in the *proviso* to Section 33(4) of the I.R.A., 2012.

3. The record shows that vide office order dated 11.07.2009 issued by respondent No.1, major penalty of compulsory retirement was imposed on the petitioner. Furthermore, it was also decided to recover Rs.1,72,456/- from the petitioner. Aggrieved by the said office order, the petitioner, on 23.10.2009, filed an appeal before the Federal Service Tribunal. Vide order dated

22.11.2010, the said appeal was dismissed as not maintainable on the basis of the law laid down in the case of Muhammad Mubeen-ul-Salam Vs. Federation of Pakistan (PLD 2006 SC 602). Thereafter, the petitioner addressed grievance notice dated 10.12.2010 on his employer. Having not received any plausible response from his employer, the petitioner, on 07.01.2011, filed grievance petition before the Labour Court. Since respondent No.1 is a trans-provincial establishment, the petitioner's grievance petition was transferred to the N.I.R.C. Vide order dated 27.11.2013 passed by the learned Member, N.I.R.C., the petitioner's grievance petition was dismissed as withdrawn. For the purposes of clarity, the said order dated 27.11.2013 is reproduced herein below:-

"Learned counsel for the petitioner has moved an application contending therein that in view of the recent judgment passed by the Hon'ble Supreme Court in case of Airleague of PIAC employees Vs. Federation of Pakistan (2011-SCMR-1254) and also the judgment dated 13.02.2013 passed in Civil Appeals No.1150/2012, 127/2013, 1754 & 1755/2012, since the labour court Islamabad (now defunct) was not functional after repeal of IRA 2008 and also not vested with the jurisdiction to entertain, hear and adjudicate upon or transfer the petition to this forum, hence this petition was not maintainable before the said defunct labour court due to repeal of IRA 2008 at the time of its institution. Therefore permission to withdraw the same and file afresh may be granted.

2. In view of above, instant petition is dismissed as withdrawn with permission to file afresh before the appropriate forum."

4. On 23.12.2013, the petitioner filed another grievance petition before the N.I.R.C. Vide order dated 27.09.2017 passed by the learned Member, N.I.R.C., the said grievance petition was dismissed as time barred. The petitioner's appeal before the learned Full Bench, N.I.R.C. against the said order was dismissed vide order dated

23.04.2018. The said concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. have been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the Federal Service Tribunal should have promptly returned the petitioner's appeal if the same was not maintainable in view of the case laid down in the case of Muhammad Mubeen-ul-Salam Vs. Federation of Pakistan (*supra*); that soon after the dismissal of the petitioner's appeal, he had served a grievance notice on his employer and thereafter had filed a grievance petition before the Labour Court; that after the enactment of the I.R.A., 2012, the petitioner's grievance petition was transferred to the N.I.R.C.; that since the Labour Court could not transfer a grievance petition to the N.I.R.C., and since after the repeal of the Industrial Relations Act, 2008 ("I.R.A., 2008"), the Labour Court at Islamabad was not functional, the petitioner withdrew his grievance petition from the N.I.R.C. with permission to file afresh one before the competent forum; that the N.I.R.C. could not have dismissed the petitioner's subsequently filed grievance petition as time barred since the N.I.R.C. had permitted him to file afresh grievance petition; that the petitioner had throughout been agitating his grievance against his compulsory retirement before different *fora*; and that the petitioner could not have been non-suited on technical grounds. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for respondent No.1 submitted that the concurrent

orders passed by the Tribunals below do not suffer from any legal infirmity; that the petitioner should not have assailed the order whereby compulsory retirement was imposed on him before the Federal Service Tribunal; that since the law laid down by the Hon'ble Supreme Court in the case of Muhammad Mubeen-ul-Salam Vs. Federation of Pakistan (supra), was prior in time to the passing of the office order dated 11.07.2009 whereby the petitioner was compulsorily retired, he ought to have known that his appeal before the Federal Service Tribunal was not maintainable; that the petitioner's grievance notice as well as the grievance petition before the Labour Court were not competent as they were time barred; that the Labour Court did not have the jurisdiction to adjudicate upon the petitioner's grievance petition, since respondent No.1 is a trans-provincial establishment, and only the N.I.R.C. had the jurisdiction to adjudicate upon the matter; and that the petitioner's fresh grievance petition was filed four years after he had been compulsorily retired. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

7. 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 paragraph 3 to 4 and need not be recapitulated.

8. The sole question that needs to be determined is whether the petitioner has filed his grievance petition within the limitation period provided by law. When the office order dated 11.07.2009 whereby the petitioner was compulsorily retired was issued, the I.R.A., 2008

was the prevailing law. Under Section 41(1) of the I.R.A., 2008, the petitioner had three months from the date of the issuance of the said order dated 11.07.2009 to serve a grievance notice on his employer. For the purposes of clarity, Section 41(1) of the I.R.A., 2008 is reproduced herein below:-

"A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises."

(Emphasis added)

9. Furthermore, under the *proviso* to Section 41(4) of the I.R.A., 2008, the petitioner could file a grievance petition within two months of the decision of his employer on the grievance notice. The petitioner could have also filed a grievance petition before a Labour Court within two months of the expiry of a period of seven days within which his employer was required to decide his grievance notice.

10. In the case at hand, it is an admitted position that the grievance notice had been issued by the petitioner to his employer on 10.12.2010 i.e. almost one year and five months after the issuance of the office order dated 11.07.2009 whereby he was compulsorily retired. Although respondent No.1 is a trans-provincial establishment, but assuming that the petitioner could have filed a grievance petition before the Labour Court, such a grievance petition would not have been maintainable since the grievance notice dated 10.12.2010 had been issued by the petitioner to his employer beyond the limitation period of three months provided in Section 41(1) of the I.R.A., 2008 for serving a grievance notice.

11. As regards the contention of the learned counsel for the petitioner that the period during which the petitioner had been agitating his grievance before the Federal Service Tribunal should have been excluded from the limitation period for filing a grievance petition, suffice it to say that it was on the basis of the law laid down by the Hon'ble Supreme Court in the case of Muhammad Mubeen-ul-Salam Vs. Federation of Pakistan (*supra*) that the petitioner's appeal was dismissed as not maintainable. Since the law laid down in the said case was prior in time to the issuance of the office order dated 11.07.2009 whereby the petitioner was compulsorily retired, he ought to have known that the Service Tribunal did not have the jurisdiction to adjudicate upon his appeal. The time consumed due to the negligence on the petitioner's part in agitating his grievance against the said office order dated 11.07.2009 before a wrong forum, cannot be ignored by this Court.

12. Had the petitioner served a grievance notice on his employer within the limitation period provided in Section 41(1) of the I.R.A., 2008, and had he filed a grievance petition within the limitation period provided by the *proviso* to Section 41(4) of the I.R.A., 2008, his grievance petition could have been transferred from the Labour Court to the N.I.R.C. after the enactment of the I.R.A., 2012. Section 57(2)(b) of the I.R.A., 2012 provides that the N.I.R.C. may, on the application of a party, or of its own motion, withdraw from a Labour Court of a Province any application, proceedings or appeal relating to unfair labour practice which fall within the jurisdiction of the N.I.R.C. Furthermore, Section 88(b) of the I.R.A., 2012 provides *inter alia* that

notwithstanding the repeal of the I.R.A., 2008, anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given, proceedings commenced or other actions taken under the I.R.A., 2008, shall be deemed to have been done, made, issued, appointed, constituted, given, commenced, or taken, as the case may be, under the corresponding provisions of the I.R.A., 2012. By virtue of this deeming clause in the I.R.A., the petition filed by the petitioner before the Labour Court would be considered as "*proceedings commenced*" under the corresponding provision of the I.R.A., 2012 (i.e. Section 33(4)). In the case at hand, the petitioner withdrew his grievance petition after the same had been transferred to the N.I.R.C. Although the said petition was dismissed with permission to file afresh, such permission would not *ipso facto* result in the condonation of the delay in the issuance of the grievance notice or the filing of the grievance petition beyond the limitation period provided by law. It is an admitted position that the fresh grievance petition was filed by the petitioner way beyond the limitation period for filing a grievance petition provided in the *proviso* to Section 33(4) of the I.R.A., 2012.

13. In view of the above, I do not find any jurisdictional infirmity in the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. Consequently, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE