IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.1787-L of 2022
(Against the order dated 26.04.2022 of the Lahore High Court Lahore passed in W.P. No.77743 of 2019)

Chief Executive Officer NPGCL, GENCO-III, TPS Muzafargarrah

Petitioner(s)

VERSUS

Khalid Umar Tariq Imran and others

...Respondent(s)

For the Petitioner(s): Mian Muhammad Javaid, ASC
Abdus Sattar, Director, HR
(*via* video link at Lahore)

For Respondent No.1: Mr. Shuja-ud-Din Hashmi, ASC

Date of hearing: 16.01.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.--Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), the petitioner has impugned the judgment dated 26.04.2022 of the Lahore High Court, Lahore whereby the constitution petition filed by the petitioner under Article 199 of the Constitution to challenge the legality of the order dated 05.11.2019 of the Full Bench of the National Industrial Relations Commission ("**NIRC**"), was dismissed while the orders dated 07.01.2019 and 09.11.2018 of the Member NIRC were upheld.

2. The background of the present controversy is that the respondent No. 1 ("**respondent**"), being aggrieved by his dismissal order, filed a grievance petition before the Labour Court which was subsequently transferred to the NIRC. The petitioner though opposed the said grievance petition by filling the contesting written

reply but failed to appear before the member NIRC at the subsequent stage. Consequently, the ex-parte proceeding was initiated against the petitioner and culminated in the passing of the ex-parte judgment dated 09.11.2018 in favour of the respondent and against the petitioner.

Upon becoming aware of this, the petitioner filed an application, accompanied by an application for condonation of delay, to set aside the said ex-parte judgment. However, the Member NIRC dismissed both applications through order dated 07.01.2019. An appeal filed by the petitioner before the Full Bench of NIRC met a similar fate. Subsequently, the petitioner filed a constitution petition, which was also dismissed by the Lahore High Court vide the impugned judgment. Hence, this petition.

3. The learned counsel for the petitioner argued that the petitioner appeared before the member NIRC and filed detailed written reply/comments while raising certain legal objections; however, the member NIRC did not consider the same and accepted the grievance petition vide the ex-parte judgment dated 09.11.2018. The ex-parte judgment passed by the member NIRC is illegal, unjustified, and unwarranted in the eye of the law; therefore, the petitioner filed an appeal before the Full Bench of NIRC, which was dismissed even without considering the facts and circumstances of the case. Similarly, the Lahore High Court also dismissed the constitution petition filed by the petitioner, Lahore, vide the impugned judgment based on that ex-parte judgment, which is a clear violation of the judgment of this Court reported as 2021 SCMR 637. Therefore, the impugned judgment suffers from illegality and irregularity, resulting from the misreading and non-reading of evidence, misapplication of the law, and mis-appreciation and non-appreciation of facts on the record.

4. On the other hand, the learned counsel for the respondent supported the impugned judgment, arguing that the member NIRC considered all aspects of the matter and rightly passed the ex-parte judgment dated 09.11.2018, which was correctly upheld by the Full Bench of NIRC as well as the High Court. The impugned judgment does not suffer from any illegality or infirmity, and thus, it does not warrant interference by this Court. Therefore, the petition is liable to be dismissed.

5. We have heard the submissions of the learned Counsel for the parties and perused the material on record with their assistance.

6. The record shows that the respondent was working as a Line Superintendent-II, Store at Thermal Power Station, Muzaffarabad and was dismissed from the service on the charges of alleged misconduct. After exhausting all departmental remedies, the respondent filed a grievance petition before the Labour Court, which was subsequently transferred to the NIRC. Admittedly, the petitioner, initially, appeared and participated in the proceedings before the member NIRC and opposed the grievance petition by submitting a contesting written reply. However, at a later stage, the petitioner disappeared from the scene and as a result, an ex-parte judgment dated 09.11.2018 was passed against him by the member NIRC.

7. Section 58 of the Industrial Relations Act, 2012 ("**IRA**"), stipulates that any person aggrieved by a 'decision given' by any Bench of the NIRC may, within thirty days of such decision, prefer an appeal to the NIRC. And, the appeal shall be heard and adjudicated by the Full Bench of the NIRC. The text of section 58 is reproduced below for the sake of convenience:

> ***"58. Appeals.***— *(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.*
>
> *(2) An appeal preferred to the Commission under sub-section (1) shall be disposed of by the Full Bench of the Commission which shall—*
>
> *(a) if the appeal is from an order determining and certifying a collective bargaining unit, have the power to confirm, set aside, vary or modify such an order.*
>
> *(b) if the appeal relates to any other matter, the Full Bench may, confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal.*
>
> *(c) The decision of the Full Bench shall be delivered as expeditiously as possible, within a period of sixty days following the filing of the appeal, provided that such decision shall not be rendered invalid by reasons of any delay in its delivery.*

> *(d) The Full Bench may, on its own motion at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit:*
>
> *Provided that no order under this sub-section shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.*
>
> *(3) In an appeal preferred to it against the order of a Bench directing the re-instatement of a workman, the Full Bench may make an order staying the operation of the order of the Bench.*
>
> *(4) The Full Bench shall decide such appeal within twenty days of its being preferred:*
>
> *Provided that, if such appeal is not decided within the period aforesaid, the stay order of the Full Bench shall stand vacated on the expiration of that period.*"

8. The above-quoted provision of law expressly provides a statutory remedy of appeal to a person who is aggrieved by the order of any Bench of the NIRC. The aggrieved person is required to file the said appeal within thirty days of such order. So, the petitioner, if feeling aggrieved by the said ex-parte judgment dated 09.11.2018 of the member NIRC, should have filed an appeal by 09.12.2018. It is a matter of record that the petitioner did not file any appeal, and the prescribed period of limitation for filing the appeal under Section 58 of IRA expired; therefore, the said ex-parte judgment is final between the parties on the basis of the well-known principle of *res judicata* as laid down by this Court in the case of *Pir Bakhsh v. the Chairman, Allotment Committee* (**PLD 1987 SC 145**).

9. Having knowledge of the aforementioned legal position, the petitioner devised a method to circumvent the applicable law on the subject i.e. IRA, and filed an application on 03.01.2019 under Order IX Rule 13 of the Code of Civil Procedure, 1908 ("**C.P.C**") to set aside the ex-parte judgment, accompanied by an application for condonation of the delay.

The objection raised by the counsel for the respondent that the petitioner could not have filed the aforementioned applications under the general law lacks merit and is rejected as being misconceived. This is because Regulation 45 of the National

Industrial Relations Commission (Procedure and Functions) Regulations, 2016 stipulates that the procedure prescribed under the Civil Procedure Code (C.P.C.) in relation to suits may be followed for the adjudication and determination of industrial disputes, including the redressal of individual grievances. Therefore, the respondent could have filed such an application for setting aside the ex-parte judgment. The Regulation 45 *supra* is reproduced hereunder for ease of reference:

> ***"45. Application of the Code of Civil Procedure,1908***.___*Subject to the provisions of these regulations, the procedure prescribed under the Code of Civil Procedure,1908 (Act V of 1908), in regard to suits may be followed, as far as it can be made applicable, in the proceedings for adjudication and determination of industrial disputes including adjudicating application brought undersection33 and clause (e) of section 54."*

10. To justify the delay in filing the application to set aside the ex-parte judgment, the petitioner, in the application for condonation of delay, asserted that he did not receive any notice or information regarding the pendency of the grievance petition filed by the respondent. He claimed to have knowledge about the ex-parte judgment on 10.12.2018 when he received an application from a former employee. However, this stance of the petitioner is self-contradictory as the record indicates that he, initially, appeared and participated in the proceedings before the member NIRC and opposed the grievance petition by filing a contesting written reply. The petitioner deliberately chose to abstain from joining the proceedings and displayed non-cooperation with the NIRC. Therefore, he has no right to request its (NIRC) indulgence and seek the setting aside of the ex-parte decree passed against him. Reference here may be made to the case of *Mukhtiar Hussain versus Mst. Shafia Bibi* (**2023 SCMR 159**). The above facts clearly established that the petitioner failed to justify or explain the delay in filing the application to set aside the ex-parte judgment. Consequently, it was rightfully dismissed by the member NIRC through an order dated 07.01.2019.

11. It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to

vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or co-existent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as 'doctrine of election', which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of *res-judicata* as articulated in section 11, C.P.C. and its explanations. Reference in this regard may be made to the case of *Trading Corporation of Pakistan versus Devan Sugar Mills Limited and others* (**PLD 2018 Supreme Court 828**).

Giving a choice to select a remedy from among several co-existent and/or concurrent remedies prevents the recourse to multiple or successive redressals of a singular wrong or impugned action. It also provides an opportunity for an aggrieved person to choose a remedy that best suits the given circumstances. Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies.

12. Similarly, in this case, the petitioner chose to file an application to set aside the ex-parte judgment instead of filing an appeal under section 58 of IRA. Having failed in the attempt to set aside the ex-parte judgment, the petitioner cannot subsequently venture into other concurrently or coexisting available remedies, such as the remedy of an appeal under section 58 of IRA against the said ex-parte judgment. We have however no hesitation to observe here that the order dated 07.01.2019 of the member NIRC, dismissing the application to set aside the ex-parte judgment

would amount to a **'decision given'** in terms of section 58 of the IRA. Therefore, the petitioner could have challenged this order by filing an appeal under section 58 of the IRA. The record indicates that the petitioner did file an appeal on 12.02.2019 against the said order dated 07.01.2019 (also challenging the ex-parte judgment dated 09.11.2018 therein) under section 58 of IRA. However, the Full Bench of NIRC found it to be time-barred, and accordingly, it was dismissed.

13. It would be relevant to mention here that when the law under which proceedings have been initiated prescribes a period of limitation, the benefit of Section 5 of the Limitation Act, 1908 ("**Limitation Act**") which allows for the filing of an appeal, application for revision, or a review of the judgment, etc. after the period of limitation after satisfying sufficient cause, cannot be availed unless Section 5 has been made applicable as per Section 29(2) of the Limitation Act as observed by this Court in the case of *Allah Dino and another versus Muhammad Shah and others* (**2001 SCMR 286**). Although the provision of Section 58 of the IRA itself prescribes a period of limitation of thirty days for filing an appeal, the provision of Section 5 of the Limitation Act has been made applicable under Section 85 of the IRA to all proceedings under the IRA. Unfortunately, the petitioner did not file any application for condonation of delay under Section 85 of the IRA read with Section 5 of the Limitation Act along with his appeal before the Full Bench of NIRC. Had the said application been filed, his appeal could have been decided on its merits rather than solely on the point of limitation.

14. Even otherwise, the public interest requires that there should be an end to litigation. The law of limitation provides an element of certainty in the conduct of human affairs. The law of limitation is a law that is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Therefore, the limitation cannot be regarded as a mere technicality. With the expiration of the limitation period, valuable rights accrue to the other party, as observed in numerous judgments by this Court. However, reference may be made to the cases of *Ghulam Rasool and others versus Ahmad Yar and others* (**2006 SCMR**

1458); *Collector Sales Tax (East), Karachi versus Customs, Excise and Sales Tax Appellate Tribunal, Karachi and another* (**2008 SCMR 435**)and *Messrs SKB-KNK Joint Venture Contractors through Regional Director versus Water and Power Development Authority and others* (**2022 SCMR 1615**).

15. Foregoing in view, the Full Bench of NIRC is fully justified in dismissing the appeal of the petitioner. The petitioners' deliberate abstention from joining the proceeding after appearing before the member NIRC provides a reasonable basis for the Full Bench to dismiss the appeal. Similarly, the High Court correctly exercised its jurisdiction and dismissed the constitutional petition filed by the petitioner under Article 199 of the Constitution. In its thorough analysis of the relevant law and available facts, the High Court has arrived at a sound and reasoned conclusion that is both legally sound and just. The judgment relied upon by the learned counsel for the petitioner does not have any relevance to the case at hand, being distinguishable on legal and factual grounds.

16. The petitioner has failed to make out any case for the grant of leave to appeal, and resultantly this petition is dismissed. Leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the
16th January 2024
APPROVED OR REPORTING.
*Ghulam Raza/**