IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No. 2305-L of 2016
Appeal against the judgment dated 27.04.2016 passed by the Lahore High Court, Multan Bench, Multan in W.P.No.8153/2002.

Muslim Commercial Bank Limited & others ...Petitioners

Versus

The Punjab Labour Appellate Tribunal, Lahore and others. ...Respondents

For the Petitioners: Mr. Farooq Zaman Qureshi, ASC

For LRs of Respondent-3: Mr. M. Yafis Naveed Hashmi, ASC

Date of Hearing: 24.09.2024

JUDGMENT

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is directed against the judgment dated 27.04.2016 passed by the Lahore High Court, Multan Bench, in W.P.No.8153/2002.

2. The aforesaid Civil Petition for leave to appeal was instituted on 25.06.2016. However, during the pendency of adjudication, the respondent No.3 (Muhammad Ajmal) died on 30.12.2019 and C.M.A No.7-L/2022, for impleadment of his legal heirs, was filed which was allowed by this Court on 25.04.2024. The amended memo of petition (CMA No.6601/2024) is taken on record.

3. According to the chronicles of the *lis*, the (deceased Muhammad Ajmal) respondent No.3 was recruited as a Cashier by the petitioner in the year 1972. He was issued Charge Sheet dated 13.09.1975 on some allegations of misconduct and he was dismissed from service on 18.11.1975. He assailed the order of dismissal before the Labour Court and *vide* Order dated 18.02.1976, he was reinstated; but in appeal, the back benefits were disallowed by the Labour Appellate Tribunal with the permission to

conduct fresh inquiry. Consequently, a fresh charge sheet was issued to him on 01.04.1976 and after proper inquiry, the deceased respondent No.3 was again dismissed from service *vide* order dated 25.05.1976. Against the dismissal order, neither any grievance notice was served nor was any petition filed before the Labour Court. However, for the first time on 26.04.1997, he sent a grievance notice to the petitioner, which was rejected *vide* letter dated 08.05.1997. Thereafter, he filed grievance petition in the Labour Court, which was allowed *vide* judgment dated 27.10.2001 with the directions given to the petitioner to reinstate the respondent in service without back benefits. The petitioner filed an appeal before the Punjab Labour Appellate Tribunal, Lahore, which was allowed *vide* judgment dated 29.04.2002, and the cross appeal filed by the deceased respondent No.3 for the grant of back benefits was dismissed. Thereafter, he filed W.P.No.8153/2002 before the learned Lahore High Court and *vide* impugned judgment dated 27.04.2016, the petitioner was directed to reinstate him in service without back benefits.

4. The learned counsel for the petitioner argued that the learned High Court failed to consider that the grievance petition was filed after a lapse of 22 years. It was further averred that the respondent No.3 was dismissed from service on 25.05.1976, whereas he issued Grievance Notice on 26.04.1997, which was refused on 08.05.1997. The date of Grievance Notice would reveal that it has been issued after about 22 years from the date of dismissal. It was further contended that the respondent No.3 was dismissed from service after the allegations of misconduct were proved during the course of independent and impartial inquiry. The learned counsel concluded that the learned High Court miserably failed to consider the question of limitation and without any lawful justification entertained the grievance which was set into motion after a lapse of 22 years by the respondent No.3 and wrongly set aside the judgment of the Punjab Labour Appellate Tribunal.

5. The learned counsel for the legal heirs of the respondent No.3 argued that the dismissal order was passed by an incompetent person. According to him, in the matter of respondent No.3, the General Manager of the Bank was authorized. He further argued that the Inquiry Officer was not produced in the court during the course of evidence. It was further averred that under Standing Order 15 (4) of the West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968, the Bank was bound to issue a Charge Sheet within one month

from the date of omission or commission, if any, on the part of respondent No.3. He next argued that the respondent No.3 had been filing appeals against his dismissal before the departmental authorities, ranging from the years 1976 to 1997, which were brought on record during the course of evidence; hence, there was no question of limitation in initiating action by the respondent No.3, even after a lapse of 22 years.

6. Heard the arguments. In order to advert to the bone of contention, it is quite expedient to delve into the provision enumerated under the repealed Industrial Relations Ordinance, 1969 (**"IRO 1969"**) for the redress of individual grievances. For the ease of convenience, Section 25-A of the IRO 1969 is reproduced as under: -

> [25A. Redress of individual grievances. (1) 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 or through his Shop Steward or [collective bargaining agent], within three months of the day on which cause of such grievance arises.
>
> (2) Where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.
>
> (3) Where a worker brings his grievance to the notice of his employer through his Shop Steward or [collective bargaining agent) the employer shall, within seven days of grievance being brought to his notice, communicate his decision in writing to the Shop Steward or, as the case may be, the '[collective bargaining agent.]
>
> (4) 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 Shop Steward may take the matter to his [collective bargaining agent) or the [Labour Court), or, as the case may be, the [collective bargaining agent] may take the matter to the (Labour Court), and where the matter is taken to the [Labour Court] 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 so to take the matter to the [Labour Court) shall do so within a period of two month 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 supplied]
>
> (5) In adjudicating and determining a grievance under, sub-section (4), the [Labour Court] shall go into all the facts of the case and pass such orders a orders as may be just and proper in the circumstances of the case.]
>
> (6) Omitted
>
> (7) Omitted
>
> (8) If a decision under sub-section (4) or an order under sub-section (5) given by the Labour Court or a decision of the Tribunal in an appeal against such a decision or order is not given effect to or complied with within a week or within the period specified in such order or decision, the defaulter shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

> (9) No person shall be prosecuted under sub-section (8) except on a complaint in implemented writing:-
>
> (a) by the workman if the order or decision in his favour is not implemented within the period specified therein, or
>
> (b) by the Labour Court or Tribunal, if an order or decision thereof is not complied with.
>
> (10) For the purposes of this section, workers having common grievance out of a common cause of action may make a joint application to the Labour Court.]

7. It is an admitted fact that the deceased respondent No.3 was dismissed from service on 25.05.1976 and the Order of the Labour Court reflects, in paragraph 9, that the respondent No.3, during the course of his evidence, submitted the copy of the alleged grievance notice and postal receipt dated 26.04.1997, and even in his evidence he admitted to have served the grievance notice on 26.04.1997, while he was dismissed from service on 25.05.1976. While allowing the grievance petition by the Labour Court, it was observed in the Order that since July 1978 to October 1995, various applications were sent by the respondent No.3 to the petitioner's establishment, therefore, the grievance notice as well as the grievance petition were considered to be within time.

8. The learned High Court, in the impugned judgment also, while discussing the effect of the grievance notice which was sent very belatedly, observed that the petitioner sent Exhibit P-10 to P-21, but failed to note that Exhibit P-10 was dated 19.07.1978 and all other exhibits were from after that date. Under Section 25A of the IRO 1969, there was a specific timeframe for lodging the grievance in writing which cannot be stretched over an unlimited period of time and no cause of action subsists merely for the reason that one letter was replied after the lapse of the limitation period by the management, which could not extend the starting point of limitation provided under the law for a workman to lodge his grievance before instituting the grievance petition in the Labour Court. No proper justification has been shown in the Order of the Labour Court and/or the impugned judgment of the High Court as to how, against the dismissal order on 25.05.1976, a grievance notice dated 26.04.1997 was found to be within time. Nothing has been adverted to in the Labour Court Order and the High Court judgment with regards to the reasons due to which the respondent No.3 was prevented from invoking the jurisdiction of the Labour Court if he was dissatisfied with the

dismissal order passed by the management. Even for condonation of delay, nothing was mentioned by the respondent No.3 before the Labour Court or the High Court. In fact, even in the handwritten grievance petition filed by the respondent No.3 in the Labour Court on 07.07.1997, the respondent No.3 failed to mention any plausible grounds for justifying the delay, while he admitted that he was dismissed from service on 25.05.1976, and he simply mentioned that he sent the grievance notice against the dismissal which was not replied to, while the written statement of the bank clearly denies to have received any grievance notice with the further assertion that the grievance petition in the Labour Court was hopelessly barred by time.

9. Even in the provision for the redress of individual grievance provided under Section 33 of the Industrial Relations Act, 2012, which is applicable to the Islamabad Capital Territory and at the trans-provincial level (trans-provincial refers to any establishment, group of establishments, or industry, having its branches in more than one province), the gist of the Section depicts that a worker may bring his grievance in respect of any right guaranteed to or secured by him under any law or any award or settlement for the time being in force, to the notice of his employer, in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises and where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker with the further rider that in case the employer fails to communicate a decision within the specified period 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 so 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 subsection (3). In the complementing parlance, the Punjab Industrial Relations Act, 2010, provides for the redress of individual grievances under Section

33; while Section 34 of the Sindh Industrial Relations Act, 2013, deals with the redress of individual grievances; the Balochistan Industrial Relations Act, 2010 deals with this situation under Section 41; and last but not the least, the Khyber Pakhtunkhwa Industrial Relations Act, 2010, under Section 37 provides the mechanism to deal and decide individual grievances. A preview of the aforesaid 5 laws (all relating to Industrial Relations) brings to light that an almost similar time frame for tendering the grievance notice to the employer against any adverse action is provided, with a further timeline in case the employer fails to respond to the grievance notice or if the employee is dissatisfied with the reply, he may lodge the grievance petition in the labour court or commission, as the case may be, for the redressal of his grievance. It is quite significant that the act of sending a grievance notice and filing a grievance petition in the Labour Court or Commission has not been left open-ended but it is linked with the time constraint for initiating legal action for the redress of an individual grievance.

10. All the more so, the procedure of filing departmental appeal by the civil servants, waiting for the response and approaching the Service Tribunal after a lapse of a certain time limit is also embedded in the Federal and Provincial Service Tribunal Acts, that are meant to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of the service of civil servants. The provision for filing appeal in the Tribunal pursuant to Section 4 of the respective Acts is more or less identical, whereby any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, file an appeal to the Tribunal; provided that where an appeal, review or representation to a departmental authority is provided under the Civil Servants Ordinance, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred.

11. It is reminiscent of jurisprudentia time immemorial that the law favours adjudication on merits, but at the same time another philosophy of law resonates, that the law helps the vigilant and not the indolent. The Latin maxim "*Leges vigilantibus non dormientibus*

subserviunt" or "Vigilantibus Non Dormientibus Jura Subveniunt" articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. The doctrine of equality before the law dictates that all litigants should be afforded the same treatment to administer the law even-handedly. In fact, the law of limitation does not bestow a right but ensues incapacitation after the lapse of a certain period admissible for putting into force existing legal rights. Therefore, it is a fundamental duty of the Court to examine the question of limitation *vis-à-vis* the statutory provisions envisioned under special or general law, requiring compliance of an act within a specific timeline. Repercussions will follow if the limitation period provided by the law set into motion is not observed or fulfilled, notwithstanding whether the objection of limitation is raised by the opponent or not. Beyond a shadow of a doubt, the rationality of the law of limitation reckons the right to sue upon the arising of a cause of action, but in tandem, it also brings forth an impediment and provides a strong line of defense to the opposing party after the lapse of the limitation period set forth for enforcing any legal right or claim.

12. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for redress or remained indolent. Though under Section 65-B of the repealed IRO 1969, it was provided that the provisions of Section 5 of the Limitation Act, 1908, shall apply in computing the period within which an application is to be made, or any other thing is to be done, under the above Ordinance, but neither the Labour Court nor the learned High Court discussed any grounds which may justify the condonation on its own motion, nor did the respondent file an application in the Labour Court seeking condonation for the delay in submitting the time-barred grievance notice. The respondent ought to have taken the recourse to this legal remedy with due diligence and within the time provided by the law, rather than approaching the Court at his own whims and desires. If this tendency is permitted, it will amount to the misuse of the judicial process and exploitation of the legal system. The law does not presume or compel the worker/employee to give numerous grievance notices on one and the same cause of action, nor does it envisage that after expiry of the limitation period, if the employer gives a response to any time-barred grievance notice, it will amount to an extension in the period of limitation provided to invoke the jurisdiction of the Court for redress of individual grievances. What is an employee supposed to do under the mandate of law? He should deliver the

grievance notice to his employer within the specified time, then wait only for the statutory period provided to the employer for the response, and after the lapse of this period, whether the notice was responded to or not by the employer, approach the Court immediately rather than spoiling or obliterating the period of limitation.

13. In the matter in hand, the grievance petition in the Labour Court was filed in the year 1997 but it was decided on 27.10.2001, then the Punjab Appellate Tribunal decided the appeal on 29.04.2002; thereafter, the learned High Court in the end decided the writ petition on 27.04.2016 which was filed in the year 2002. Finally the aforesaid Civil Petition for leave to appeal was filed in this Court which unfortunately remained pending for a substantial period of time. In our considered view, both the Labour Court and the High Court failed to advert to the crucial question of limitation provided for transmitting the grievance notice as provided in the repealed ordinance, and without appreciating the law and evidence led in the case, rendered the impugned judgments, which are not sustainable and are liable to be set aside, while the judgment of the Punjab Appellate Tribunal is based on the correct exposition of law. In the case of M.S. Ahlawat v. State of Haryana & another (AIR 2000 SC 168), the Court held that to perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience.

14. Though, in the present case, the grievance notice and grievance petition both were time-barred merely for the reason that the employee was in deep slumber, which crucial facet was not properly appreciated by the Labour Court and the High Court *vis-à-vis* the law and evidence led by the parties. However, in unison, we are sanguine that there is no specific form or template provided under the law to emanate the grievance notice, but the prime consideration of this provision is to ensure, by and large, that the grievance of employee should be translated without any doubt or ambiguity for redressal within the time-frame specified in the law. The law is clear on all fours and in this sense, the Court is duty-bound while adjudicating upon and determining a grievance petition, that it shall go into all the facts of the case, which also include the question of limitation, and then pass such order as may be just and proper in the circumstances of the case. The purposefulness of the expression used in the law “shall go into all the facts of the case” advocates that the Labour court or the NIRC, as the case may be, should focus on the actual cause of the grievance, including the defense of the

employer and the evidence led by the parties, and then decide the matter expeditiously without delaying or prolonging the proceedings or litigation in the nature of civil suits which has multifarious segments and niceties of law. Hence, the proceedings before the Labour Court/NIRC cannot be equated with civil suit proceedings in Civil Courts in the *stricto sensu* along with all the ramifications or intricacies of the Code of Civil Procedure, 1908. It is quite significant to note that Section 25-A of the repealed IRO 1969, laid much emphasis on the principle that the Labour Court should decide the grievance petition within seven days from the date of the matter being brought before it as if such matter were an industrial dispute. What is more, the Industrial Relations Act, 2012, again recapitulated that for the decision in the individual grievance petition, if the employer fails to communicate a decision within the period specified 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. What it demonstrates is that the legislature included a provision even in the 2012 Act stipulating that matters should be decided within seven days. Moreover, while the Punjab Industrial Relations Act, 2010, does not explicitly state seven days, it has fixed a period of ninety days from the date of the matter being brought before it as if such matter was an industrial dispute. In the same analogy, the Sindh Industrial Relations Act, 2013, is not dissimilar but it also encompasses a timetable for making a decision within ninety days. Whereas in the Baluchistan Industrial Relations Act, 2010, and the Khyber Pakhtunkhwa Industrial Relations Act, 2010, the lawmakers of both the provinces adopted the previous timeline as embodied in the repealed IRO 1969 with the same language that where the matter is taken to the Labour Court, 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.

15. The comprehensive evaluation of the aforesaid provisions metes out the legislative intent unmistakably that labour cases must be decided quickly and without delay. At least in our experience, we have never come across any grievance petition which was decided by the Labour Court or NIRC within seven days. To bring into play the symbolic or metaphoric

timeline of seven days without providing any adverse consequences if the same is not adhered to is meant to invite the attention of the Court to decide the matter expeditiously; that if it is not possible within seven days, then at least a proper case management system may be put into effect to trim the docket by curtailing the frequency of unnecessary adjournments and delay to ensure that the decision is given within reasonable time. Why are we expatiating it? The dismissed or terminated employee/workman cannot afford the luxury of prolonged litigation due to limited or meager resources, therefore, the intention of the legislature was to ensure expeditious and timely justice in the industrial relations disputes rather than protracting it for an unlimited period of time in the impression and anticipation that if the employee is reinstated in service, he may have the prospect of back benefits; that may be logical to some extent, but at the broader spectrum, we cannot lose sight of another essential factor that delay in deciding the case of terminated or dismissed labour/employee becomes the constant source of glitches and miseries, especially when he is unemployed after termination or dismissal of his services or if he is not gainfully employed for his and his family's livelihood. Therefore, serious efforts are required to be put in place for early and expeditious disposal of labour cases by the Labour Courts, Labour Appellate Tribunals, and the National Industrial Relations Commission (NIRC), both at original and appellate stage.

16. In the wake of the above discussion, this Civil Petition is converted into an appeal and allowed. As a consequence thereof, the judgment of the learned High Court, dated 27.04.2016, and the Labour Court, dated 27.10.2001, are set-aside and the judgment passed by the Learned Punjab Labour Appellate Tribunal dated 29.04.2002 is restored.

Judge

Judge

Judge

Islamabad
24th September, 2024
Khalid
Approved for reporting