

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

C P D 3258 of 2021 : Hamid Ali vs.  
PTCL & Others

C P D 3259 of 2021 : Kamran Ahmed Siddiqui vs.  
PTCL & Others

C P D 3260 of 2021 : Hashim Raza Khan vs.  
PTCL & Others

For the Petitioners : Mr. Muhammad Atiq Qureshi, Advocate

For the Respondent : Mr. Syed Yasir Ahmed Shah  
Assistant Attorney Sindh

Mr. Ali Azad Salim, Advocate

Date/s of hearing : 18.11.2022

Date of announcement : 18.11.2022

## ORDER

**Agha Faisal, J.** These petitions assail respective orders, dated 16.03.2021 (“Impugned Orders”), rendered by the learned Full Bench NIRC, whereby the grievance notices and grievance petitions filed by the respective petitioners were found to be hopelessly time barred, therefore, the appeals of the respondent No.1 were accepted. The orders impugned in all three petitions demonstrate that the acceptance of respective appeals was on the sole ground of limitation. Since the issue involved is common *inter se*, these petitions were listed and heard conjointly and shall be determined vide this common order.

2. It is considered appropriate to reproduce the operative constituent of the impugned order in the lead petition herein below, being representative of all the orders under scrutiny herein:

“5. We have heard the arguments of both the learned counsels for both the parties and have perused the record carefully and we have come to the conclusion that petitioner was terminated from service on 12.07.2007 and filed the grievance notice on 02.06.2011 and thereafter, filed the grievance petition, which is time barred. We are of the considered view that the grievance notice as well grievance petition is hopelessly time barred, therefore, while accepting the instant appeal filed by the PTCL, we set aside the Impugned Order dated 09.06.2020 passed by the learned Single Member, consequently, grievance petition filed by the petitioner stands dismissed. There is no order as to the cost. File be consigned to record room after due completion.”

3. Petitioners' counsel did not controvert the chronology enumerated in the Impugned Orders, leading to the conclusion that the respective grievance notices and petitions were time barred. On the contrary, the counsel insisted on agitating the merits of the respective cases, notwithstanding the factum that the merits were never considered in the Impugned Orders, rendered solely on the basis of the issue of limitation.

4. The respondent's counsel submitted that the petitioners were never employees of PTCL and instead represented themselves to have been engaged by a third party contractor, services whereof were terminated by PTCL on 09.07.2007<sup>1</sup>. It was further added that the only appointment letter<sup>2</sup> on record is issued by the contractor and the bald assertion of having been regularized by PTCL is admittedly devoid of any corroboratory documentation, hence, patently false. In conclusion it was submitted that the petitioners have failed to identify any infirmity with the Impugned Orders, hence, no interference is warranted therewith.

5. Heard and perused. The Impugned Orders are rendered on the grounds of limitation and the chronology of events relied upon by the NIRC, demonstrating the bar of limitation, has not even been attempted to be controverted by the petitioners' counsel. The merits of the respective appeals are not before us as the learned NIRC has rested its findings on the issue of limitation. Therefore, the only argument remaining before us was whether the mandate of limitation could have been disregarded by the appellate forum.

6. It is the considered opinion of the Court that the prescriptions of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation otiose<sup>3</sup>. It has been maintained by the Superior Courts consistently that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard<sup>4</sup>. It has been maintained by the honorable Supreme Court<sup>5</sup> that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed.

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<sup>1</sup> As pleaded by the petitioners themselves. A representative termination letter was placed on record in the lead petition at page 323.

<sup>2</sup> As demonstrated vide the letter placed on record by the petitioner in the lead petition at page 73.

<sup>3</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

<sup>4</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>5</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.

7. The record demonstrates that the contractor's engagement was determined by PTCL on 09.07.2007. Pursuant thereto and with specific reference to the aforesaid determination, the services of the petitioner were terminated by the contractor on 12.07.2007<sup>6</sup>. The grievance notice wasn't sent until almost four years later, on 02.06.2011<sup>7</sup>. These facts, representative of all three petitions, are uncontroverted, hence, there is nothing before us to suggest that the Impugned Orders could not have been rested upon the grounds relied upon.

8. It is imperative to denote that this Court is not exercising appellate jurisdiction; and the same has already been exhausted by the petitioners. Article 199 of the Constitution contemplates the discretionary writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter the alternate remedy has already been invoked and exhausted and no case is made out for entertaining this matter in the writ jurisdiction.

9. The ambit of constitutional petition is not that of yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order/s impugned. It is trite law<sup>8</sup> that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned.

10. In view hereof, we are constrained to observe that in the *lis* before us the petitioners' counsel has been unable to set forth a case for the invocation of the discretionary<sup>9</sup> writ jurisdiction of this Court, hence, these matters, along with pending applications are dismissed.

JUDGE

JUDGE

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<sup>6</sup> As demonstrated vide the letter placed on record by the petitioner in the lead petition at page 321.

<sup>7</sup> As demonstrated vide the notice placed on record by the petitioner in the lead petition at page 265.

<sup>8</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

<sup>9</sup> Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as *2021 SCMR 425*; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as *2010 SCMR 105*.