

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-5839 of 2023

Present:

Justice Zafar Ahmed Rajput

Justice Ms. Sana Akram Minhas

Petitioner	:	Pakistan International Airlines Corporation Limited & 2 others, through Mr. Khalid Mehmood Siddiqui, Advocate.
Respondent No. 1.	:	Nazish Samo, through Mr. Imdad Ali R. Unnar, Advocate.
Respondent No. 2.	:	National Industrial Relations Commission, through Registrar (<i>Nemo</i>)
Date of hearing	:	13.11.2024
Date of order	:	13.11.2024

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the Petitioner inter-alia seeks the following relief: -

- (a) *Set aside the impugned orders order dated 11.10.2023, 02.02.2022 & 27.10.2021, passed by the Respondent No. 2.*
- (b) *Direct the Respondent No. 2 to first decide the Application under section 5 of the Limitation Act, for condonation of delay, filed by the Respondent No. 1, before embarking upon adjudication of Respondent's Petition on merits.*

2. Briefly stated, the facts of the case are that the Respondent No.1 was a regular employee of the Petitioner, Pakistan International Airlines Corporation Limited (“PIACL”). On 03.10.2019, she was served with a Show Cause Notice (“SCN”) under the PIA Employees Service Regulations, 1985, on various charges, including absence from duty without prior information or authorization of leave. She submitted her reply to the SCN, denying the allegations against her. Later, on 06.01.2020, a corrigendum to the SCN was issued, whereby the disciplinary proceedings were brought under PIA Administrative Order No.10/2019, and the charge against her was confined to “Misconduct” on account of “unauthorized absence from duty for seven consecutive days or ten non-consecutive days in a rolling year.” Thereafter, a regular inquiry was conducted against her. The Inquiry Committee submitted its report, dated 15.09.2020, holding her guilty of the charge levelled against her. Upon consideration of the record, the Competent Authority, vide order dated 03.12.2020, decided to dismiss her from the service of PIACL. Afterwards, on 08.04.2021, she served a

Grievance Notice upon the Petitioner under Section 33(1) of the Industrial Relations Act, 2012 (**“Act of 2012”**). Thereafter, on 21.05.2021, she filed a Grievance Petition before the learned Single Member of the Respondent No.2, the National Industrial Relations Commission (**“NIRC”**), under Section 33(4) of the Act of 2012. Along with the said Petition, she also filed an application under Section 5 of the Limitation Act, 1908, seeking condonation of delay. The Petitioner could not file its reply within the prescribed period; consequently, the Single Member of NIRC proceeded *ex parte* against the Petitioner. Vide order dated 27.10.2021, the Single Member of NIRC allowed the Grievance Petition filed by the Respondent No.1. On 06.11.2021, the Petitioner filed an application seeking recall of the order dated 27.10.2021, along with its Written Statement. The office of the Respondent No.2 endorsed the said application as having been filed within time. However, vide order dated 02.02.2022, the Single Member of NIRC dismissed the said application, observing that the same was directed against the order dated 04.08.2021 instead of the order dated 27.10.2021. The Single Member further declined to take the Written Statement on record on the ground that final orders had already been passed on 27.10.2021. Later, on 28.02.2022, the Petitioner preferred an Appeal before the learned Full Bench of the Respondent No.2, challenging the orders dated 27.10.2021 and 02.02.2022 passed by the Single Member of NIRC. Along with the Appeal, the Petitioner also filed an application seeking condonation of delay and another application for suspension of the operation of the aforesaid orders. However, vide impugned order dated 11.10.2023, the Full Bench of the Respondent No.2 dismissed the Appeal filed by the Petitioner; hence, this Petition.

3. Learned counsel for the Petitioner contended that the impugned orders are contrary to the facts on record as well as the applicable law; that both the forums below failed to appreciate that the Grievance Notice as well as the Petition filed by the Respondent No.1 were hopelessly barred by limitation; that the Respondent No.1 had filed an application under Section 5 of the Limitation Act seeking condonation of delay; however, the forums below committed a serious error of law by neither deciding the said application nor even making any reference to its pendency; that the question of limitation was required to be determined before the matter could proceed on merits; that the Respondent No.1 had also failed to disclose any cogent or sufficient reason for the admitted delay in submitting the Grievance Notice before the Petitioner and the subsequent Grievance Petition before the Respondent No.2; that the forums below misdirected themselves with regard to the application for recall as the application filed on 03.11.2021, as reflected from the office note, was an application seeking

recall of the order dated 27.10.2021, but the same was incorrectly treated as an application for recall of the order dated 04.08.2021; as such, in the circumstances, the said application ought to have been treated as an application under Order IX Rule 13, CPC, and decided in accordance with law; that the impugned order incorrectly recorded the date of filing of the application as 06.11.2021, whereas the record clearly reflected that it had been filed on 03.11.2021; that the forums below failed to appreciate the evidentiary deficiencies in the case of the Respondent No.1; that after filing her affidavit-in-evidence, the Respondent No.1 was never examined on oath, nor was she subjected to cross-examination; that the documents produced by the Respondent No.1 along with her affidavit-in-evidence were merely photocopies and no original documents were produced in support of her claim; hence, such evidence could not have been relied upon without proper proof in accordance with law; that the Respondent No.1 had admittedly been dismissed from service after due process of law, including issuance of a charge-sheet and conduct of a regular departmental inquiry, as was evident from her own Petition and the documents annexed thereto; that once the dismissal had been effected after following the prescribed disciplinary procedure, the lawful order of dismissal could not have been set aside merely on the ground that the Petitioner had failed to submit its reply within the prescribed period; that the Respondent No.1 had failed to justify the alleged misconduct at any stage; that neither in her reply to the SCN, nor in the Grievance Notice or in the Petition filed before the forum below, the Respondent No.1 furnished any satisfactory explanation or otherwise established that the misconduct for which she was dismissed had not been committed by her; that even in an *ex parte* matter, the Court is required to determine the controversy in accordance with the evidence and law and cannot grant relief merely because the opposite party failed to appear or file a reply within the prescribed time; that where matter is proceeded *ex parte*, the Court's obligation to reach a just and lawful determination assumes greater significance, requiring an opportunity or warning before disposing of it in absentia; that the impugned orders suffer from material errors of law and fact and are therefore liable to be set aside and if the impugned orders are allowed to remain in force, the Petitioner would suffer serious prejudice, irreparable loss and injury. In support of his contentions, the learned counsel has placed his reliance on the case of Government of Balochistan v. Khawaja Muhammad Naseer (PLD 2006 SC 572), Muhammad Sami v. Additional District Judge Sargodha (2007 SCMR 621), National Bank of Pakistan and another v. Zahoor Ahmed Mengal (2021 SCMR 144), Secretary Elementary and Secondary Education, Government of Khyber Pakhtunkhwa.

Peshawar and others v. Noor-ul-Amin (2021 SCMR 959) and *Fayyaz Hussain v. Executive District Officer (Education), City District Government Rawalpindi and others (2021 SCMR 1358)*.

4. Conversely, learned counsel for the Respondent No.1 maintained that the Petitioner, through its counsel, appeared before the Single Member of NIRC on 30.06.2021, undertook to file a power and his request for grant of time to submit a reply was allowed; that thereafter, on 04.08.2021, neither the Petitioner nor anyone on its behalf appeared, whereupon the Single Member directed to proceed *ex parte* against it; that, on 15.09.2021, Mr. Usman Advocate filed his power on behalf of the Petitioner; that the Petition filed by the Respondent was allowed vide order dated 27.10.2021; that the Petitioner was admittedly aware of the proceedings and the *ex parte* order dated 04.08.2021, at least by 15.09.2021, when its counsel entered appearance and filed the power on its behalf; however, despite having knowledge of the said order, the Petitioner did not challenge the same within the prescribed period; rather, it allowed the proceedings to continue and, after the final order dated 27.10.2021 had been passed, it sought to challenge the earlier *ex parte* order through a belated application for recall; that the application seeking recall of the *ex parte* order dated 04.08.2021 was itself hopelessly barred by time and was rightly dismissed by the forum below; that the Petitioner cannot circumvent the statutory period prescribed for challenging the final order dated 27.10.2021 by indirectly questioning an interlocutory/*ex parte* order passed during the pendency of the proceedings; that the Petitioner applied for a copy of the order dated 27.10.2021 on 16.02.2022, which was supplied to him on 17.02.2022, whereas the Appeal before the Full Bench was filed on 01.03.2022; as such, the office of the Full Bench raised an objection that the Appeal *prima facie* appeared to be barred by limitation by more than three months; that although the Petitioner filed an application under Section 5 of the Limitation Act seeking condonation of delay, the question of limitation remained a material and legally relevant issue; that the Petitioner, having consciously failed to challenge the final order dated 27.10.2021 before the competent appellate forum within the prescribed period, cannot now invoke the constitutional jurisdiction of this Court to overcome the statutory remedy and period of limitation provided under the Limitation Act; that the impugned orders passed by the forums below are well-reasoned and speaking orders, whereby the relevant facts and objections raised by the parties have been duly considered; that no illegality, jurisdictional defect, or perversity has been pointed out that would warrant interference by this Court in exercise of its constitutional jurisdiction; that the forums below, being statutory forums constituted under the Act of 2012,

was competent to adjudicate upon the disputed questions of fact arising between the parties; that the findings recorded after consideration of the material available on record cannot ordinarily be re-appraised or substituted in constitutional jurisdiction, particularly when no jurisdictional error or violation of law has been demonstrated; that the Petitioner cannot be permitted to derive benefit from its own omission and inaction as having acquired knowledge of the *ex parte* order on 15.09.2021 and failed to challenge the same within the prescribed period, the Petitioner cannot subsequently rely upon its own delay to reopen proceedings that had culminated in the final order dated 27.10.2021; that the settled principle of law that a party cannot be permitted to take advantage of its own wrong squarely applies to the circumstances of the present case; that the Petitioner has, in substance, attempted to challenge the final order dated 27.10.2021 indirectly through an application for recall of the earlier *ex parte* order dated 04.08.2021, although the latter order was within its knowledge and was not challenged within the prescribed period; hence, such an indirect course cannot be permitted to defeat the statutory scheme relating to limitation and the appellate remedy; that the impugned orders passed by the forums below are based upon a proper appreciation of the record, are supported by cogent reasons, and do not suffer from any illegality, material irregularity, or jurisdictional defect warranting interference by this Court in exercise of its constitutional jurisdiction; hence, the instant petition is liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record with their assistance. The controversy, in essence, arises from the proceedings before the Single Member of NIRC, whereby the Grievance Petition filed by the Respondent No. 1 was allowed *ex parte*, and the subsequent orders whereby the Petitioner's applications to recall/reopen the proceedings and the Appeal preferred before the Full Bench of NIRC were dismissed. The principal grievance of the Petitioner is that the Grievance Notice and the Grievance Petition were barred by limitation and that the application filed by the Respondent No. 1 under Section 5 of the Limitation Act was not decided.

6. The record, however, reflects that the Petitioner was aware of the proceedings before the Single Member of NIRC and, admittedly, its counsel appeared on 30.06.2021 and sought time to file a reply. Thereafter, when neither the Petitioner nor anyone on its behalf appeared on 04.08.2021, the Single Member of NIRC proceeded *ex parte*. Significantly, the Petitioner's counsel subsequently entered appearance and filed power on 15.09.2021, yet no effective challenge to the *ex parte* order dated 04.08.2021 was brought within the

prescribed period. Instead, the Petitioner allowed the proceedings to culminate in the final order dated 27.10.2021 and thereafter attempted to reopen the matter through a belated application for recall. Thus, the Petitioner cannot legitimately seek to circumvent the statutory period prescribed for assailing the proceedings by indirectly challenging an earlier order after the matter had already culminated in a final decision.

7. The contention regarding the application under Section 5 of the Limitation Act also does not advance the Petitioner's case. The Petitioner itself failed to avail the statutory remedy within the prescribed period and, subsequently, filed an Appeal before the Full Bench of NIRC after considerable delay. The question of limitation was, therefore, a material issue before the appellate forum. The impugned order demonstrates that the Full Bench of NIRC considered the relevant circumstances and declined to grant the Petitioner the benefit of its own delay and inaction. No material has been brought on record to establish that the said approach suffers from any jurisdictional defect or patent illegality warranting interference in constitutional jurisdiction.

8. As regards the Petitioner's grievance concerning the merits of the Grievance Petition, including the evidentiary material relied upon by the Respondent No.1 and the alleged failure to prove the misconduct, these are essentially matters falling within the domain of the statutory forum. The Member of NIRC had jurisdiction to adjudicate the grievance, while the Full Bench of NIRC exercised the appellate jurisdiction conferred upon it by law. In the absence of any demonstrated jurisdictional error, violation of a mandatory provision of law, or perversity in the impugned orders, this Court, in exercise of its constitutional jurisdiction, would not substitute assessment of the competent statutory forums merely because another view may be possible.

9. It is also significant that the Petitioner's own case shows that the Respondent No.1 had been dismissed from service pursuant to disciplinary proceedings, whereas the Petitioner, despite having knowledge of the proceedings before the Single Member of NIRC, failed effectively to contest the Grievance Petition within the prescribed time. A party cannot be permitted to take advantage of its own omission or negligence and, after allowing the proceedings to culminate in a final order, seek to revive the matter by adopting an indirect route of challenge to an earlier interlocutory or *ex parte* order.

10. So far, the case-law relied upon by the learned counsel for the Petitioner are concerned, it may be observed that there is no cavil to the principles

propounded in these cases but the same being based on distinguishable facts and circumstances, do not advance the case of the Petitioner.

11. For the foregoing reasons, we are of the considered view that the Petitioner has failed to identify any illegality, jurisdictional defect, material irregularity, or perversity in the impugned orders dated 27.10.2021, 02.02.2022 and 11.10.2023 which could justify interference by this Court in its constitutional jurisdiction. The petition, being devoid of merit, is accordingly dismissed, along with pending applications.

12. Above are the reasons for our short order dated 13.11.2024.

JUDGE

JUDGE

Athar Zai