JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1752 of 2019
Nasir-ud-Din and others
Versus
O.G.D.C.L. and others

Date of Hearing: 19.01.2021
Petitioners by: Raja Shahzad Anwer, Advocate
Respondents by: Mr. Saad Shuaib Wyne, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, who are serving as Technical Officers in the Oil and Gas Development Company **("O.G.D.C.L.")**, impugn the order dated 26.03.2019 passed by the learned Full Bench, National Industrial Relations Commission **("N.I.R.C.")**, whereby their appeals against the order dated 09.05.2018 passed by the learned Member, N.I.R.C. were dismissed. Vide the said order dated 09.05.2018, the learned Member, N.I.R.C. dismissed the grievance petitions filed by the petitioners under Section 33 of the Industrial Relations Act, 2012 **("I.R.A.")** primarily on the grounds that their grievance petitions filed before N.I.R.C. as well as their grievance notices were barred by time.

2. During 1995-96, the petitioners were employed in O.G.D.C.L. as Assistant Technical Mechanic (Pay Scale 12). They claim that they were due to be promoted in Executive Group-I **("EG-I")** in the year 2001 but were promoted in EG-I on 01.07.2005. They submitted applications seeking for their promotion in EG-I to be made with effect from 2001. While the petitioners said applications were pending, the learned Labour Court vide order dated 15.02.2011 allowed the petitions filed by similarly placed employees of O.G.D.C.L. seeking the antedation of their promotion to EG-I. The said order dated 15.02.2011 was based on an earlier order dated 17.11.2008 passed by the learned Labour Court. Writ petition No.298/2011 filed by O.G.D.C.L. against the said order dated 17.11.2008 was dismissed by this Court vide order dated 12.11.2012. Other similarly placed employees of O.G.D.C.L. filed writ petition

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No.3232/2011 before this Court seeking the same relief as was granted by the learned Labour Court vide the said orders dated 17.11.2008 and 15.02.2011. Vide order dated 15.05.2012, the said writ petition was disposed of with the direction to O.G.D.C.L. to extend the same benefit to the petitioners in the said writ petition as was granted by the learned Labour Court.

3. The petitioners, except petitioners No.2, 4 and 6, filed writ petition No.3119/2015 before this Court seeking *inter alia* the antedation of their promotion in EG-I from 01.07.2005 to 01.12.2001. Vide judgment dated 02.06.2017, the said writ petition was dismissed primarily on the ground that an alternative remedy of filing a grievance petition under the provisions of the I.R.A. was available to the petitioners. The said judgment dated 02.06.2017 was not challenged any further. On 20.06.2017, the petitioners filed the grievance petitions before N.I.R.C. Vide order dated 09.05.2018, the said petitions were dismissed by the learned Member, N.I.R.C. on the ground that the petitioners had not served a grievance notice on O.G.D.C.L. in accordance with the requirements of the I.R.A., and that their grievance petitions were not filed within the limitation period of sixty days provided in Section 33 of the I.R.A. The petitioners' appeal against the said order was dismissed by the learned Full Bench, N.I.R.C. vide order dated 26.03.2019. The said concurrent orders have been assailed by the petitioners in the instant writ petition.

4. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the petitioners' grievance petitions before the N.I.R.C. were also accompanied with an application for condonation of delay; that since this Court had vide order dated 15.05.2012 passed in writ petition No.3232/2011 granted relief to similarly placed employees of O.G.D.C.L., the petitioners were justified in filing writ petition No.3119/2015 before this Court; that since the petitioners were diligently prosecuting their remedy in the writ jurisdiction of this Court, there was sufficient cause for the delay in filing of the grievance petitions to be condoned; that the petitioners had served

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notices voicing their grievances regarding the delayed promotion before O.G.D.C.L. within time; that this Court should have returned writ petition No.3119/2015 at an early stage so that the petitioners could have filed their grievance petitions before the N.I.R.C. within the limitation period provided by law; that the petitioners are entitled to the same relief as had been granted by the Labour Court vide orders dated 17.11.2008 and 15.02.2011 to similarly placed employees of O.G.D.C.L.; and that the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. suffered from jurisdictional errors. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for O.G.D.C.L. submitted that the petitioners had not served grievance notices on O.G.D.C.L. within limitation period provided by law; that the cause of action (if any) accrued to the petitioners when they were promoted in EG-I on 31.10.2005; that petitioners No.2, 4 and 6 submitted a request for the antedation of his promotion on 30.10.2013 whereas petitioners No.1, 3, 5 and 7 submitted such a request to O.G.D.C.L. on 20.03.2013; that the departmental appeals submitted by the petitioners could not be treated as a grievance notices in terms of the law laid down in the case of Khushal Khan Vs. Muslim Commercial Bank Ltd. (2002 SCMR 943); that the said departmental appeals were not addressed to the appointing authority; that other than the petitioners' grievance notices being time barred, their grievance petitions were also barred by time; that the grievance petitions were filed before the N.I.R.C. on 20.06.2017; that the time consumed while the petitioners were prosecuting their remedy in the Constitutional jurisdiction of this Court cannot be excluded when computing the limitation period for filing a grievance petition; that writ petition No.3119/2015 filed by the petitioners was dismissed by this Court vide order dated 02.06.2017 on the ground that they had the alternative remedy of filing grievance petitions before the N.I.R.C.; that the petitioners had not challenged the said order dated 02.06.2017 any further; that the earlier short order dated 15.05.2012 passed by this Court in writ

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petition No.3232/2011 whereby O.G.D.C.L. was directed to grant the petitioners in the said petition the same relief as was granted by the Labour Court, was passed without considering the fact that the petitioners had the alternative remedy of approaching the N.I.R.C.; and that the concurrent orders passed by the learned Member, and the learned Full Bench, N.I.R.C. do not suffer from any legal or jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for O.G.D.C.L. prayed for the writ petition to be dismissed.

6. 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 paragraphs 2 and 3 above, and need not be recapitulated.

7. The learned Member and the learned Full Bench, N.I.R.C. concurrently dismissed the petitioners' grievance petitions and their appeals primarily on the ground that they had not served grievance notices on their employer, and that their grievance petitions were filed beyond the limitation period prescribed in Section 33(1) of the I.R.A.

8. Section 33(1) of the I.R.A. reads thus:-

> ***"33. 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 ninety days of the day on which the cause of such grievance arises."***

9. Section 33(1) of the I.R.A. mandates that the grievance notice has to be given to the employer within a period of ninety days from day on which the cause for the grievance arises. In the instant case, the cause for the petitioners' grievance arose in 2001 when they claim to have become eligible for promotion to EG-1 and were not promoted in the said year; or on 01.07.2005 when they were promoted to EG-I with immediate effect and not with effect from 01.12.2001. The Labour Court had passed order dated 15.02.2011 in favour of similarly placed workmen / employees of O.G.D.C.L., three years before the petitioners filed their departmental appeals /

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representations. The petitioners filed departmental appeals / representations on different dates between 20.03.2013 to 30.10.2013. Although departmental appeals / representations cannot be treated as grievance notices but if even it is assumed that the petitioners had served grievance notices on their employer on the said dates, they were clearly beyond the limitation period of ninety days prescribed in Section 33 (1) of the I.R.A.

10. Under Section 33(4) of the I.R.A., the petitioners could take their grievance to the N.I.R.C. only if their employer failed to communicate a decision within a period of fifteen days of the submission of the grievance notice or if the employer had given a decision against the petitioners on their grievance notice. Hence, the filing of a grievance notice in terms of Section 33(1) of the I.R.A. within the limitation period of ninety days is an essential pre-requisite for filing a grievance petition before the N.I.R.C. This Court, in the case of Pakistan Telecommunication Company Limited Vs. Muhammad Dilpazeer Abbasi (2016 PLC 367), has held *inter alia* as follows:-

> ***"A worker / workman can file a petition for redressal of grievance in the mode or in accordance with the procedure provided in section 33 of the Act. In this behalf a worker/workman is required to bring to the notice of his employer in writing the grievance within 90 days of the cause by which grievance arises and if the employer, under subsection (4) of section 33 fails to make/communicate decision within 15 days of the grievance or the decision rendered is not satisfactory then the matter can be agitated before the Commission. Under proviso to subsection (4) a worker/ workman who desires to take the matter to the Commission shall do so within a period of 60 days from the date of commencement of the employment or as the case may be from expiry of the period mentioned in subsection (2) or subsection (3) as the case may be."***

11. In drawing the said conclusion, this Court relied on the judgments in the cases of Khushal Khan Vs. Muslim Commercial Bank Limited (2002 PLC (C.S.) 907), Allied Bank of Pakistan Limited Vs. M. Iqbal Sipra (2007 PLC Labour Cases 398), and Abdul Rauf Vs. Muhammad Shafiq (2006 PLC Labour Cases 135). In the said case, one of the reasons why this Court set-aside the concurrent orders of the learned Member and the learned Full Bench of the N.I.R.C. was that there was nothing on the record to establish that the employees (the petitioners before the N.I.R.C.) had served a grievance notice on

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their employer and a reply thereto was communicated to them. Therefore, the procedure prescribed under Section 33 of the I.R.A. was held to have not been followed as no grievance notice had been served.

12. Furthermore, in the case of Zar Khan Vs. Senior Vice-President, Muslim Commercial Bank Ltd., (1984 PLC 89), the Hon'ble Peshawar High Court held as follows:-

> ***"5. Insofar as the other point of the learned counsel for the petitioner is concerned, it may be stated that no doubt no special form of a grievance notice is specified in section 25-A of the Industrial Relations Ordinance and there are reported cases of Superior Courts whereby a Mercy petition or an appeal to the higher authorities was treated as a grievance notice but there are also reported judgments of Superior Courts wherein it has been held that an appeal or a Mercy petition to the higher authorities or the authority above the employer could not be treated a grievance notice. In the case, reported in 1981 PLC 605 it has been held that no particular form or procedure of a grievance notice has been provided by section 25-A for its compliance and that petition, appeal or application submitted within time can be regarded compliance of grievance procedure and Mercy petition submitted after departmental appeal could be regarded as sufficient compliance of section 25-A. In the case of Muhammad Ozair Qureshi v. Chairman, National Construction Company Limited, Karachi and others (1982 PLC 17) it was held that first appeal to Chairman could be treated as a grievance notice as no specific form is prescribed to bring grievance to notice of employer. On the contrary, in the case reported in 1982 PLC 389 it was held that departmental appeal to Appellate Authority could not be treated as grievance notice and in the case reported in 1982 P L C 920 it was held that grievance notice is to be served upon employer and not upon final Appellate Authority and that representation to President of Bank could not be treated as a grievance notice. It shall thus be seen that although, no specific form of a grievance notice is provided in section 25-A of the Ordinance, however, it is clear that the notice is to be served upon the employer and not on any higher or Appellate Authority. Moreover, a Mercy petition, an appeal, or a petition to the Labour Court, cannot be treated as grievance notice. We are inclined to agree with the latter two reported cases, because having anxiously applied our minds to the provisions of section 25-A and the reported cases, we are of the considered opinion that a grievance notice is a document independent of a Mercy petition or an appeal to the Appellate Authority and it has to be served upon the appointing authority and not to an authority higher than the appointing authority. We would, therefore, not accept this contention either."***
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> **(Emphasis added)**

13. Although, Section 33(1) of the I.R.A., 2012 does not prescribe the form in which the grievance notice is to be issued but the law mandates that it must be addressed to the *"employer"* and none other. The petitioners have not brought on record their appointment

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letters. Therefore, this Court is not in a position to determine who exactly the petitioners should have addressed their grievances notice to. Be that as it may, in the case at hand, the petitioners have not satisfied the essential pre-requisite of issuing the grievance notices on the employer within the limitation period of ninety days from the date when the cause for their grievance arose. Therefore, their grievance petitions cannot be held to have been competently filed before the N.I.R.C.

14. I also cannot bring myself to agree with the contention of the learned counsel for the petitioners that the petitioners' departmental appeals to O.G.D.C.L. should be treated as grievance notices. In the case of Khushal Khan Vs. Muslim Commercial Bank Limited (2002 SCMR 943), it has been held *inter alia* that an appeal filed by an employee before the employer could not be treated as a grievance notice within the meaning of Section 25-A of the Industrial Relations Ordinance, 1969. Without a grievance notice, the proceedings initiated by an employee before a Labour Court were held to be incompetent. Section 33(1) of the Industrial Relations Act, 2012, requires a worker / employee to 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 within 90 days of the date on which the cause of such grievance arises. Since the petitioners' departmental appeals could not be treated as grievance notices, the grievance petitions before the N.I.R.C. were filed by the petitioners without satisfying the essential prerequisite of issuing the prior grievance notices. Hence, the learned Member and the learned Full Bench of the N.I.R.C., were correct in concurrently dismissing the petitioners' grievance petitions. This was enough ground for the learned Member N.I.R.C. to have dismissed the petitioners' grievance petitions.

15. Now the grievance petitions were filed before the N.I.R.C. on 20.06.2017. This would be more than three years after the departmental appeals were submitted by the petitioners to O.G.D.C.L. The *proviso* to Section 33(4) of the I.R.A. requires a worker to take the matter to the N.I.R.C. within a period of sixty days

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from the date of the communication of the employer, as the case may be, or from the expiry of the period within which the employer is required by Section 33(2) or (3) to take a decision on a grievance notice. Since the petitioners' grievance petitions before the N.I.R.C. were barred by time, some of the petitioners had filed applications for condonation of delay along with their grievance petitions. Such petitioners wanted the period during which they were prosecuting their remedy in the Constitutional jurisdiction of this Court to be excluded from the limitation period for filing a grievance petition. Since the law had clearly provided an alternative remedy of filing a grievance petition before the N.I.R.C., this Court had vide order dated 02.06.2017 dismissed the petitioners' (except petitioners No.2, 4 and 6) writ petition No.3119/2015 as not maintainable. The petitioners accepted the said order and did not challenge the same. In such circumstances, the period during which the said writ petition was pending cannot be excluded from the limitation period for filing a grievance petition provided in the *proviso* to Section 33(4) of the I.R.A. The said writ petition was also filed years after the cause for grievance had accrued to the petitioners. The mere fact that the said writ petition was dismissed on the ground of the availability of an alternative remedy would not do away with the requirement of filing a grievance petition within the limitation period provided by law.

16. In view of the above, I do not find any jurisdictional infirmity with the impugned orders dated 09.05.2018 and 26.03.2019 passed by the learned Member and the learned Full Bench, N.I.R.C., respectively. Consequently the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 24/02/2021

(JUDGE)

*Qamar Khan**

APPROVE FOR REPORTING

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