JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 672 of 2022

Kush Ahmed Jan

Versus

Full Bench NIRC & 2 others.

Date of Hearing	:	20.06.2022.
Petitioner by	:	Mr. MastanWali Khan, Advocate
Respondents by	:	Syed Nazar Hussain Shah, AAG Ch. Kamil Hayat, Advocate Dr. Agha Ghulam Haider DD(L) M/O Federal Education & Professional Training.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, the petitioner impugns orders darted 29.11.2021 and 21.01.2022 passed by the learned Member and Full Bench of the National Industrial Relations Commission Islamabad-**NIRC**respectively, whereby his application under Section 33 of the Industrial Relations Act, 2012 **(Act of 2012)** bearing case No.4B(208)/2021 and CMA No.7B(168)/2021 was dismissed while appeal also met the same fate at preliminary stage.

2. Facts relevant for the disposal of the instant writ petition are that the petitioner had been an employee of the National Book Foundation, Islamabad (*respondent No.3*) in the capacity of "*Sales Representative*" on contract basis. The last extension of his contract was made on 21.01.2020 vide Office Order No.53-HAA-875 for a period of 89 days that stood expired on 30.03.2020.

3. According to the petitioner, at the relevant time the corona virus pandemic had been in full swing due to which the various government as well as semi-government offices were closed across the country and that after return to normal routine, in the month of July 2020 he submitted a Departmental Appeal for

renewal of his contract but the same remained un-responded which constrained him to file Writ Petition No.3341 of 2020 but the same was dismissed vide order dated 25.02.2021 being not maintainable due to non-statutory rules of the respondent-department. He then preferred an ICA, that too met the same fate vide order dated 04.11.2021. The petitioner then approached the Member NIRC with a grievance petition, referred above, but the same was dismissed being time barred while his appeal before the Full Bench of the NIRC also met the same fate on the same premises, hence instant writ petition.

4. In order to counter the concurrent orders of the two learned forums on the claim of the petitioner being time barred, learned counsel emphasized that after the expiry of last extension of the contract, petitioner, as a pre-cautionary measure, filed an application on 09.04.2020 for extension of his contract period but the same could not be materialized on the pretext of non-availability of the competent authority/ MD of the National Book Foundation; that thereafter the petitioner approached the respondent No.2(*Secretary Education and Professional Training*) through application dated 08.05.2020 & 15.07.2020 with identical request and for payment of salaries as well and his application was marked to the respondent No.3 (*M.D. NBF*) but on the said applications, no decision was taken till 04.11.2020 due to non-availability of the M.D. NBF, where after having left no option, petitioner filed writ petition and thereafter an ICA but both were dismissed being not maintainable.

5. Learned counsel further argued that in view of the law laid down by the superior Courts, an aggrieved person could not be made to suffer on account of misconception of law and in case of a *bonafide* error in approaching the wrong forum, the delay can be condoned. It is added that the petitioner along with his petition has also filed an application for condonation of delay under Section 5 & 14 of the Limitation Act, 1908 before the NIRC but the same did not find favour. According to the learned counsel, the petitioner had been left remediless merely on technicality and was not provided with opportunity to adduce his case on merits and thus

has been deprived of right of fair trial and to be treated in accordance with law, therefore, impugned orders are liable to be set aside. Learned counsel placed reliance upon case laws reported as 2022 SCMR 636, 2017 SCMR 56, 2006 SCMR 504,

6. On the other hand, learned counsel for the respondent No. 3, learned AA-G assisted by Deputy Director (Law) Ministry of Federal Education and Professional Training repelled the above submissions. It is argued that the grievance petition of the petitioner was time barred; he failed to serve notice within specified time while his application for condonation of delay was also found without having valid explanation of inordinate delay, therefore, concurrent observations are not open to any exception and the petition is liable to be dismissed.

7. Heard, record perused.

8. The reasons prevailed with the learned Member NIRC for dismissing petition of the petitioner as being time barred were to the effect that:-

> *"From the above stated facts, it has fully become clear that the grievance petition filed by the petitioner is barred by time. The learned counsel for the petitioner has stated that the petitioner filed the departmental appeal on 15.07.2021. As stated above, the petitioner was firstly refused extension in his employment contract 30.03.2020, so the departmental appeal submitted by the petitioner on* ***15.07.2021*** *is also barred by time. Learned counsel for the petitioner has further maintained that the petitioner approached the Islamabad High Court and from there his Intra Court Appeal was dismissed on 04.11.2021. The petitioner has filed an application for condonation of delay. Perusal of this application shows that in it that the petitioner has given no explanation of any kind for his approaching the High Court. So, it is declared that no ground is made out to condone the delay in filing this grievance petition in NIRC."*

9. The learned Full Bench of the NIRC dismissed the appeal on the following grounds:-

> *"Perusal of the record reveals that the appellant was appointed on contract basis and his contract period was extended from time to time and lastly the respondent*

> *refused the appellant for extension of his contract period on 30.03.2020 against which he filed departmental appeal on* ***15.07.2021 after delay of one and a half month which is clearly barred by time****. According to section 33(1) of the Industrial Relations Act 2012 a worker may bring his grievance in respect of any right guarantee or secured to him by or under any law or any award or settlement for the time being enforce to the notice of his employer in writing, either himself or through his shop steward or Collective Bargaining Agent within 90 days on which the cause of action arises. But in the case in hand the alleged grievance notice has been sent by the appellant beyond the prescribed period of limitation. It is well settled law that the grievance petition is not competent when grievance notice was not served within specified time. In regard reliance is placed upon case reported as 2015 TD (Labour) 199, 2017 TD (Labour) 244 and 2017 PLC 28.*

10. It is clear from the orders supra that the petitioner was non-suited on account of his departmental appeal being time barred as being submitted on **15.07.2021** while he also remained unable to furnish an explanation for approaching the High Court, In-addition it was observed that non-service of the grievance notice within the specified time, itself bars filing of grievance petition.

11. On the contrary, it is the stance of the petitioner that after normalization of the situation on 15.07.2020 he approached the competent authority to extend his contract according to the commitment but they refused to renew the same. This stance of the petitioner being agitated in the instant writ petition finds support from paragraph-4 of his grievance petition wherein the date mentioned as **15.07.2020** which has been mentioned as 15.07.2021 in both the impugned orders. The petitioner also reasserted to have served a grievance notice by hand dated 15.07.2020 in paragraph 6(V) of his grievance petition. In-addition, the ground of approaching wrong forum is also stipulated in paragraph 6(VI) of the grievance petition. The application under Section 5 of the Limitation Act, 1908 filed by the petitioner together with his grievance petition contains the ground of approaching the wrong forum

12. Furthermore, it is the stance of the petitioner that his application for extension of contract could not be decided at the relevant time due to non-availability of the competent authority

and for this reason, he filed Writ Petition on 04.11.2020 and after dismissal of his ICA by this Court on 04.11.2021 he filed the grievance petition before the NIRC on 29.11.2021.

13. After giving due consideration to the facts gathered from the documents made available on record, it is observed that the above aspects skipped the sight of the two learned forums and the fact that the date of filing of departmental appeal by the petitioner mentioned in the impugned orders as **15.07.2021** is contrary to the stance taken by the petitioner in paragraph-4 of his grievance petition where the date is mentioned as **15.07.2020**.

14. In view of above, the instant writ petition is **allowed**. Consequently, impugned orders dated 29.11.2021 and 21.01.2022 passed by the learned Member and Full Bench of the NIRC are set aside. The grievance petition together with application for condonation of delay filed by the petitioner before the learned Member NIRC shall be deemed pending which shall be decided afresh in accordance with law on the subject after providing opportunity of hearing to the petitioner in the light of above observations. There shall be no order as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on ___.08.2022.

JUDGE

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