JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.811 of 2022

Raja Shafaqat Ali

Versus

The Regional Chief (HR) National Bank of Pakistan and others

Petitioner by:	Malik Akhtar Abbas and Mr. Muhammad Umair Baloch, Advocates.
Respondents No.1 & 2 by:	Barrister Sohail Nawaz, Advocate.
Date of Hearing:	**01.09.2025.**

INAAM AMEEN MINHAS, J:- This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been filed by the petitioner challenging the order dated 22.11.2021, passed by the learned Full Bench, NIRC, whereby the appeal filed by respondents No.1 & 2 (National Bank of Pakistan) was allowed and the order dated 12.06.2020 passed by the learned Singe Bench, NIRC was set aside.

2. The facts, in brief, are that the petitioner was initially appointed as Cash Sorter in the National Bank of Pakistan on 15.01.2003. In pursuance of the judgment of the Hon'ble Supreme Court several junior colleagues of the petitioner were absorbed/regularized in the National Bank of Pakistan whereas the petitioner was ignored. Being aggrieved, the petitioner filed a representation for regularization of his service but the National Bank of Pakistan terminated his service vide letter dated 21.08.2009. After availing the remedy of departmental appeal, on 16.09.2009 the petitioner impugned his termination before Federal Service Tribunal **("FST")** by filing an appeal, which was dismissed for want of jurisdiction vide judgment dated 18.06.2011 with an advice to seek remedy at an appropriate fora. Then the petitioner filed a civil

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petition before the Hon'ble Supreme Court against the judgment of FST, which was dismissed vide order dated 25.08.2011 with the observation that the petitioner may avail appropriate remedy before the proper forums subject to all just exceptions. Thereafter, the petitioner filed Writ Petition No.2785/2011 before this Court, which was dismissed vide judgment dated 09.05.2016. The said judgment was assailed by the petitioner in ICA No.316/2016, which was also dismissed vide judgment dated 31.01.2017 allowing the petitioner to approach appropriate forum. Finally, the petitioner a filed grievance petition on 02.03.2017, which was allowed by the learned Single Bench, NIRC vide order dated 12.06.2020. The said order was assailed by the National Bank of Pakistan before the learned Full Bench, NIRC in appeal, which was allowed vide order impugned dated 22.11.2021 and order of the learned Single Bench, NIRC was set aside, hence, this appeal.

3. The learned counsel for the petitioner contended that the impugned order is illegal, unlawful and arbitrary and that the impugned order is result of misreading and non-reading of the record with National Bank of Pakistan.

4. Conversely, the learned counsel for National Bank of Pakistan has supported the impugned order and prayed for dismissal of the instant petition.

5. I have heard the learned counsel for the parties and gone through the record.

6. The pivotal issue that arises for determination is whether the learned Full Bench, NIRC was justified in allowing the appeal and dismissing the petitioner's grievance petition on the grounds of non-service of the grievance notice and limitation.

7. To determine the issue of non-service of grievance notice, section 33(1) of the Industrial Relations Act, 2012 **("IRA, 2012")** is relevant, which provides that a worker may bring his grievance in respect of any

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right guaranteed or secured to him by or under any law or by any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shops steward or collective bargaining agent within ninety days of the date on which the cause of such grievance arises. It is apparent from the record that the petitioner did not serve any grievance notice upon the respondent. The service of a grievance notice by an employee upon the employer prior to instituting a grievance petition is a *sine qua non*, the absence of which renders such petition incompetent. This is a statutory requirement, which is not merely procedural but is mandatory in both scope and nature.

8. It is settled law that 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 serve a grievance notice to his employer in writing and a grievance petition before the N.I.R.C., without the service of a grievance notice on the employer, is not maintainable. Reliance is placed upon the case law titled ***Khalid Hussain vs. Full Bench National Industrial Relation Commission and others,*** **(2020 PLC 204 Islamabad),** ***Pakistan Telecommunication Company Limited vs. Muhammad Dilpazeer Abbasi,*** **(2016 PLC 367),** ***Allied Bank of Pakistan Limited vs. Muhammad Iqbal Sipra*** **(2007 PLC Labour Cases 398),** ***and Abdul Rauf vs. Muhammad Shafiq*** **(2006 PLC Labour Cases 135).** The learned Full Bench, therefore, rightly concluded that the petitioner's grievance petition was not maintainable for want of compliance with Section 33(1) of IRA, 2012.

9. This Court shall now address the issue of limitation. Perusal of the record reveals that services of the petitioner as Cash Sorter were engaged by National Bank of Pakistan on 15.01.2003. The petitioner was terminated vide letter dated 21.08.2009. After availing the remedy of departmental appeal on 16.09.2009 the petitioner impugned his termination before FST by filing an appeal, which was dismissed for want of jurisdiction vide judgment dated 18.06.2011 to seek remedy at

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an appropriate fora. Then the petitioner filed a civil petition before the Hon'ble Supreme Court against the judgment of FST, which was dismissed vide order dated 25.08.2011 with the observation that the petitioner may avail appropriate remedy before the proper forums subject to all just exceptions. Thereafter, the petitioner filed Writ Petition No.2785/2011 before this Court, which was dismissed vide judgment dated 09.05.2016. The said judgment was assailed by the petitioner in ICA No.316/2016, which was also dismissed vide judgment dated 31.01.2017. Thereafter, the petitioner filed the grievance petition on 02.03.2017, which was badly time barred. As regards to the contention of learned counsel for the petitioner that grievance petition could not have been dismissed as time-barred on the premise that this Court had permitted him to assail his dismissal order before the appropriate forum, it is sufficient to observe that no such liberty could, nor did, absolve the petitioner from compliance with the mandatory requirements of section 33(1) of the IRA, 2012.

10. It is a settled principle of law where a person had sought remedy before wrong forum, he is not entitled to condonation of delay unless he proves that he had sought remedy before wrong forum in good faith. On the touchstone of the criterion as mentioned above the case of petitioner has been examined, who has miserably failed to explain the delay and show that FST was approached in good faith. The Honourable Supreme Court of Pakistan in the case of ***Abdul Ghani vs. Ghulam Sarwar, (PLD 1977 SC 102)*** held that:-

> *"In any event, the conduct of other parties cannot help the petitioner to make out sufficient cause under section 5 of the Limitation Act. It is true that this section does not define sufficient cause but the meaning of this expression is too well known to need recapitulation, and we would only refer here to the observations of Kaikaus, J. on this question in Ata Ullah v. Custodian Evacuee Property PLD 1961 SC 236. 'Under section 5 ..... there has to be a finding of sufficient cause. In pre-partition India a sufficient cause had been defined as circumstances beyond the control of the party and I do not know of any case wherein this definition of sufficient cause had been rejected." We re-affirm these observations and we may*

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explain here that the burden is on the appellant to prove that his delay in filing his appeal was on account of circumstances beyond his control, because as observed by Sir George Rankin in Kunwar Rajendra Bahadur Singh v. Rai Rajeshwar Bali and others AIR 1937 PC 276 in applying section 5 (of Limitation Act)... the analogy of section 14 (which applies only to suits) is an argument of considerable weight." Section 14 permits the exclusion of time only for proceedings prosecuted in good faith, "therefore, in order to make out sufficient cause under section 5 an appellant must prove that he had acted in good faith in presenting his appeal in the wrong Court. Good faith has been defined in clause (1) of section 2 of the Limitation Act as: 'good faith': nothing shall be deemed to be done in good faith which is not done with due care and attention. "Now if an appellant proves that he filed his appeal in the wrong Court despite due care and attention it means that the presentation of the appeal in the wrong Court was on account of circumstances beyond his control. No doubt, what such circumstances are must depend on the facts and circumstances of each case and in Kunwar Rajendra Bahadur Singh's case, Sir George Rankin set aside the finding of the Chief Court that the appellant's advocate had been very negligent in filing the appeal in the wrong Court because the facts relevant to the question of the Court in which the appeal was to be filed were very complicated. Similarly, an appellant can bring his case under section 5 if he can show that there is some ambiguity in the law governing the forum in which the appeal is to be filed. Or, to take another example, an appellant can rely on section 5, if he can show that he was misguided by the practice of the Court or by an erroneous judgment of the Court but, in the instant case, the provisions of section 18 of the West Pakistan Civil Courts Ordinance are plain beyond any doubt and as there is also no complication whatsoever about the facts relevant to the question of the proper forum for filing the appeal, it is clear that the prosecution of the appeal in the District-Court was an act of gross negligence."

11. No case has been made out for grant of condonation of delay within the meaning of section 5 read with section 14 of the Limitation Act, 1908. It is a settled principle that knowledge of law is presumed, and ignorance thereof constitutes no excuse, particularly where the underlying facts stand admitted. In sum, the rule laid down by the Hon'ble Supreme Court of Pakistan in the case of Abdul Ghani *Supra* is that the period spent in pursuing an appeal before a forum lacking

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jurisdiction cannot be condoned under section 5 of the Limitation Act, 1908. The mistake of counsel in approaching a wrong forum does not constitute an act done in good faith, as it lacks due care and caution, and therefore does not amount to "sufficient cause" within the contemplation of section 5 of the Limitation Act, 1908.

12. In view of the above discussion, the impugned order has been passed in accordance with law. The instant petition bears no merits, hence, ***dismissed***. No order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 08.09.2025.

JUDGE

R.Anjam

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