ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3742 of 2018
Pakistan Telecommunication Company Limited
Versus
The Learned Full Bench of National Industrial Relations Commission and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.11.2019	**Chaudhary Sagheer Ahmad, Advocate for the petitioner** **Mr. Muhammad Akhtar Anjum, Advocate for respondents No.3 to 14**

Through the instant writ petition, the petitioner, Pakistan Telecommunication Company Ltd. ("P.T.C.L") impugns the order dated 21.06.2018 passed by the learned Full Bench of National Industrial Relations Commission, Islamabad ("N.I.R.C."), whereby the private respondents' appeal under Section 58 of the Industrial Relations Act, 2012 ("I.R.A.") against the order dated 08.09.2015 passed by the learned Member, N.I.R.C., was allowed and the matter was remanded with the direction to proceed with case No.7B(214)/14 in accordance with law.

2. Vide order dated 08.09.2015, the learned Member, N.I.R.C. had dismissed the private respondents' petition praying for the petitioner to be punished with a direction to implement judgment dated 26.11.2008 passed by the Punjab Labour Court, Rawalpindi.

3. The facts essential for the disposal of the instant petition are that vide judgment dated 26.11.2008, the Punjab Labour Court, Rawalpindi allowed the private respondents' grievance petitions praying for the regularization of their services with the petitioner/P.T.C.L. It is an admitted position that the petitioner's appeal against the said judgment had been dismissed by the Punjab Labour Appellate

Tribunal, vide judgment reported as *2013 PLC 44.* The said judgment dated 26.11.2008 had attained finality for all intents and purposes.

4. In order to implement the said judgment dated 26.11.2008, the private respondents filed an application before the N.I.R.C., Islamabad. For the purpose of clarity, the prayer made by the private respondents is reproduced herein below:-

> ***"It is therefore, respectfully prayed that the respondents/accused be dealt with in accordance with law and awarded exemplary punishment with direction to implement the decision dated 26.11.2008 in letter and spirit as the said judgment has attained finality up to the August Supreme Court of Pakistan."***

5. Vide order dated 08.09.2015, the learned Member, N.I.R.C. dismissed the said application primarily on the following grounds:-

"(i) that the application for the implementation of the order dated 26.11.2008 was filed after a lapse of more than seven years

(ii) that since under Section 33(6) of the I.R.A., if any decision given by the N.I.R.C. is not given effect to or complied within seven days or the within the period specified in the order, the defaulter is to be punished, and since in the instant case the judgment dated 26.11.2008 was passed by the Punjab Labour Court, Rawalpindi and not by the N.I.R.C., the N.I.R.C. did not have the jurisdiction to adjudicate upon the application."

6. The appeal filed by the private respondents against the said order dated 08.09.2015 was allowed by the learned Full Bench, N.I.R.C. vide order dated 21.06.2018. In the said order, it was held *inter alia* that relief could not be refused to the private respondents on the *"technical ground of limitation".* The said order dated 21.06.2018 has been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that against the order dated 08.09.2015 passed by the learned Member, N.I.R.C.,

the private respondents had filed an appeal under Section 58 of the I.R.A.; that Section 58(1) of the I.R.A. provides a limitation period of thirty days for filing an appeal; that the appeal filed by the private respondents was beyond the limitation period provided by Section 58(1) of the I.R.A.; that the learned Full Bench, N.I.R.C. erred by holding that the private respondents could not be denied relief on the *"technical ground of limitation";* that lapse of the limitation period had vested the petitioner with valuable rights; that no explanation had been given by the private respondents for the delay in filing the appeal; and that although the appeal filed by the private respondents was accompanied with an application for condonation of delay, the learned Full Bench, N.I.R.C. should not have condoned the delay or decided the appeal on merits.

8. Learned counsel for the petitioner further submitted that the private respondents, in their application to the N.I.R.C., had prayed for the petitioner to be awarded exemplary punishment with a direction to implement the judgment dated 26.11.2008 passed by the Punjab Labour Court, Rawalpindi; that under Section 33(6) of the I.R.A. only if a decision or order passed by the N.I.R.C. was not given effect to or complied with within seven days or within the period specified in such decision or order, could the defaulter be punished; and that since in the instant case, the judgment that was sought to be implemented by the private respondents had not been passed by the N.I.R.C. (but by the Labour Court), the learned Member, N.I.R.C. correctly held that the N.I.R.C. had no jurisdiction to adjudicate upon the private respondents' said application. Learned counsel for the petitioner prayed for the writ petition to be allowed

and for the impugned order dated 21.06.2018 to be set-aside.

9. On the other hand, learned counsel for the private respondents submitted that the judgment dated 26.11.2008 passed by the Punjab Labour Court, Rawalpindi had attained finality, and the petitioner was bound to implement the same; that in view of the law laid down by the Hon'ble Supreme Court in the judgment reported as *2014 SCMR 535*, the N.I.R.C. did have the jurisdiction to implement a judgment passed by the Labour Court; that the learned Full Bench, N.I.R.C. had correctly observed that the petitioner was legally and morally bound to implement the said judgment dated 26.11.2008, and that the petitioner was creating hindrances in the implementation of the said judgment; that prior to the filing of the application before the N.I.R.C. for the implementation of the said judgment dated 26.11.2008, the private respondents had filed a contempt petition before the Labour Court as well as the N.I.R.C. but the said petition was returned due to lack of jurisdiction; and that against the order dated 08.09.2015 passed by the learned Member, N.I.R.C., the private respondents had filed a writ petition and a contempt petition before the Hon'ble High Court, and after the said petitions were dismissed, the private respondents filed an application before the N.I.R.C. Learned counsel for the private respondents prayed for the writ petition to be dismissed.

10. 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 to 6 and need not be recapitulated.

11. The sole question that needs to be decided is whether the N.I.R.C. had the jurisdiction to implement a judgment passed by a Labour Court.

12. Through application (annexed at pages 27 to 31 of this petition) before the N.I.R.C., the private respondents had *inter alia* sought the implementation of the judgment dated 26.11.2008 passed by the Punjab Labour Court, Rawalpindi in their favour. Section 33(6) of the I.R.A. provides *inter alia* that if an order or a decision given by the N.I.R.C. is not given effect to or complied with within seven days or within the period specified in such an order or a decision, the defaulter shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to Rs.75,000/- or with both.

13. In the case of Pakistan Telecommunication Company Ltd. Vs. Member, N.I.R.C. (2014 SCMR 535), the respondents, who were employees of the petitioner/P.T.C.L. had filed a grievance petition under the provisions of the Punjab Industrial Relations Act, 2010 challenging the termination of their services. The learned Labour Court allowed their grievance petition against which the respondents filed a petition for Contempt of Court before the Labour Court. The respondents had also sought the implementation of the order passed by the Labour Court in their favour. After P.T.C.L. was served with the notice, it approached the N.I.R.C., Lahore for the withdrawal of the contempt petition filed before the Labour Court. The contempt proceedings were withdrawn from the Labour Court and were assigned to a Bench of the N.I.R.C. at Lahore. The withdrawal of the contempt petition from the Labour Court was assailed by the respondents in a writ petition before the Hon'ble Lahore High Court. The respondents' stance was that the N.I.R.C. had no jurisdiction to order the withdrawal

of the contempt proceedings from the Labour Court. Since P.T.C.L. was a Trans-Provincial Organization, the Hon'ble Supreme Court upheld the order whereby the contempt proceedings were withdrawn from the Labour Court and assigned to a Bench of the N.I.R.C.

14. In view of the law laid down by the Hon'ble Supreme Court in the said judgment, it can safely be held that the N.I.R.C. was vested with the jurisdiction to proceed in contempt against the petitioner for not showing compliance with or giving effect to the judgment dated 26.11.2008 passed by the Labour Court in favour of the private respondents. N.I.R.C. would have jurisdiction in the matter since the petitioner/P.T.C.L. is admittedly a Trans-Provincial Organization.

15. Since the order dated 08.09.2015 passed by the learned Member, N.I.R.C. was not in consonance with the judgment of the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Ltd. Vs. Member, N.I.R.C. *(supra)*, which was decided on 17.02.2014, I am of the view that the learned Full Bench, N.I.R.C. did not commit any illegality by setting aside the said order dated 08.09.2015 and remanding the matter to the learned Member, N.I.R.C.

16. True, the private respondents' appeal was filed beyond the limitation period provided in Section 58(1) of the I.R.A. but the said appeal was accompanied with an application for condonation of delay. By deciding the appeal on merits, the learned Full Bench, N.I.R.C. condoned the delay in filing of the appeal. I cannot bring myself to agree with the learned Full Bench, N.I.R.C. that limitation is a *"technical ground".* It is well settled that vested rights are created on account of the expiry of limitation period in favour of the other party. However, it is also well settled that the bar of limitation loses significance if the judgment or

the proceedings in question are *coram non-judice;* or if the essential features for the assumption of the jurisdiction are contravened; or if a forum exercises jurisdiction not vested in it by law; or if it exceeds the jurisdiction vested in it by law. In the case at hand, the learned Member, N.I.R.C. had committed a jurisdictional irregularity by not assuming jurisdiction on the private respondents' application, and such non-assumption of jurisdiction was in disregard of the law laid down by the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Ltd. Vs. Member, N.I.R.C. *(supra).*

17. It may also be noted that the petitioner's conduct cannot be termed as equitable. Even though the judgment dated 26.11.2008 passed by the Labour Court in favour of the private respondents has attained finality as the appeal against the said judgment was dismissed by the Punjab Labour Appellate Tribunal, the petitioner is simply refusing to implement the said judgment. The said judgment dated 26.11.2008 was a composite judgment deciding several grievance petitions. The petitioner's appeal against the said judgment was also dismissed by the Punjab Labour Appellate Tribunal, vide judgment dated 13.03.2012 reported as *2013 PLC 44.* This judgment was also upheld by the Hon'ble High Court and the petitioner's appeal before the Hon'ble Supreme Court was dismissed as not pressed on 29.05.2012. The petitioner's conduct in simply ignoring the said judgment dated 26.11.2008 is most inequitable. The private respondents who had acquired valuable rights on the basis of the said judgment dated 26.11.2008 could not be left without a remedy. There is no limitation period provided in the I.R.A. for filing an application for contempt of Court or

for the implementation of a judgment passed by the Labour Court against a Trans-Provincial Organization.

18. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

Uploaded By: Engr. Umer Rasheed Dar