JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.1206 of 2017
Muhammad Ashraf Kiyani
Versus
Full Bench NIRC, Islamabad and others

Date of Hearing:	27.09.2017
Petitioner by:	Khawaja Muhammmad Amir, Advocate,
Respondents by:	Mr. Muhammad Faruq Ghani, Advocate for respondents No.3 and 4, Mr. Sagheer Ahmad Bhatti, Advocate for respondent No.5.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Ashraf Kiyani, impugns the appellate order dated 25.01.2017, passed by the learned Full Bench of the National Industrial Relations Commission ("N.I.R.C.") whereby respondent No.3's appeal against the order dated 31.07.2015, passed by the learned Member, N.I.R.C., was allowed, and the petitioner's grievance petition filed before the N.I.R.C. under Section 33 of the Industrial Relations Act, 2012 ("I.R.A."), was dismissed.

2. Learned counsel for the petitioner submitted that the sole ground on which the petitioner's grievance petition was dismissed, was that the petitioner had not sent a notice under Section 33 of the I.R.A., which was held by the learned Full Bench of the N.I.R.C. to be an essential pre-requisite before filing a grievance petition before the N.I.R.C. Learned counsel for the petitioner drew the attention of the Court to the legal notice dated 11.12.2014, sent to the Executive Officer, Medical Superintendent, Amanat Eye Hospital, Mayo Road, Rawalpindi (respondent No.5), and copied to the Human Resource Manager, Gerry's Dnata (Private) Limited (respondent No.3), and submitted that the requirement of sending a grievance notice had been complied with by the petitioner before filing a grievance petition before the N.I.R.C.

3. Learned counsel for the petitioner further submitted that the petitioner was appointed as a Driver by respondent No.3; that at no material stage was any punishment, major or minor, imposed on the petitioner; that vide order dated 24.11.2014, the petitioner had been forcibly retired from service due to his weak eye sight; that neither a charge sheet or show cause notice was issued to the petitioner, nor was the petitioner afforded an opportunity of hearing by respondent No.3 before the petitioner was forcibly retired; that vide order dated 31.07.2015, passed by the learned Member, N.I.R.C., the petitioner's grievance petition was allowed, and respondent No.3 was directed to reinstate the petitioner with all back benefits; that aggrieved by the said order dated 31.07.2015, respondent No.3 filed an appeal under Section 58 of the I.R.A. before the learned Full Bench of the N.I.R.C.; that vide order dated 25.01.2017, respondent No.3's appeal was allowed, and consequently, the petitioner's grievance petition was dismissed; that the said order dated 25.01.2017, is not in accordance with the law and facts of the case; that the learned appellate forum did not appreciate that legal notice dated 11.12.2014, was issued on the petitioner's behalf to respondent No.5; that since the said legal notice was also copied to respondent No.3, the same was to be treated as a grievance notice as contemplated by Section 33(1) of the I.R.A.; that since the petitioner did not receive any response from respondent No.3, he filed a grievance petition under Section 33(4) of the I.R.A. before the N.I.R.C. In support of his contention that the law does not require the grievance notice to the employer to be in any particular form, learned counsel for the petitioner relied on the judgments in the cases of Taufiq Ahmed Vs. Takbeer Weekly (2007 PLC 375), Nadeem Ahmed Qureshi Vs. Habib Bank Ltd. (2009 PLC 160), and Tariq Mehmood Vs. Allied Bank of Pakistan Ltd. (2013 PLC 199). Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned judgment dated 25.01.2017, passed by the learned Full Bench of the N.I.R.C. to be set aside and for the judgment dated 31.07.2015, passed by the learned Member, N.I.R.C. to be restored.

4. On the other hand, learned counsel for respondents No.3 and 4 submitted that the legal notice issued on the petitioner's behalf to respondent No.5 could not be treated as a grievance notice under Section 33(1) of the I.R.A.; that since the petitioner had not sent a grievance notice to respondent No.3, the grievance petition before the N.I.R.C. was not maintainable. In support of his contention that a grievance petition before the N.I.R.C. is not maintainable unless a grievance notice has been issued by the workman/employee to the employer regarding the unlawful treatment or unfair labour practice. Learned counsel for respondent No.3 placed reliance on the law laid down in the cases of Hussain Karim Vs. Crescent Pak Industries Ltd. (1976 SCMR 74), Pakistan National Centre Vs. Presiding Officer, Punjab Labour Court (PLD 1976 Lahore 1085), Muhammad Hussain Vs. Pakistan Tobacco Co. Ltd. (PLD 1980 SC 80), Muhammad Hussain Vs. Pakistan Tobacco Company Limited (1977 PLC 489), Sultan Ahmad Vs. Junior Labour Court (1979 PLC 322), and Khizar Hayat Vs. Pakistan Railways, Karachi (1993 PLC 106).

5. Furthermore, learned counsel for respondents No.3 and 4 submitted that due to the petitioner's weak eye sight, he met with two accidents (i.e. one on 04.02.2014, and the other on 13.11.2014) within the restricted area which is under the jurisdiction of the Civil Aviation Authority ("CAA"); that the Medical Officer of CAA at the Islamabad International Airport had vide letter dated 13.11.2013, referred the petitioner to respondent No.5 for the check-up of his eye sight; that the said Medical Officer had recommended that the petitioner was not fit for driving; and that there was no legal infirmity in respondent No.3's decision to retire the petitioner. Learned counsel for respondents No.3 and 4 prayed for the writ petition to be dismissed.

6. Learned counsel for respondent No.5 submitted that the document annexed as R/4 to the written comments filed by respondents No.3 and 4 contains interpolations; that respondent No.5 had not written the words *"patient examined and*

considered not to be recommended for driving" **on the said document; that the said words were written by the Medical Officer of CAA at the Islamabad International Airport on 15.11.2014.**

7. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

8. The record shows that that the petitioner had served as a driver with respondent No.3 for a period of twenty-two years. The question whether the petitioner could perform his duties as a driver with weak eyesight could be determined after his eyesight was medically examined. Apparently, the petitioner had met with two accidents while driving at the Airport. Vide letter dated 13.11.2014, respondent No.3 informed the petitioner that his eyesight would have to be examined. Vide letter dated 13.11.2014, respondent No.3 informed the Medical Officer of CAA at the Islamabad International Airport that the petitioner had been advised to appear before the Medical Officer of CAA to have his eyesight checked up. On 13.11.2014, the said Medical Officer referred the petitioner to respondent No.5 for his eyesight to be checked up. R/4 is a document from respondent No.5 which cannot be termed as a medical report. On the said document, the Medical Officer of CAA has written: *"patient examined and considered not to be recommended for driving"*.

9. On 24.11.2014, respondent No.3 terminated the petitioner's services. On 11.12.2014, a legal notice was issued to respondent No.5 on the petitioner's behalf. In this legal notice, respondent No.5 was called upon to explain the contradictions in respondent No.5's report dated 15.11.2014. The said legal notice makes no mention of the termination of the petitioner's services by respondent No.3. In this legal notice, there is no allegation of any unfair labour practice by respondent No.3 against the petitioner. Although this legal notice was copied to respondent No.3, it does not fulfill the requirements of a grievance notice contemplated by Section 33(1) of the I.R.A. which is reproduced herein below:-

> ***"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."*

10. In the said legal notice, respondent No.3 was not even requested to take a decision regarding the petitioner's grievance, if any. The petitioner's grievance in the said legal notice was against respondent No.5, who was not the petitioner's employer. Therefore, it can safely be concluded that the petitioner did not bring his grievance to the notice of the employer within a period of ninety days of the date on which the cause of such grievance arose, and, therefore, the requirements of Section 33(1) of the I.R.A. were not fulfilled by the petitioner. Furthermore, under Section 33(4) of the I.R.A., the petitioner could take its grievance to the N.I.R.C. only if respondent No.3 failed to communicate a decision within a period of fifteen days of the submission of the grievance notice or if respondent No.3 had given a decision against the petitioner on his grievance notice. Since respondent No.3 was not even called upon by the petitioner to decide the petitioner's grievance, the legal notice sent on the petitioner's behalf to respondent No.5 could not be termed as a grievance notice. Although Section 33 of the I.R.A. does not prescribe the form in which the grievance notice is to be issued, the legal notice dated 11.12.2014 (which was issued after the petitioner's services were terminated by respondent No.3), does not voice any grievance on the petitioner's behalf against any act or decision of respondent No.3. Therefore, the essential pre-requisite for filing a grievance petition before the N.I.R.C. had not been satisfied in this case.

11. 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."

12. In drawing the said conclusion, this Court relied upon the case law titled 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 (petitioners before the N.I.R.C.) had served a grievance notice on their employer and a reply thereto was communicated to them. Therefore, the procedure prescribed under Section 33 of the I.R.A. had not been followed as no grievance notice had been served.

13. Before parting with this judgment, I would be failing in my duty if I do not observe that the learned counsel for respondents No.3 and 4 did not convince me that the petitioner's eyesight was medically examined either by respondent No.5 or by the Medial Officer of CAA at the Islamabad International Airport before the petitioner's services were terminated. Learned counsel for respondent No.5 categorically stated that the endorsement: *"patient examined and considered not to be recommended for driving"* on the document (R-4) had not been written by respondent No.5. It is also clear that the Medial Officer of CAA had not examined the petitioner's eyesight, but had referred the petitioner to respondent No.5. Therefore, respondent No.3's stance that the petitioner's services were terminated due to his weak eyesight is not sustainable. Be that as it may, the petitioner did not send a grievance notice to respondent No.3 within a period of ninety days of the termination of his services. Since a

grievance notice was not sent by the petitioner to respondent No.3, the question of any decision by respondent No.3 regarding the petitioner's un-communicated grievances did not arise. Since the petitioner's grievance petition was not in accordance with the requirements of Section 33 of the I.R.A., he has only himself to thank for the unsavory situation he finds himself in.

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

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham Majid*

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