

NATIONAL INDUSTRIAL RELATIONS COMMISSION ISLAMABAD
FULL BENCH AT ISLAMABAD

Before: **Mr. Justice (F) Abdul Rasool Memon, Chairman**
Mr. Shabbir Hussain Awan, Member
Syed Noor ul Hassnain, Member

Appeal No.12A(21)/2023

J&S Enterprises Jang Printing Press Vs Irfan Ali

Appeal No.12A(22)/2023

J&S Enterprises Jang Printing Press Vs Muhammad Shabbir

Appeal No.12A(23)/2023

J&S Enterprises Jang Printing Press Vs Nasir Iqbal

Present: Syed Safeer Hussain, advocate for appellant.
 Mr. Kh. M. Arif, advocate for respondents.

ORDER

01.01.2024 **Shabbir Hussain Awan, Member.**

Note:

Since, one and the same order dated 09-12-2022 has been assailed through the above titled three appeals thus all the three appeals are being decided by this Single Order.

2. Facts giving rise to the titled appeals are that the respondents/petitioners filed grievance petition against the appellant with the following prayers

"It is therefore, respectfully prayed that grievance petition may kindly be accepted with all consequential effect and the petitioners be regularized in service from 1993 and a direction to the respondent for issuance

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permanent appointment letter to the respondent petitioner may also be issued."

3. The appellant/respondent appeared before the Single Member and after decision of some miscellaneous application ultimately the grievance petitions were allowed with the following observation.

"In view of what has been discussed above the petition is allowed and it is held that the petitioner is permanent employee of J&S Enterprises, Jang Printing Press, and he may be treated/considered as permanent employee of J&S Enterprises, Jang Printing Press from the date of his initial appointment with all consequential benefits".

Feeling aggrieved the instant appeal.

4. Learned counsel for the appellant argues that the appellant has been condemned unheard as the impugned order has been passed in the absence of the appellant in violation of nature rule of justice, therefore, no more sustainable. Hence, while allowing the appeal the impugned order be set aside as being illegal, unlawful and contrary to the facts and circumstance of the case as well.

5. Kh. M. Arif, Learned counsel for the respondent, on the other hand, contends that all the three titled appeals being hopelessly time barred, merits dismissal.

6. Arguments heard, record perused.

7. Having given our decent consideration. The available record demonstrates that the appellant has assailed the order dated

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09-12-2022 on 16-03-2023. Application for certified copy of the order under fire was moved on 16-03-2023 and the copy was delivered on the same day. The version of the learned counsel for the appellant that since the order was passed against them exparte and as and when they attained knowledge of the same they applied for certified copy on 16-03-2023 by filing the instant appeal on the same day without any loss of time. Therefore, the appeals are quite within time.

8. But record contradicts the stance of the appellant because one of the respondent Irfan Ali filed a petition No.7(07)/2023 titled Irfan Ali vs Daily Jang seeking compliance of the order. The appellant appeared before the learned Single Member through Mr. Safeer Hussain Shah, Advocate on 06-02-2023. I want to quote the order dated 06-02-2023 in verbatim:-

"Case No.7(07)/2023
Irfan Ali vs Daily Jang

Before: **Noor Zaman, Senior Member**

Present: Mr. M. Akram Bunda, Lab. Rep for petitioner
Mr. safer Hussain Shah, advocate for respondent.

ORDER:-

06-02-2023

Learned counsel for the respondents has appeared and filed memo of appearance. Now to come up on 28-02-2023 for submission of compliance report".

9. It is clear from what has been referred above that the order dated 09-12-2022 (impugned one) came into the notice of appellant on 06-02-2023 but the appeal was filed on 16-03-2023 i.e after 09/10 days of the limitation provided for filing appeal for which no explanation has been rendered.

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10. Undoubtedly, an application under Section 5 of Limitation Act is on the file but the same is silent regarding any justification or plausible explanation whatever to the satisfaction of common sense of wisdom for not filing the appeal within time or otherwise explaining the extra ordinary circumstances, restraining the appellant for not filing the appeal within stipulated period prescribed by law. We have perused the application for condonation of delay very minutely but the plausible justification or otherwise convincing reason does not figure anywhere in all the five paragraphs of the same.

11. The very justification given in para No.4 indicate that the appeal could not be filed due to two fold reasons:

1. Due to non-availability of the Full Bench; and,
2. The impugned order was ex-parte.

But both the above reasons are not only after thought but flimsy as well being contradicted and controverted by the record.

12. Non-availability of the Full Bench of NIRC does not debar the aggrieved to file an appeal by presenting the same in the office. The hearing of the appeal is the second step. First of all the appeal was to be presented/filed before the proper forum and if the Full Bench was not available, it makes no difference because the office would have made endorsement regarding the date and time of presentation of the appeal just to ensure whether the appeal was within time or beyond the limitation. Unfortunately, the appellant did not file appeals before Full Bench of NIRC within the limitation.

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13. Moreover, despite after attaining knowledge on 06-02-2023 the appeals were not filed within the limitation rather after 09/10 days beyond the limitation appeals were filed without any justification whatsoever, as to what prevented the appellant from challenging the impugned order within the prescribed time. Legally, each and every day has to be explained. But, unfortunately, the application under Section 5 of Limitation Act is quite silent regarding the reasonable justification whatsoever, then what to speak of explaining each and every day of delay in filing the titled appeals.

14. Since legally, speaking law aids the vigilant and not an indolent. A person who sleeps over his right is denied every remedy to which otherwise he is found entitled, thus, in view of what has been disused above, without going into merits of the case, all the three appeals being hopelessly time barred are hereby dismissed. There is no order as to costs. File be consigned to record room.

Announced in open Court

Dated:01-01-2024

(Abdul Rasool Memon)
Chairman

(Syed Noor ul Hassnain)
Member

(Shabbir Hussain Awan) 11/1/24
Member