

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(59)/2023

Jade e Service etc Vs Shujaat Ali Umer etc

Present: Mr. Sikandar Abbas advocate for appellant.
 Mr. Suleman Farooq advocate for respondents.

ORDER

28.11.2023 **Shabbir Hussain Awan, Member.**

Facts giving rise to the instant appeal are that the respondent filed a grievance petition under section 33, IRA 2012 by stating therein that he joined appellant/respondent company as Hub Supervisor vide contract dated 07.06.2021. The respondent facing different problems with regard to the affairs of the business went on putting into picture the appellant/respondent but to no avail. His correspondence offended the appellant/respondent culminating into show cause notice dated 25.07.2022 despite of the fact that no specific allegation was mentioned in the show cause notice even then he was asked to submit the reply. He was ultimately suspended on 02.08.2022 for seven days and the suspension was extended vide letter dated 10.08.2022 and 16.08.2022 respectively. Inquiry was conducted vide letter dated 11.08.2022. But he was not given any copy of complaint nor provided opportunity of hearing followed by dismissal order dated 19.08.2022, hence, the grievance petition.

2. The respondents were put to notice. They contested the grievance petition through written reply on legal as well as factual grounds.

3. After hearing the arguments of the learned counsel for the parties. The learned Member allowed the petition by declaring the dismissal order illegal and without lawful authority by directing the appellant/respondent to reinstate the respondent/petitioner in service with back benefits.

4. Feeling aggrieved the instant appeal.

 28/11

5. At the very outset of his arguments, the learned counsel for the appellant Safiuddin Abbas argues that the impugned order being non speaking is no more sustainable because the learned Member failed in proceeding according to law while delivering the impugned order because the application under order 7, rule 11, CPC, filed by the appellant/respondent has not been touched which is sufficient to vitiate the impugned order; that the respondent petitioner also did not serve any grievance notice but the learned Member while delivering the order/judgment has not attended this legal aspect of the matter. Lastly, the impugned order has been passed in very slipshod manner without recording the evidence, therefore, the impugned order be set aside while allowing the appeal.

6. The learned counsel for the respondents Mr. Suleman Farooq, on the other hand, contends that non decision of any miscellaneous application having got no bearing upon the merits of the case does not matter. Because remanding the case on this point will be nothing but a futile exercise by putting the parties to another round of litigation which is no more permissible under law; that the written reply submitted by the appellant is silent with regard to the prayer whatsoever, therefore, the well-reasoned order under fire calls for no interference.

7. Having given our decent consideration. There is no denying the fact that the appellants filed written statement/reply in response to the grievance petition of the respondent/petitioner wherein vide preliminary objection No. 4 they specifically rested upon the plea that since no grievance notice was served upon the employer by the respondent/petitioner, therefore, the grievance petitioner was liable to be rejected followed by a separate application under order 7, rule 11, CPC, in which vide para No. 4 the rejection of the grievance petition was sought on this ground as well. But to our astonishment unfortunately, the learned Member has neither touched the very objection as well as application under order 7, rule 11, CPC.

8. It has been centuries down practice of the Superior Courts that while deciding a lis, if a miscellaneous application remains unattended and without deciding the same and keeping it pending the petition or appeal is decided it will be very extremely improper on the part of the Court. Legally, before deciding main suit or appeal it is bounden duty of the Court to first ensure that every miscellaneous

Sh. I. Khan
28/11

application stood decided irrespective of the fact that the parties concerned press the same or not because if the party does not press than it can be dismissed for non-prosecution. A specific order is to be passed. If the court fails in deciding the miscellaneous application prior to the final disposal then the Appellate Court/Forum is left with no choice except to set aside the impugned order by remanding the case to the Learned Single Member for decision afresh.

9. In view of our above discussion, without touching the merits of the case the appeal is allowed and the impugned order dated 23.06.2023 is hereby set aside. The case/matter is remanded back to the learned Single Member-III for decision afresh in accordance with law purely on merits after hearing the arguments of the parties in light of the observation recorded above.

(Abdul Rasool Memon)

Chairman

(Syed Noor ul Hassnain)

Member

(Shabbir Hussain Awan) 28/11