

NATIONAL INDUSTRIAL RELATIONS COMMISSION
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(78)/2023
CMA No.24A(61)/2023

M/S Taxila Cotton Mills Versus Zain ul Haq.

Present: Fazli Qadir Khan, Advocate for the appellant
 Mr. Kamran Amjad Kiani, Advocate of the respondent.

ORDER
04.01.2024

Shabbir Hussain Awan,

Through this appeal filed under Section 58 of the IRA, 2012 the appellant has assailed the impugned order dated 17.08.2023 passed by the learned Single Bench, whereby the learned Member has allowed the application filed for condonation of delay in case No. 4B(56)/2013.

2. Brief facts of the case are that the respondent was appointed in the appellant establishment in the year 1992 and subsequently promoted as Assistant Jobber and regularized in the year 1996. The respondent was terminated from service vide order dated 22.02.2021 on allegation of misconduct and he approached the Labour Court Rawalpindi through filing grievance petition. The learned Labour Court vide order dated 09.09.2021 allowed the petition and reinstated the respondent in service. The appellant assailed the order of the Labour Court before the Punjab Labour Appellate Tribunal and the PLAT vide order dated 07.02.2023 held that the labour court had passed the order without jurisdiction as the appellant establishment is having trans-provincial status. The respondent challenged the order of PLAT

 41/124

before the Lahore High Court, Rawalpindi Bench through filing writ petition No. 822/2023 which subsequently was dismissed as withdrawn. The respondent thereafter, filed grievance petition before the Commission on 27.03.2023 with the prayer that the petitioner (respondent) may be reinstated in service from the date of passing of order with all back benefits. An application for condonation of delay was also annexed with the grievance petition and the learned Single Bench through impugned order dated 17.08.2023 has allowed the said application with the following observations: -

"Record shows that the petitioner has not wasted time for seeking redressal hid grievance before the forum available for such redressal in his understanding. He has approached Lahore High Court within less than a month after order of PLAT and that within 10 days withdrawn the petition from High Court and within 10 days approached this Commission which shows his alertness and vigilance to seek redressal of his grievance. Therefore, the application for condonation of delay is allowed and the case is fixed for arguments on merits."

The appellant being aggrieved with the impugned order has filed instant appeal and has contended that the grievance petition filed by the respondent is hopelessly time barred as the respondent initially assailed his termination before the wrong forum i.e. Labour Court and the order of Labour Court was set aside the by the Labour Appellate Tribunal on the ground of lack of jurisdiction on 07.02.2023; that the respondent instead of approaching the Commission (NIRC) has filed Writ Petition before the Hon'ble Lahore High Court, Rawalpindi Bench which was subsequently withdrawn on 16.03.2023 without any permission/condition; that when the writ petition was withdrawn unconditionally then the limitation would be counted from the date of the order of Punjab Labour Appellate Tribunal dated 07.02.2023 and not from the order of the Hon'ble High; that the respondent filed grievance petition before the Commission on 27.03.2023 after about one month and twenty days and no plausible explanation of such delay has been furnished; that it is the settled principle of law that each and every day's delay must be explained

In view of 4/11/24

satisfactorily, but nothing has been brought on record for condonation of delay and the learned Single Bench while ignoring this important aspect of the matter has allowed the application for condonation of delay. The learned counsel for the appellant has prayed that the appeal may be allowed and the grievance petition may be dismissed being hopelessly time barred. The learned counsel for the appellant in support of his arguments has relied on case law i.e. PLD 1983 SC 385, PLD 2016 SC 872, 2018 PLC 242 and 2018 PLC Note 5.

3. The learned counsel for the respondent has contended that the learned Single Bench has rightly allowed the application filed for condonation of delay; that the respondent bonafidely pursued his case with due diligence and has not shown any carelessness/negligence; that it is settled principle of law that the matters should have been decided on merits instead of knocking out the litigants on technical grounds; that the grievance petition should have been decided on merits. The learned counsel for the respondent has prayed that the appeal may be dismissed.

4. The learned counsel for the parties have been heard and record perused.

5. Without commenting on the merits or demerits of the application filed for condonation of delay, it is admitted position that the respondent was terminated from service on 22.02.2021 and thereafter, he was pursuing his case even before wrong forum but with due diligence, however, he has withdrawn writ petition without any condition and this aspect of the matter has not been appreciated by the learned Single Bench in accordance with law. Even otherwise it has now been settled by the Superior Courts of the Country that the question of limitation is not a mere technicality rather it goes to the roots of a litigation until it is proved that cause of action was agitated within time prescribed by law. The question of limitation cannot be considered a technicality simplicitor as it has got its own significance and would have substantial bearing on merits of the case.

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6. In view of what has been discussed above, we are of the considered opinion that the learned Single Bench while deciding the application filed for condonation of delay has not appreciated the facts and law, therefore, the impugned order is set aside and the application will be deemed to be pending for its decision at the time of final adjudication of the grievance petition and the question of limitation will remain open. The appeal is hereby disposed of in above terms.

7. As the main grievance petition is pending before Syed Noor ul Hassnain learned Member who is also Member of this Bench, therefore, on administrative side the grievance petition No. 4B(56)/2023 is transferred from his Bench and assigned to the Bench of Learned member (Mr. Abdul Qayyum) for hearing and disposal in accordance with law. The file be consigned to record room after its due completions.

(Abdul Rasool Memon)
Chairman

(Shabbir Hussain Awan)
Member

(Syed Noor Ul Hassnain)
Member