

2. Briefly the facts of the instant case are that the respondent No.1 filed a Civil Suit against the appellant for Declaration, Permanent and Mandatory Injunction with the following prayers:-

- a) Declare that the plaintiff is eligible to contest elections for the post of President of PALPA for the elections 2016-2018;
- b) Declare that the letter dated 21.12.2015 and 30.12.2015 of the Chairman, and the Decision dated 28.12.2015 of the Election Committee are void, illegal, set-aside and suspend the same;
- c) Direct the Election Committee to include name of the plaintiff in the final list of contestants and print his name on ballot papers for the post of President for the election 2016-2018 and allow him to contest election for the said post;
- d) Restrain the Election Committee from printing the final list of contestants, ballot papers and/or holding elections for the election 2016-2018 unless the plaintiff is included therein and allowed to contest elections for the post of the President;
- e) Grant cost of the Suit;
- f) Pass such further order as may be just and proper;

3. Case of the respondent No.1/plaintiff is that he is an active pilot; filed nomination Form for the post of President of PALPA but the same was rejected by the Election Committee vide Order dated 28.12.2015. He preferred appeal but same was declined, hence, he filed review application, same was also not entertained. Thus, present case.

4. The appellant/defendant filed his written statement denying the case and claim of the respondent No.1 by stating that the respondent No.1 is going to retire on 31.12.2017, therefore, his case

does not fall within the ambit of the Constitution of Pakistan Airline Pilots' Association, therefore, respondent No.1 is not entitled for any relief.

5. It is pertinent to mention here that on 07.01.2016, the learned Single Judge after hearing the parties Advocates and on the basis of pleadings of the parties, framed the following issues with detailed order, which reads as under:-

“It appears that the matter involves election dispute of PALPA body consisting of office bearers and executive members. Mr. Lakhani submits that the election of the present is different from that of the executive members as a complete tenure ought to be available for member contesting the election of a president/office bearer. Such position is vehemently controverted by Mr. Jamali. His contention is that there is no such embargo in the byelaws/constitution of the registered body, as available on record. Be that as it may, since there is urgency in the matter as the election schedule has been issued, counsel agree that the process of election shall be withheld until disposal of the injunction application. However, both the learned counsel agree that since short controversy/law point arising out of the constitution/byelaws is involved, a legal issue may be framed for final disposal of the suit. Mr. Jamali submits that he would not press any other relief including the malice against some of the officials including the Chairman. Accordingly, by consent the injunction application shall be disposed of alongwith main suit and following issues are framed:-

1. Whether the plaintiff is entitled to contest the election of president under the byelaws/constitution of PALPA as he is reaching the age of superannuation on 31.12.2017 and that non-availability of complete tenure of two years is not an impediment?
2. What should the decree be?

6. It appears from the record that the learned Single Judge after hearing the parties and after going through the record passed the impugned Judgment and Decree in favour of respondent No.1, which have been assailed through this appeal.

7. It is contended by the learned counsel for the appellant that the impugned Judgment and Decree passed by the learned Single Judge of this Court are against the facts and law and he has not appreciated the pleadings of the parties and documents on record, therefore, the same may be set-aside. He further contended that the post of the President of PALPA can be filled through Election, those who are only active pilots and also the member of appellant. It is also contended that the respondent No.1 is going to retire on 31.12.2017 on his superannuation, hence, if he would be allowed to contest the Election, in case of returned candidate, he could not be completed his tenure. Therefore, according to him, the case of the respondent No.1 does not fall within the ambit of Byelaws/Constitution of Pakistan Airline Pilots' Association; that the order of the appellate committee is legal and maintainable, no bias or prejudice was caused to respondent No.1. During the course of argument, learned counsel for the appellant has also reiterated the same facts and grounds, which he has urged in the memo of appeal, however, in support of his argument, he cited the Judgment of *"the Court of Appeals Sixth Appellate District of Texas at Texarkana and The Yale Law Journal, Volume 70, July 1961 on Judicial Regulation of Union Elections"*, and was of the view that suit filed by the respondent No.1 was not maintainable and no relief could be granted in favor of respondent No.1 through the instant proceedings.

8. On the other hand, learned counsel for respondent No.1 has supported the impugned Judgment and Decree passed by the learned Single Judge and contended that the same have been passed in accordance with law. It is argued that respondent No.1 filed civil suit in relation to dispute of Election of registered body called PALPA.

Learned counsel submits that he has filed nomination papers for contesting Elections of PALPA which contest was declined by the Election Committee of PALPA vide Order dated 21.12.2015, in terms whereof on account of shortage of a period in respect of tenure of the office, the nomination papers were declined and so also the review application. The decision was taken by the majority of the committee constituted thereunder and in view of non-availability of two years tenure such right was denied. Learned counsel submits that PALPA is association of serving and retired pilots and this does not matter if the contesting person is retired or serving pilot for the post of President as distinguished for the post of Member of Executive Committee. Learned counsel also relied upon the observation made by Provincial Assistant Registrar, Joint Stock Companies Sindh with whom the PALPA is registered wherein they have clarified that the membership of the association relates to serving and retired servants of Pakistan International Airline Pilots' Association. Learned counsel further submits that respondent No.1 is due to retire on 01.01.2018 and would be short of few days as alleged by appellant to fulfill the tenure of the office of President and on this, his nomination papers were declined. Learned counsel has relied upon Clause 3.1.1.6 of Constitution of PALPA, which provides a remedy for a situation where office of President falls vacant on any account, hence, respondent No.1 cannot be ousted to contest election for the President of PALPA and the interpretation is not acceptable. During the course of his argument, he draws our attention to various clauses of the Byelaws/Constitution of PALPA and contended that under the facts and circumstances, the respondent No.1 cannot be deprived for contesting the said Election. Lastly, he argued that

appellant filed instant appeal just to deprive the respondent No.1 to contest the Election as President of PALPA, although the respondent No.1 has fulfilled all the legal requirements to contest the Election as President of PALPA.

9. We have heard learned counsel for the parties at a considerable length and perused the record.

10. It is an admitted position that the respondent No.1 filed his nomination papers to contest Election for the post of President of PALPA in respect of Election 2016-2018 with Election Committee but the same was rejected. Respondent No.1 preferred appeal but same was declined, hence, he filed review application, same was also not entertained. It is argued by learned counsel for the respondent No.1 that order passed by Election Committee and subsequent orders were *ab-initio void*; mandatory requirements to contest Election is active pilot, admittedly, respondent No.1 is active pilot within the meaning of Articles and Constitution of PALPA. Appellant has not disputed that the respondent No.1 is active pilot. However, it is the case of the appellant that the post of the President of PALPA is for two years and the respondent No.1 is going to retire on 31.12.2017 and that non-availability of complete tenure of two years is an impediment.

11. Before proceeding further, we feel it necessary to make it clear that to exercise right "to contest Election" is a fundamental right, which is subject to only one condition i.e. "qualification per prescribed relevant and applicable laws". In this matter, since the issue involves qualification for President of PALPA, hence, reference

to Rule 6.1.3.1 of Article-I Chapter-VI, being relevant is referred as under:-

“Any Member pilot, who wishes to contest Election for a particular post of the Executive Committee shall be required to submit the duly completed relevant proposal Form (Serving/retired or permanently grounded Pilot) to the Association within fifteen (15) days of the publication of the proposal Form and obtain the receipt thereof.....**The Active Pilots shall vote only for the Active Pilots** contesting for the Executive Committee; and Retired/permanently Medically Grounded Pilots shall vote only for Retired/permanently Medically Grounded Pilots, who are contesting for the post of two Retired/permanently Medically Grounded Pilots as Executive Committee Members.”

From the above provision, it appears that the “qualification” is one i.e. Member must be “active pilot” at the time of filing of nomination papers which undisputedly the respondent No.1 is. This status of the respondent No.1 is not denied even while declining the right of respondent No.1 to contest Election but rejection of the nomination papers was entirely based with reference to date of retirement of the respondent No.1, which is evident from the operative part dated 28.12.2015 passed by Election Committee.

12. We have gone through the various clauses of the Byelaws/Constitution of PALPA with the assistance of learned counsel for the parties but did not find any express embargo under the Constitution that an active pilot having less period of outstanding service cannot contest Election, however, there was a maximum term of period of electoral office i.e. two years is provided but there is no mandatory minimum term is mentioned in the Constitution of PALPA. During the course of arguments, we had specifically asked the question from the learned counsel for the appellant whether there is any provision contrary to the above position of law, no satisfactory answer available with him.

13. We have also gone through Clause 3.1.1.6 of the Constitution of PALPA for the sake of convenience, it would be relevant to reproduce the said clause, which reads as under:-

“The Executive Committee shall have the powers to fill casual vacancies in the Committee by Co-opting members. Such members shall hold office till the next Annual General Body Meeting. If the position of President or General Secretary falls vacant the Executive Committee will call for election for the vacant post. The Election will be held within 80 days from the date the position has fallen vacant, provided the next scheduled elections are to be held within 120 days from the date the position fell vacant. In which case the existing principal Office Bearers and Executive Committee Members shall elect from within themselves a person to serve on the vacant position for the remaining of the tenure.”

The above clause provides that if during terms of office the position of President falls vacant then Election will be called within 80 days except where the date of next Election is less than 120 days in which case someone from the current Office Bearers will be elected as President.

14. Furthermore, the Clause 3.1.1.6.A of the Constitution of PALPA explains terms “falls vacant” includes retirement as one of the modes of the position falling vacant. Subsequently, second paragraph of Clause 6.1.4.2.5.2 uses the words “coming years” and not the words “next tenure”, when it casts a duty on members of PALPA to appoint Office Bearers. This means that the period of service can even be less than the maximum period of two years.

15. It is settled position of law that when a thing is to be done in a particular manner it must be done in that way and not otherwise. In this respect we are fortified with case of Tehsil Nazim TMA, Okara vs. Abbas Ali & 2 others reported in 2010 SCMR 1437 but the case in hand and as observed above, Election Committee has not acted in

accordance with the Byelaws/Constitution of PALPA while rejecting the nomination papers of respondent No.1. Admittedly, the appellant has its own Byelaws/Constitution to deal the situation in all circumstances as such the Election Committee was bound to follow the Byelaws/Constitution and departure therefrom, would amount to exercise of power in an arbitrary and unregulated manner defeating the very purpose for which Byelaws/Constitution were framed. Nobody can be allowed to contravene, flout or violate the Byelaws/Constitution in any manner. Rule of law requires that every person in execution of law should follow strictly the law as laid down and should not exceed the limit of law for any reason whatsoever. But here in this case, the case of the respondent No.1 has not been treated in accordance with Byelaws/Constitution; therefore, the decision of the Election Committee is not sustainable in law.

16. From the perusal of the above cited Clauses of the Constitution of PALPA, pleadings of the parties and documents on record, there left no ambiguity that the respondent No.1 is entitled to contest the Election for the post of President of PALPA for the year 2016-2018. As observed above, the respondent No.1 is reaching the age of superannuation on 31.12.2017 and if he contest Election and in case of returned candidate, he shall leave the post of the President of PALPA upon attaining the age of superannuation and Election Committee shall call for Election for the vacant post as per law.

17. In view of the above, the submissions of the learned counsel for the appellant as well as case law cited by him have no force under prevailing facts and circumstances of the case.

18. Keeping in view hereinabove facts, we are of the view that the appellant has not been able to point out any illegality or error in impugned Judgment, which require no interference by this Court. Accordingly, the instant appeal being devoid of any merit is hereby dismissed with the result that pending CMAs have become infructuous and are also disposed of.

19. The above are the reasons for the short order announced by us on 13.04.2016, whereby this appeal was dismissed and the listed CMAs were also disposed of having become infructuous.

JUDGE

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