

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-2353 of 2014

Pakistan Airline Pilots Association and others

vs.

Pakistan International Airline Corporation and another

**Before: Mr. Justice Muhammad Ali Mazhar
Mr. Justice Zulfiqar Ahmad Khan**

Date of Hearing : 29.08.2016.
Petitioners : Through M/s. Anwar Mansoor Khan,
Umamah Anwar and Reem Tashfeen Niaz,
Advocates
Respondents : Through Mr. Khalid Javed, Advocate
Mr. Shaikh Liaquat Hussain, Standing Counsel

JUDGMENT

Zulfiqar Ahmad Khan, J.:- Through the instant petition, a number of retired pilots, who once served Pakistan International Airline Corporation (“PIAC”), have challenged the current method of the calculation of their pension and have prayed that the said calculation should, retrospectively from 01.01.2003, be pursuant to the methodology detailed in the Trust Deed dated 12.02.1980 (“the said deed”) which created PIA PALPA FENA Pension Fund (“the fund”).

Taking us through the various provisions of the said deed, the learned counsel for the Petitioners submitted that through the said deed, the above referred fund was created and it was decided that w.e.f. 01.07.1977, “the Pilots Pension Fund established on 29.06.1965” and “the Flight Engineers Navigators Pension Fund established on 01.06.1965” were amalgamated to form the above referred PALPA FENA Fund. In terms of the said deed, the trustees at the request of the PIAC agreed to act as trustees of the said fund in accordance with the said deed and the rules made in connection therewith, with the objective to administer the said fund including making of investments for the benefit of the trust. Through

Article 3(e) of the said deed, a pensioner was defined to mean *a retired employee or a dependent of a retired or deceased employee, who has received or is entitled to receive the pension*. Through Article 4(b), it was agreed that the said fund be established irrevocably and that PIAC shall have no beneficial interest in the said fund. Under Article 4(c), objectives of the said fund were prescribed, which included *providing annuities or pensions for employees in the trade or undertaking upon their requirements or upon attaining specified age or upon their becoming incapacitated prior to such retirement or for the widows, children or dependents of such persons*. Through Article 5, a mechanism has been laid down with regards the contribution to be made by PIA into the fund. The said clause provides that PIA shall from time to time pay such contributions to the said fund as are specified by the actuary provided, however, such contributions are restricted not to exceed 25% of the annual salary of the *member* (which term was defined to mean any employee or pensioner, who were eligible to receive the benefit from the fund according to trust). Article 5(c) empowers the Actuary (alone) to investigate and report upon actuarial position of the funds and to certify the contribution paid by the Corporation (i.e. PIAC) to the funds once every three years at least. Through Article 15, while a mechanism for revocation or modification of the trust is provided for, however, the said clause restricts such modifications (etc.) not to alter the main pension purpose of the scheme constituted by the said trust, however, any amendment in the rules is required only to be made with the consent of the beneficiaries of the fund and with the prior approval of the Commissioner of Income Tax. In terms of Article 16, circumstances in which the scheme envisaged by the said trust could be revoked are laid down, in which circumstances, the deed provides that from the date of such closure, the trustees shall be provisioned out of the funds for the full payment of pension with effect from the closure date.

Through internal rules, method of calculation of member's pension is provided. Under rule 9, pension is payable at the monthly rate of $1/60^{\text{th}}$ X a total of last basic salary, minimum guaranteed flying allowance, qualifications pay and adhoc relief X total number of years pensionable service subject to a maximum of 50% as pension. Under rule 8(2) for gratuity and commutation thereof is also provided for.

Summarizing the purpose and intent of the trust and internal rules made thereunder, the learned counsel for the Petitioner submitted that the trust also intended to provide complete scope of the trustee's powers and the mechanism to administer the trust. Per counsel, the trust deed and the fund are irrevocable for the benefit of the pilots and flight engineers of PIAC and in no way, the Respondent No.1 itself could make any beneficial use of those funds, and the only role that PIAC has is to make contributions in the trust fund, as per the recommendation and certification of the actuary with the limitation that such contribution not to exceed 25% of the annual income of the beneficiary. Once such contributions were made into the fund as per the formula prescribed under the rules, pension was to be calculated at that rate provided therein. The counsel also submitted that to show transparency, the trustees were to prepare statement of account and balance sheet of the fund every year, which was required to be audited by the duly appointed auditors. The very intent of the learned counsel through the said submission was that there was no possibility that PIAC could withdraw any sums out of the fund for its own benefit and there was no mechanism that such trust could have been altered for the benefits of the PIAC, thus ensuring that the pension payable under the trust rules not be reduced in any circumstances. The counsel further submitted that rules (deemed to have been formed on 01.07.1977) were changed by PIAC, however, the method of calculation of pension should have remained unchanged, which according to rule 9(i) was duly provided for, wherein the pension amount was dependent on the

last drawn salary and other allowances payable to the beneficiary. The counsel contended that this mode of calculation was binding on the parties and was to be adhered to.

The learned counsel further submitted that mismanagement in the system erupted after the imposition of the Provisional Constitutional order in 1999 in terms of which the Petitioner No.1 and 2 were suspended and barred them from collective activity of any kind including redress of grievances through a Court of law. Per counsel in the year 2003, the Respondent No.1, without any approval of the Income Tax authorities or the beneficiaries, illegally, arbitrarily, without lawful authority, passed an Admin Order No.34/2003 through which the pension was altered to be calculated from the amount of pensionable elements of salary as frozen on 31.12.2002 resulting in the pension components to become stagnant as compared to being variable due to the component of last drawn salary. Prior to the passing of this order, per counsel, the pension was calculated on the last drawn basic salary plus the other three allowance (being: (a) Guaranteed Flying allowance, (b) Ad hoc relief and (c) Qualification pay) resultantly any increase in any components of the salary would result in an increase in the pension contribution made by the Respondent No.1. But via the Admin Order 34/2003, the increments were frozen as those existing on 31.12.2002. The counsel alleged that the Admin Order is detrimental to the beneficiaries (which include the petitioners) as it is in violation of the trust deed. In addition, per counsel, this illegality, even if an amendment to the internal rules for calculating the pension was to be introduced, it had to remain within the permitted parameters as prescribed by the trust deed alone and had to have acquired consent of the beneficiaries and the approval of CBR. Counsel stated that the above act has clearly breached Articles 4, 5 and 15 of the trust deed and the said decision of introducing and implementing the Admin Order having not been taken by the trustees, is without any legal authority, and being arbitrarily and illegal. Moreover,

the counsel submitted that through the instant Admin Order, the Respondent No.1 in fact made the pensionable components stagnant w.e.f. 31.12.2002 making the application of the Admin Order having a retrospective effect.

The learned counsel additionally submitted that the Respondent No.1 announced a revision of pension; initiating a change in gross pension for the pensioners with effect from 01.03.2003. This new admin order No.21/2003 was issued five days after the earlier order No.34/2003, however, it was again in violation of the trust deed as it was passed (by the Respondent No.1) without lawful authority as it also did not adhere to the pension formula prescribed in the rules. However, in the said new admin order, it was mentioned that any forthcoming changes in pension shall be linked with the salary revision of serving employees.

Per counsel on 03.03.2004, a new admin Order No.8/2004 was issued whereby the Respondent No.1 decided to calculate the pension benefits on the redefined pensionable components of the emoluments. Through the said order, the percentage of the pensionable components of emoluments, per counsel, was revised arbitrarily again.

The learned counsel also submitted that Respondent No.2 was run by the Respondent No.1, without any trustees, actuary or any audit performed, though all of these requirements were mandatory in the functioning of the Respondent No.2, none were complied with. Per counsel, as a result of the whimsical and the arbitrary changes, the pension was being paid on the basis of the emoluments which were payable before the admin order No.34 of 2003 and not from the date of retirement which led to discrimination by the respondent No.1 towards pilots retiring on or prior to 31.12.2002 receiving a higher pension than the beneficiaries who retired thereafter.

Per counsel when letters were written to Respondents No.1 & 2, inquiring about the information regarding trustees, actuary, bank accounts, funds maintained and annual interest accrued on the funds, amount of contributions by the Respondent No.1, the annual returns and other information about the Respondents No.2, no reply was received. Per counsel, after long delays the Respondent No.1 circulated a "Personnel Policies Manual" dated 15.09.2008, which is an amalgamation of all the policies of the Respondent No.1 wherein chapter 18 relates to pension. This manual clearly points out that there are Admin Orders/Circulars that are being followed for the purposes of calculation of pension and other ancillary decisions however there is no mention of the advice of the actuary or any consensus of the trustees. The counsel maintained that the Admin Orders and Circular which are being followed have been made without due authority for the benefit of the Respondent No.1.

To conclude the foregoing, the learned counsel submitted that the trust deed demanded that contributions are made into the Respondent No.2 by the Respondent No.1 at rates proportionate to the earnings of the employee or otherwise through the Actuary's certification, which is not adhered to and all the admin orders which were issued in connection with the pension scheme are in fact ultra vires of the said deed. Moreover, the since the deed had provided a method through which alteration to the pension scheme or to the trust deed could be made, all admin orders are illegal. The learned counsel also submitted that since trust deed was not implemented by PIAC, these violations also give rise to infringement of petitioners' rights as provided in the Trusts Act, 1882.

The counsel feared that the Respondent No.1 seems to have some vested interest in the Respondent No.2, therefore, no information regarding the functioning of the trust is disclosed. Neither is there any audit report available nor there is any record of meetings convened for

running the Respondent No.2 besides, there is no information as to who the trustees and the actuary.

To conclude, the learned counsel submitted that recently it has been reported in the newspaper that the Respondent No.1 is being privatized. Upon being privatized, per counsel, this unresolved matter will be left to the dictates of another owner and will cause further delay. The learned counsel referred to the following list of precedents in support of his assertions:

1. Muhammad Abbasi *vs.* SHO Bhara Kahu & others (PLD 2010 SC 969)
2. Muslimabad Cooperative Housing Society Ltd *vs.* Mrs. Siddiqa Faiz (PLD 2008 SC 135)
3. Dr. Sher Afgan Khan Niazi *vs.* Ali S. Habib & others (2011 SCMR 1813)
4. Dr. Akhtar Hassan Khan & others *vs.* FOP & others (2012 SCMR 455)
5. Nizamuddin & another *vs.* CAA & others (1999 SCMR 467)
6. Muhammad Aslam *vs.* Senior Member (Colonies), Board of Revenue, Punjab & others (2004 SCMR 1587)
7. Khalid Mehmood *vs.* Collector of Customs, Customs House, Lahore (1999 SCMR 1881)
8. Chairman, Central Board of Revenue, Islamabad & others *vs.* M/s. Pak-Saudi Fertilizer Ltd. & another (2001 SCMR 777)
9. Tehsil Municipal Administration (T.M.A), Mandi Bahauddin through Tehsil Nazim *vs.* Evacuee Trust Property Board Punjab, Lahore through Chairman & others (2004 YLR 1969 Lah.); and

10. Mst. Razia Sultana & others vs. Chairman, Evacuee Trust Property Board, Lahore & others (2002 CLC 1257 Pesh.)

Starting his line of arguments, learned counsel for the Respondent No.1 submitted that PIAC Employees (Service and Discipline) Regulations, 1985 are not statutory rules of service and as such the relationship between the petitioners and answering Respondent No.1 PIAC is that of Master and Servant hence the instant constitutional petition under Article 199 of the Constitution, 1973 is not maintainable in law as held in various cases of PIAC decided by Hon'ble Supreme Court and by the High Courts.

The learned counsel submitted that the petitioners were retired from service of PIAC in normal course on attaining the age of superannuation several years ago and asserted that the petitioners have accepted their service and pensionary benefits at the time of their retirement without any objection, whereas the instant petition has been filed after several years of retirement of petitioners, thus there are inordinate delay of several years in filing the above petition for which no plausible explanation has been assigned, hence the petition also suffers from laches.

The learned counsel took us to the Martial Law Regulation No.52 and the Chief Executive Order No.6/2001 to submit that the trust does not exist anymore since under the said MLR, all associations and unions in the Respondent No.1 (PIAC) were declared defunct and agreements made with them stood terminated. New internal service rules for cockpit crew were issued by the PIAC subsequently which contained pension schemes as well and according to these new internal rules, certain benefits were substituted. Further, per counsel, title of PIAC, PALPA and FENA Pension Fund was also changed and it was converted into "PIAC Cockpit Crew

Pension Fund”. Resultantly the subject fund is no more in existence as the same has been superseded by the PIAC Pension Fund Rules.

The learned counsel took us to the full text of the Martial Law Regulation No.52, where in terms of paragraph 7(1) any existing agreement entered into between the corporation and any employee of the corporation or any class, union, association or organization of such employee stood terminated and were held not to form basis for a fresh agreement on the resumption of activities of PIAC. The learned counsel also submitted that the Chief Executive Order No.6/2001 provided that settlement or award being in force between PIAC and its unions, associations, organizations or groups (of any type) were suspended and ceased to function as of 5.07.2001. The said CEO’s Order No.6/2001, per counsel, remained operative until the same has been repealed vide Act No.II of 2008 dated 30th August, 2008. In the said repealing Act, per counsel, it was provided that the Trade Unions, Associations, Organizations or Groups of any type of employees also remained suspended unless the same were registered afresh in accordance with law, which exercise was not carried by the trustees in respect of the trust.

The learned counsel also raised the following grounds:

1. Pilots get the highest pension as admissible in Respondent PIAC. The pension of all other categories of PIAC employees is less than the pension of pilots.
2. Article 1.3 of PALPA Working Agreement (relevant pages 669-671 of memo of petition) provided that the rules in the admin orders of the Respondent PIAC shall be applicable on all the pilots and that no amendment in the existing rules can be made to disadvantage of existing rules of pilots. At the time of execution of the relevant agreement, the pension of the pilots of Cockpit Crew was governed by the admin order No.08 of 2004

and PIAC has not made any change in the above admin order to the disadvantage of the rights of pilots.

3. The rumor regarding privatization of Respondent was also specifically denied. The learned counsel submitted that the petitioners have already acquiesced to the present pension scheme circulated vide admin order No.08 of 2004 and that the petitioners have put forward a case of increase of pension under the garb of changes in the pension formula, which has no constitutional merits and if there is a claim, it ought to be agitated in a civil suit.
4. The petitioners have raised numerous controversial facts which cannot be decided in writ jurisdiction as adjudication thereof requires evidence to be lead, which is beyond the scope of writ jurisdiction.

Heard the counsel and perused the records. To us, the matter which has been ballooned by the rival parties, appears to be quite simple. The petitioners are relying on the trust deed and rules made thereunder for the calculation of their pension amount (and seeking details of the funds invested and contributions made into the said trust fund by the Respondent No.1) and the Respondents are relying on MLR - 52 in terms of which that said trust was 'terminated' and they subsequently alerted their formulae of calculation of pensionary benefits and thereafter pension has been calculated as per the new admin orders issued from time to time.

We will start adjudicating the instant matter from the arguments of the learned counsel for the Respondents as to the very maintainability of the instant petition specifically on the basis of master and servant relationship between the parties, and in particular, in the light of the various judgments of the Hon'able Supreme Court on the same issue. In our view, there is no cavil to the fact that these assertions as to master-servant relationship denying the very maintainability of the instant

petition appear to be have exponential persuasive value. In this regard, judgments cited by the learned counsel for the respondent are discussed hereunder:

1. Pakistan International Airline Corporation and others *vs.*
Tanweer-ur-Rehman & others (PLD 2010 SC 676)

In the instant case the question before the Hon'ble apex Court was whether the constitutional petition against PIAC (being a corporation) having no statutory rules would be maintainable in cases of disputes regarding the terms and conditions of employment considering the fact that PIAC was not performing any function in connection with the affairs of the Federation. The Hon'ble apex Court in the instant matter was considering Civil Appeal Nos. 172-K to 175-K of 2009, amongst which in Civil Appeal No.172-K to 174-K of 2009 the appellants joined the PIAC as flight officers on 30.10.2003 on contract basis for an initial term of 5 years (extendable depending on the sole requirement of PIAC), however, when these officers were superseded by some officers junior to them and sent flying Boing-737, they approached the High Court by filing constitutional petition challenged the said act of the respondent regarding the petitioners' promotion and seniority. PIAC raised objections on maintainability of the instant petitions, however, the High Court upheld the maintainability, but dismissed the petitions on merit.

In the case of Civil Appeal No.175-K/2009, which relates to an Airhostess who was a permanent employee as of 14.05.1992, but after her resignation, was reappointed on a contract for one year w.e.f. 02.07.1995 within indication that if her services remain satisfactory, she would be permanently absorbed. When the latter promise was not fulfilled she filed a writ petition before the High Court of Sindh at Karachi, wherein the Court ordered that an opportunity of hearing be provided to the

respondent for consideration of her case of regularization; whereupon the PIAC filed the appeal before the Hon'ble Supreme Court.

In the third type of cases bearing No.177-K to 182-K of 2009, the high officials of PIAC before they attained the age of superannuation, were compulsorily retired from service. The employees assailed the order before the Federal Services Tribunal, which abated the matter in view of the judgment passed in Muhammad Mubeen-us-Salam case (PLD 2006 SC 602) and they reached the High Court of Sindh at Karachi under Article 199 of the Constitution, whereupon the High Court while overruling the objections of PIAC regarding the maintainability of the petition, dismissed the same on account of time limit prescribed under Muhammad Mubeen-us-Salam case. Whereupon both PIAC and the employees assailed the order in appeals before the Hon'ble apex Court.

Through a very detailed judgment taking account of the origination of PIAC as of 23.10.1946, the complete legislative history of the Pakistan International Airlines Corporation Act, 1956 has been considered by the Hon'ble Apex Court while giving due consideration to the meaning of "effective control" of the Government on PIAC, reached to the conclusion that while PIAC is performing functions in connection with the affairs of the Federation, but since the services of the employees were governed by a contract governed under the principle of master and servant, thereby constitutional petitions were not permissible and the remedy lies through institution of a civil suit.

2. Pakistan Defence Officers' Housing Authority vs. Jawaaid Ahmed (2013 SCMR 1707)

In this landmark judgment, while dilating upon the service issues of employees belonging to a number of institutions (including PIAC in C.A. No. 228-K of 2010) invoked constitutional jurisdictions of various High Courts by means of writ petitions, the Apex Court on page 1742 in paragraph 50 summarized the principles of law emanating from a number of precedent case-laws placed before the Court and, inter alia, held that *“(ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under Statutes but only Rules or Instructions issued for its internal use, any violations thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principles of ‘Master and Servant’”*.

3. Syed Nazir Gillani vs. Pakistan Red Crescent Society and another (2014 SCMR 982)

In this revision petition, Apex Court, while referring to the above referred Pakistan Defence Officers' Housing Authority case reaffirmed findings given in paragraph 50(ii) that employees of organizations which have non-statutory rules are to be governed by master-servant relationship and writ petitions filed by them are not maintainable.

4. PIA Corporation *vs.* Syed Suleman Alam Rizvi & others (2015 SCMR 1545)

In the instant case, the petitioners were retired employees of PIAC, who filed a constitutional petition before the High Court of Sindh in relation encashment of accumulated leave and leftover increments etc. In the instant case the petitioners were retired on 31.10.1997 under a Mandatory Early Retirement Scheme viz. Administrative Order No.15 of 1997 and pleaded unfair treatment, because other 238 employees of PIAC, who were also affected by the said administrative order filed an appeal before the Federal Service Tribunal for the above benefits and the Tribunal on 28.02.2004 directed the PIAC to pay the appellants, which decision was not challenged by PIAC. However, upon such failure of implementation, when these 238 employees approached the Tribunal again, the Tribunal directed the Corporation to implement the judgment and pay the dues. PIAC, however, challenged the said order of the Service Tribunal before the Hon'ble apex Court where in a detailed order dated 17.06.2009, the Hon'ble apex Court was pleased to dismiss the same with direction "to accept the benefit of increment and implement for PL/LPR within a period of one month", but when the 14 respondents filed their cases before the Tribunal, it was abated on the grounds of Muhammad Mubeen-us-Salam (*supra*) order, whereupon the said respondents filed constitutional petitions before the High Court of Sindh. The Hon'ble apex Court held that since there is a master servant relationship between the employees of the Corporation, constitutional petition does not lie leaving no option to the petitioners except to file a suit for redressal of their grievances.

5. Unreported judgment in the case of Civil Appeal No.276-K/2013 (Pakistan International Airline Corporation (PIAC) *vs.* Aziz-ur-Rehman Chaudhry & another)

In this case under MLR - 52 the services of the respondent No.1 alongwith 300 other employees were dispensed with on 27.08.1981, however, upon review of the cases of these affectees, the Review Board constituted by the Government of Pakistan, these affectees were reemployed under new terms and conditions contained in these fresh appointment letters. The case of the respondent No.1 was that he continued to serve PIAC and upon reaching the age of superannuation retired from the Corporation on 23.03.2003 and was paid his pension and other retirement benefits as per his entitlement. However, being aggrieved that he was not treated by PIAC at par with certain other affectees of MLR - 52, where those employees were reemployed with back benefits, the respondent No.1 sought the identical treatment. The Hon'ble apex Court under these circumstances held that since the respondent No.1 accepted his reemployment on fresh terms and conditions as contained in the appointment letter dated 10.04.1990 and continued to serve PIAC as such until reaching his age of superannuation, and received all the retirement benefits, the petition filed by him after 19 years calling in question his reemployment in the terms of conditions clearly suffered from laches and thus his claim for back benefits is hit by the doctrine of past and close transaction, and claim of other affectees already been rejected by the Hon'ble apex Court vide order dated 13.05.2002 including that of the respondent No.2 (who did not disclose this fact in the fresh appeal) was hit by the principle of res judicata.

6. CPLA No.404-K/2015 (*Aziz-ur-Rehman Chaudhry vs. Pakistan International Airlines Corporation*)

The petitioner, in the instant case was an employee of PIAC, contended that he was a Civil Servant and his constitutional petition was wrongly dismissed by the High Court on account of maintainability. He contended that in the constitutional petition he sought implementation of Circular No. 21 of 2003 inasmuch as increase in pension was to be linked to the salary revision and his pension be increased accordingly and arrears be paid to him. This contention was vehemently challenged making reliance on the judgment passed in the above referred cases and on Articles 3 & 4 of PIAC (Suspension of Trade Unions and Existing Agreements) Order 2001, the Hon'ble apex Court consented with the view that the constitutional petitions filed by the petitioners before the High Court were not maintainable as the relationship between the parties has governed through the doctrine of Master-Servant.

In the light of the above clear and affirmed findings specifically in the case of PIAC itself that employees of the corporation are in a master-servant relationship therefore their grievances could only be adjudicated through a civil suit, the instant constitutional petition cannot be maintained.

Now we revert to the contention of the learned counsel for the Respondent that the Martial Law Regulation No.52, where in terms of paragraph 7(1) terminated the trust. For the sake of relevancy, we once again reproduce the said paragraph which provides "any existing agreement entered into between the Corporation and any employee of the Corporation or any class, union, association or organization of such employee stood terminated.." In relation thereto, we find it useful to

examine the definition of “Trust” under Trust Act, 1882, where section 3 describes a trust to mean *an obligation annexed to the ownership of the property*. Black’s Law Dictionary, 6th Edition defines “Trust” to mean *a legal entity created by a grantor for the benefit of designated beneficiary*” and to mean *“the fiduciary relationship, in which one person is holder of title of the property subject to an equitable obligation to keep or use property for the benefit of another*. On the other hand, the term “Agreement” which defined by the same Dictionary means *“a meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition”*. The above definitions make a clear distinction that an agreement is merely an understanding between two parties and an agreement *per se* never becomes a juristic person, whereas a trust, upon signing become a juristic person and acquires individuality to the extent that it could sue and be sued like a company, whereas an agreement never acquires such individuality and always remains dependent on the parties to seek legal remedies against each other. It however seems that the petitioners have no information at their hands that trust was in fact executed and the fund was created and a certain portion of member’s salaries were withheld by PIAC and deposited in the trust fund. These questions however requires evidence, thus cannot be answered in writ jurisdiction.

With regards the prayer of the petitioners about execution of trust through the instant petition, we wish to make reference to the provisions of section 59 of the Trust Act 1882, which are reproduced in the following:

“Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee”.

As it could be examined from a reading of the above reproduced text, in cases where no trustees are appointed (which is the case in hand) and where a trust is not executed (which is the main grievance of the petitioners), the appropriate remedy available to the beneficiaries is to institute a suit for the execution of the trust; meaning thereby constitutional writ of a court is not the appropriate forum to agitate such grievances. At the same token, when we pay attention to prayer (iv) of the petition in terms of which a declaration is sought from this Court in respect of Admin Order 8/2004 *and all other admin orders*, such type of vague declaration for un-specified admin orders is also not possible *via* the instant constitutional petition. Also as rightly pointed by the learned counsel for the respondent that the issue in hand is not about payment of pension (which is regularly paid to the petitioners), it is rather about payment of continuously enhancing (dynamic) pension through the formulae provided under the internal trust rules, which once again involves consideration of controversial questions of fact and taking of evidence, that can only be done by a civil court in a civil suit.

Before we conclude, we wish to mention that amongst the list of precedent case laws cited by the learned counsel for the petitioners, no assistance was forthcoming as none of these precedents related to PIAC, for which the Hon'ble Supreme Court has very specifically affirmed over half a dozen times that in respect employees of PIAC, writ petitions are not maintainable as their relationship is governed by the principle of Master and Servant.

In the light of above reasons and on the well settled legal position, we are of the considered view that the petitioners' grievances cannot be addressed and effectively remedied in a constitutional petition on want of master-servant relationship between the rival parties and on account of the evidence that need to be examined to give just and proper finding as to

the execution of the trust, therefore the instant constitution petition is dismissed, however, the petitioners may file civil suit for the redressal of their grievances before the appropriate forum, which may, keeping in view that the matter has been inordinately delayed, and the petitioners are of advance ages, be disposed of as expeditiously as possible.

Karachi: 23 September 2016

Judge

Judge