

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-2811 of 2013

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Captain Saifuddin Petitioner

Versus

Pakistan International Airlines Corporation
and others ... Respondents

Date of hearing 03.04.2018

Mr. M.M. Aqil Awan, Advocate for the Petitioner.
Mr. Kafeel Ahmed Abbasi Advocate for Respondents No. 1 to 4.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The Petitioner has sought the following relief(s):-

- i. That the impugned order of dismissal from service dated 03.01.2007, may kindly be set-aside and Petitioner be reinstated in service in his capacity as Captain of A-300 Aircraft, with all consequential benefits and thereafter be retired from service as Captain of A-300, Aircraft with all consequential benefits w.e.f. date of superannuation 14.06.2012.***
- ii. That Respondent be directed to pay the salary of the petitioner w.e.f. September 2005 till the date of dismissal i.e. 03.01.2007.***

02. Brief facts of the case as averred by the Petitioner are that the Petitioner was initially appointed as Cadet Pilot in the Pakistan International Airlines Corporation (PIAC) on 11.02.1976. Petitioner was promoted from Fokker Aircraft to the /Command of Air Bus

(A-300). The Respondent-PIAC circulated a letter No. 22/97 dated 12.12.1997 introducing the scheme of leave without pay/self-arranged secondment in other airlines for its pilots and subsequently the Petitioner adopted the same and left the Pakistan Airlines and joined the Saudi Airlines. Thereafter, the Petitioner returned and applied for reinstatement of his service in the Pakistan Airlines vide letter dated 27.01.1999, which was accepted on 04.02.2000 and the Petitioner was re-employed on 23.02.2000 as per the terms and conditions mentioned in the letter/M-21. Relevant Portion of M-21 is reproduced herein below for the reference:-

“It is, thereafter, recommended that he may be re-employed as A-300 Captain but with loss of seniority by 23 places. He will be placed below Captain Naveed Aziz, P-35214 and above Capt. Mumtazul Haq P-35216.”

After approval of the above referred M-21, which contained inter-alia the fixation of pay/ allowances and the seniority and flying allowances admissible as Captain of A-300 but contrary to the above referred approval by the management regarding the appointment, the Chief Pilot disturbed the pay fixation, which was challenged by the Petitioner vide Service Appeal No. 1032®CS/2001 before the learned Federal Service Tribunal, but during the pendency of the above mentioned Appeal, the Pakistan Airline Corporation withdrew the order of fixation of pay/allowances vide order dated 26.09.2001. However, the Petitioner again approached the Federal Service Tribunal (FST) vide Service Appeal No. 1284(R)CS/2003, which was disposed of vide judgment dated 31.01.2005 with the following observation:-

“6. We are of the view that no definite order has been passed on Minute-21 by the Managing Director to-date. It means that Minute-21 has not been approved by the Managing Director as year. We accordingly direct that this Minute shall be placed before the Managing Director of the respondent-corporation for appropriate orders. With this direction the appeal is disposed of.

7. There shall be no order as to costs. Parties be informed.”

Petitioner has further averred that he was reverted and relegated from the captainship of A-300 to the post of First Officer on F-27 (Fokker Aircraft) vide letter dated 19.4.2005. Petitioner being aggrieved by and dissatisfied with his reversion from the aforesaid post had filed Service Appeal No. 497 (R)(CE)/2005 before the Federal Service Tribunal. The learned FST vide order dated 15.7.2005 suspended the operation of the letter dated 19.4.2005, but the same was not complied which constrained the Petitioner to file another application, which was allowed vide order dated 11.10.2015. Finally the Petitioner joined his training on F-27 (Fokker), subsequently during service the Petitioner was issued charge sheet on 28.9.2006, with the allegations of non-attending Technical Course on F-27 Aircraft. Petitioner was issued show cause notice, inquiry was conducted, result of the inquiry was that the Petitioner was dismissed from the service under Removal from the Service (Special Powers) Ordinance 2000. Vide order dated 3.1.2007. Petitioner assailed the impugned order dated 3.1.2007 before the learned Federal Service Tribunal by filing the Service Appeal No. 193/2007 and the same was dismissed vide Judgment dated 9.3.2010 by its majority view. Petitioner being aggrieved by and dissatisfied with the impugned judgment dated

9.3.2010 challenged the same before the Honorable Supreme Court of Pakistan in Civil Appeal No. 551 of 2010, which was too disposed of vide order dated 23.4.2013 with the following observation:-

“Admittedly the appellant is an employee of P.I.A which has no statutory rules, therefore, he could not approach the Federal Service Tribunal for the purposes of the redressal of his grievance, thus it is submitted by the learned counsel for the appellant that he would not press this petition and would like to agitate his grievance before the appropriate forum, however, any observation or view expressed in the impugned judgment should not be a hindrance in his way before that forum. Learned counsel for the respondents concedes to the above effect.

2. In the light of the above, this petition is disposed of with the observation that if the appellant approaches any appropriate forum for the redressal of his grievance any observation or conclusion drawn in the impugned decision would cause no prejudice to him. Disposed of as not pressed.”

Petitioner has claimed that he has filed the instant Petition before this court on 25.6.2013, as he has no other remedy available under the law.

03. Upon notice the Respondent-PIAC has filed comments and controverted the allegations leveled against them.

04. Mr. M.M Aqil Awan the learned counsel for the Petitioner has argued at length and submitted that offer of appointment to the Petitioner is very clear whereby he was appointed as Captain of A-300 and placed above Captain Mumtaz ul Haq P-35216 and below Captain Naveed Aziz P-35214, but subsequently he was demoted by the Respondent-PIAC vide order 19.04.2005, against which the Petitioner approached the Learned Federal Service Tribunal vide Appeal; No. 497(R)CE/2005 and consequently the

order of the demotion from the Captain of A-300, First Officer at F-27 (Fokker) (which is eight stages down from his original position) was suspended by the FST vide order dated 15.07.2005. It is further added that after suspension of the impugned order, the Respondent-PIAC did not implement the same with malafide intention against which the Petitioner filed Misc: Application. No. 904 of 2005 for implementation of the order of FST, and the learned FST took serious notice of this illegality and directed Respondent-PIAC to implement the orders of the FST vide order dated 10.10.2005; that the impugned order is contemptuous in substance as the Respondent-PIAC did not implement the order of the learned FST and have repeatedly shown the Petitioner as absent with the reason that the Petitioner did not attend the F-27 Refresher course. Learned counsel in support of his contention has relied upon the cases of M/s Lanvin Traders Vs. Deputy Administrator and another (2013 SCMR 1707), General Manager /Circle Executive Muslim Commercial Bank Limited and another Vs. Mehmood Ahmed Butt and others (2002 PLC (C.S) 982) 2015 PLC (C.S) 366), Syed Mehomood Akhtar Naqvi and others v. Federation of Pakistan and others (PLD 2013 SC 195), Independent Newspapers corporation (PVT) Ltd. Vs. Government of Pakistan and 2 others (1993 SCMR 1533) Karachi Development Authority and another Vs./Wali /Ahmed Khan and others (1991 SCMR 2434) Mrs. Abida Parveen Channar Vs. High Court (2011 PLC CS 837), and 2002 PLC (C.S) 1083).

05. Mr. Kafeel Ahmed Abbasi the learned counsel for the Respondent-PIAC, conversely, raised the question of maintainability of the instant Petition and submitted that the

Petitioner's un-authorized absence from the duty w.e.f. 01.05.2005 to 03.01.2007, compelled the Respondent-PIAC to adopt the legal course and after fulfilling all the codal formalities, as provided under the law, dismissed the service of the Petitioner vide order dated 3.1.2007. Against which the Petitioner impugned the order dated 3.1.2007 before the learned Federal Service Tribunal by filling Service Appeal No. 193/2007 and the same was dismissed vide order dated 9.3.2010 by its majority view. Petitioner impugned the Judgment dated 9.3.2010 of the FST before the Honorable Supreme Court of Pakistan, which was also disposed of vide order dated 23.4.2013; that the Petitioner has not exhausted the remedy as provided under Removal from Service Ordinance 2000, before the Competent Authority; that PIAC has no statutory rules of service as observed by the Hon'ble Supreme Court vide order dated 23.4.2013 therefore this Court has no jurisdiction to entertain the Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973; that the Respondent PIAC has acted in accordance with law as there is no illegality in the proceedings conducted by them; that the PIAC has reemployed the Petitioner in service on certain terms and condition, as such he has no right to call in question the impugned action of Respondent-PIAC. In support of his contentions he relied upon the case of Pakistan Airlines Pilots Association and others Pakistan International Airlines Corporation and another (2017 SBLR Sindh 31).

06. We have heard the learned counsel for the parties and perused the material available on record as well as case laws cited at the bar.

07. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the Parties, three basic primordial questions require our determination, which are as follows:

- (i) Whether or not a writ could be issued against the Respondent-PIAC under Article 199 of the Constitution?**
- (ii) Whether “PIAC” is a “person” and is owned and controlled by the Federal Government, by virtue of the fact that its majority shares are held by the Government of Pakistan?**
- (iii) Whether PIAC has statutory rules of service and writ could be issued against the Respondent-PIAC under Article 199 of the Constitution?**

08. The issue of maintainability of the captioned Constitutional petition has been raised, in view of the latest verdict by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), as such we would confine our self to that issue only and refrain ourselves to dilate upon the merits of the case, if we find the instant matter is not maintainable under the law.

09. To answer the first and second proposition, the profile of the Respondent/PIAC reveals that it is a Statutory Body established under the Pakistan International Airlines Corporation Act 1956, now converted into a Company vide Pakistan International Airline Corporation (Conversion) Act, 2016. It is a State Enterprise. The Government owns the majority of shares and the Managing Director of the Company is a nominee of the

Government of Pakistan and has been delegated with the powers by the Board of Directors as are necessary to effectively conduct the business of the Company. In view of the above background and status of the Respondent-PIAC, the same can ordinarily be regarded as a 'Person' performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, the High Court has an entry point to exercise the judicial powers in the subject affairs of the Respondent-PIAC under the Constitution. We are fortified by the decisions rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd Vs. Sui Northern Gas Pipe 6 Lines (Pvt.) Ltd. (2004 SCMR 1274) and the case of Pakistan Defence Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

10. To answer the third proposition of law, in present matter, Petitioner is seeking reinstatement in service in his capacity as Captain of A-300 Aircraft, with all consequential benefits w.e.f. date of superannuation 14.06.2012. So far as issue of non-statutory rules of service of Respondent-PIAC is concerned, we seek guidance from the Judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of PIA Corporation Vs. Syed Suleman Alam Rizvi (2015 SCMR 1545).

11. Much emphasis has been laid on the point of law that when the matters pertaining to the terms and conditions of service of Employees of a Respondents-PIAC, Constitutional jurisdiction of this Court cannot be invoked, on the premise that the terms and conditions of the employees of the Respondents/PIAC are not

governed by any Statutory Rules and the relationship between the Respondent-PIAC and its employees is that of “Master and servant”. The same principle has been reiterated in the case of the Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14). There is no cavil to the aforesaid proposition set forth by the Honorable Supreme Court of Pakistan, regarding Non-Statutory Rules of Service of the Respondent-PIAC.

12. We are cognizant of the fact that this Court earlier in the case of Nabeela Ashfaq vs. Federation of Pakistan and others in C.P. No. D-562 of 2012, vide Judgment dated 07.03.2018, the objection about the maintainability of the Petition against PIAC was rejected on the premise that Petitioner was seeking declaration to the effect that her services may be regularized from the date of her initial appointment and not enforcement of service rules of the Respondent-PIAC by relying upon the aforesaid judgments of the Hon’ble Supreme Court of Pakistan and we reiterate our view as discussed in the case of Nabeela Ashfaq supra. However in the present matter Petitioner is seeking enforcement of the terms and conditions of the Respondent-PIAC, for which the Hon’ble Supreme Court vide order dated 23.04.2013 in Civil Appeal No. 551 of 2010 has held that PIAC has no statutory rules of service. The Pakistan International Airline Corporation (Conversion) Act, 2016 also provide that it has no statutory rules of service.

13. Since the Petitioner’s service was governed as per the terms of his reemployment contract letter and terms and conditions of service attached thereto, therefore, if there is any

violation of the breach of contract including the terms and conditions of the service, the same is not enforceable under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973.

14. The learned counsel for the Petitioner while arguing the case has heavily relied upon Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to stress that in view of the recent Judgment of the Hon'ble Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and there are violation of statute/ Ordinance, the same can be enforced through constitutional jurisdiction and rule of Master and Servant has been diluted. We have carefully gone through the aforesaid judgment of the august Supreme Court, the ratio decidendi in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the constitutional petition will be maintainable. The relevant observation of the august Supreme Court is as under: ---

"It was not disputed before this Court by appellants learned counsel that the respondent-employees were "persons in corporation service" within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a 'statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, (in Mubeen us Salam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under

Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above."

15. In the aforesaid judgment, the Larger Bench of Hon'ble Supreme Court has deduced and summarized the following principles of law:---

(i) Violation of Service Rules or Regulations framed by the statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.

(ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof, cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.

(iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.

(iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.

(v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.

16. Applying the aforesaid principles of law to the case of the Petitioner, we feel no hesitation in drawing inference that the Respondent-PIAC is a statutory entity and Petitioner is not governed under statutory rules of service hence terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of law nor is violation of rule of natural justice attracted in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings undertaken against him under statutory rules of service. The Service Rules of the Respondent PIAC are not statutory, therefore, for all intent and purpose, these are contractual terms for internal use, hence, the law laid down by the Hon'ble Supreme Court in Pakistan Defence Housing Authority (supra), does not support the case of the Petitioner as we see no violation of law as agitated by the Petitioner.

17. For the aforesaid reasons, we are of the view that the relationship of Master and Servant exist between the Petitioner and the Respondent-PIAC and hence, his grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-PIAC. Guidance in this behalf could be taken from the Hon'ble Supreme Court's judgment enunciating the test of Statutory Rules and non-Statutory Rules [Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)] and Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division

(Regulation Wing), Islamabad (2017 SCMR 571), where in Paragraph-7 following was held:-

“According to the Judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Amed Khan, etc Vs. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/ regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under Section 54(1) of the Act]. Out of all the matters listed in Section 54(2) of the Act, clause (j) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift”. A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.”

Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed.” (Emphasis Added)

18. We, thus, are of the considered view that it is for the Respondent-PIAC to place its employees in accordance with its

Service Rules and Regulations, which is an internal matter of the Respondent-PIAC, thus devoid of any Constitutional interference.

19. In the light of above discussion and the case law referred above, the instant Petition merits no considerations and the same is accordingly dismissed along with the pending application(s), with no order as to costs.

Karachi

JUDGE

Dated

JUDGE

Shafi Muhammad P.A