ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

Suit Nos.1498, 1499, 1500, 1501,
1502 and 1508 of 2017

DATE	**ORDER WITH SIGNATURE(S) OF JUDGE(S)**

Before:-
Mr.Justice Muhammad Ali Mazhar

(1) Shariq-ul-Haq
(2) Faisal Mehmood
(3) Muhammad Faisal
(4) Abid Hamza
(5) Muhammad Adeel Javaid
(6) Amir Mahmood.....Plaintiffs

V/s

Pakistan International Airlines
Corporation Limited & another.....Defendants

For hearing of CMA Nos.9402/2017 & 9944/2017 (Suit No.1498/2017), CMA Nos.9405/2017 & 9947/2017 (Suit No.1499/2017), CMA Nos.9408/2017 & 9950/2017 (Suit No.1500/2017), CMA Nos.9411/2017 & 9953/2017 (Suit No.1501/2017), CMA Nos.9414/2017 & 9956/2017 (Suit No.1502/2017) and CMA Nos.9455/2017 (Suit No.1508/2017).

Dates of hearing: 18.09, 18.10 & 02.11.2017

M/s.Muhammad Haseeb Jamali and M.Saad Siddiqui, Advocates for the Plaintiffs.

Mr.Abdul Haleem Siddiqui, Advocate for Defendants.

Captain Uzair Khan, Director Flight Operations, PIAC.

Mr.Anwar Nadeem, General Manager, Flight Operations, PIAC.

Captain Waqar Hassan, Chief Pilot, Planning & Scheduling PIAC.

Captain Zarak Khan, Chief Pilot Training, PIAC.

Mr.Ahmed Rauf, Consultant Legal and Syed Fayyaz Ali Shah, Law Officer, PIAC.

Muhammad Ali Mazhar-J. The aforementioned lawsuits have been set in motion to aim at declaration, permanent injunction and damages. Together with the main suit, the plaintiffs have also filed interlocutory applications under Order 39 Rule 1 & 2

C.P.C for suspending the operation of impugned letter dated 25.5.2017 issued by defendant No.2 for Transition Training ATR-P1 Course scheduled as of 12.6.2017. Subsequently, except the plaintiff in Suit No.1508/2017, other five plaintiffs also moved applications under Section 94 & 151 C.P.C for restraining the defendants from grounding them from flying duties or deducting salaries and other fringe benefits.

2. The epigrammatic facts of the case are that the plaintiffs are serving senior B-777 First officers. They claimed promotion on A-320 Aircraft under the Amended Carrier Plan by dint of Memorandum of understanding but the management offered them Transition Course on ATR. They took up the matter with PALPA and PIAC for redress of their grouse and grumble but their association PALPA as well as PIAC management both failed to respond. Due to non-availability of any other expedient and efficacious remedy for alleviation, the plaintiffs have approached this court for implementation of MOU dated 18.3.2016. In essence the plaintiffs move in on to protect and safeguard their rights and interest conferred and bequeathed in the aforesaid MOU. As an interim measure this court directed the defendants not to force the plaintiffs to join the impugned Transition Training Course and afterwards in addition to earlier interim orders, this court further directed the defendants not to draw any adverse inference against the plaintiffs in respect of the flying licenses.

3. The learned counsel for the plaintiffs argued that out of six plaintiffs, the PIAC management called upon only three plaintiffs to attend impugned transition course, two of them were kept stand by and one of them was not even in the list of the course. When the plaintiffs raised the voice for their vested right of promotion in terms of MOU, the management detached them from flying duties and treated them at par with

suspended pilots with further directions not to leave the station (Karachi, Islamabad or Lahore). The plaintiffs are presently entitled to fly B-777 as First Officers and they are also entitled to be promoted on A-320 as Captain. The learned counsel pointed out that vide order dated 14.7.2017, this court has already directed the defendants not to draw adverse inference against the plaintiff in respect of flying license. It was averred that the prime issue involved is the implementation of the MOU and its binding effect. Once a principal decision was taken to promote the Plaintiffs on A-320 Aircrafts, the Defendants have no right to unilaterally place them for a training course on ATR aircraft. It was further contended that the conditions mentioned in the MOU have become the part of the Working Agreement. The management has admitted execution of MOU and they have acted upon the same independently of Admin Order No.7 of 2016. The MOU cannot be unilaterally annulled simply for the reasons that Clause 1.9 of the Working Agreement expressly protects MOUs executed between PIAC and PALPA for the benefit of Pilots. The Execution of MOU shows that in principal the decision had been taken to send First officers of B-777 as Captains on A-320. The Clause 2 of the MOU has to be read as a whole. The first and second limb of the clause are connected with each other, the implementation of the first limb paves way for implementation of 2nd limb. It is a concluded contract executed by both PALPA and PIAC in terms of Clause 5.10 read with clause 1.5 & 1.3 of the Working Agreement in vogue. The learned counsel further argued in fact the management went on to implement the MOU, the Advertisement dated 19.05.2016 is an ample prove through which interested pilots were offered contracts as Captains on ATR Aircrafts. This was done even prior to the issuance of Admin Order No.7 of 2016 dated 31.5.2016. The independence of MOU is further

established that the Admin Order No.07/2016 neither provides for hiring of contract pilots on ATR nor provides for promotion of B-777 First Officers as Captains on A-320 aircraft. The learned counsel added that presently there is a serious shortage of flying crew on A-320 and B-777 Aircrafts especially Captains on these two aircrafts.

4. The learned counsel for the plaintiff concluded that the plaintiffs have a strong prima facie case. The defendants are attempting to mislead this Court by claiming that methodology is yet to be framed where in reality as per their letter dated 20.4.2017 they have unilaterally attempted to wriggle out of their obligations under MOU. The balance of convenience also lies in favour of the plaintiffs and no loss or injury will be caused to the defendants if they comply with the terms of Clause 2 of the MOU but on the other hand if the injunction is refused, serious prejudice will be caused to the plaintiffs and their seniority. The plaintiffs have already suffered a lot and now their flying licenses granted by CAA are at stake, further non-flying or any more negative inference on their license can seriously prejudice their livelihood and their future. The plaintiffs have always served PIAC with pride and will continue to do so but in accordance with law, applicable rules, working agreement and their entitlements under superior clauses as agreed by PIAC and PALPA in working agreement. He referred to following judicial precedents:-

1. **1994 MLD 476 (Province of Punjab through the Secretary to Government of the Punjab, Communication and Works Department and another vs. Malik Muhammad Ilyas and 2 others). Document embodying a contract is to be interpreted according to intention of the parties; construction thereof, must be reasonable, liberal and with a spirit to save rather than destroy it; ordinary sense of the words is to be followed; and the whole of the document is to be looked at in order to gather the intention of the parties.**

2. **2016 PLC 335 (Sadiq Amin Rahman vs. Pakistan International Airlines Corporation through Managing Director and 3 others). (a) Specific Relief Act (I of 1877). Sections 42 & 54. Suit for declaration and injunction. Plaintiff was a pilot and was aggrieved of refusal made by the Airline Corporation declining him to send him to transition training B-777 in view of agreement executed between**

the Corporation and Association of Pilots. Management of Airline Corporation was not supposed to act recklessly or sabotage professional norms and transparency in the affairs of their management. Airline Corporation should follow principle of good governance and maintain transparency and fair-mindedness in its affairs. By misapplication of phrase 'master and servant' management feels that an employee cannot raise voice of his rights even though an oppressive attitude and behavior of management which is an incorrect exposition of law.

3. **1980 SCMR 89 (Bakhtawar etc. vs. Amin etc.). (b) Civil Procedure Code (V of 1908). Order XXXIX, Rule 2 (3). When by contravening an injunction order the party against whom the order is passed has done something for its own advantage to disadvantage of the other party, it is open to the Court under its inherent jurisdiction to bring back the party to a position where it originally stood, as if the order had not been contravened.**

5. Quite the reverse, the learned counsel for the defendants argued that in the supporting affidavits of injunction application, the plaintiffs have failed to disclose prima facie case, balance of convenience and irreparable loss therefore they are not entitled for the discretionary relief. The plaintiffs have taken the ground for change of carrier plan in Working Agreement 2011-2013 executed between PALPA & PIAC but no Admin Order was issued by the PIAC with the mutual consent as regard to the change in the agreement relevant to carrier plan. It was further contended that PALPA is a registered association under the Societies Registration Act, XXI of 1980 whose members are pilots employed by PIAC. The PALPA is empowered to negotiate on their behalf to regulate the working conditions of the pilots as contained in the Agreement and all pilots including the plaintiffs are discharging their duties under the said Agreement, hence the terms and conditions enumerated therein are binding upon the plaintiffs. The Association has not been made party in this suit with mala fide intentions so the suit is hit by non-joinder of necessary party. There is no dispute between PALPA and PIAC on the working Agreement or any of its provision nor any dispute to the MOU.

6. While referring to the Minutes of Meeting dated March 31, 2016, the learned counsel added that the minutes only reflect the discussions, suggestions and opinion of the Directors present in the meeting which cannot be treated as Resolution. However, Board of Directors of PIAC approved the increase in salary structure of pilots and other allowances. The Career plan attached with the Agreement shows that the First Officer B-777 is promoted as Captain ATR. In the Admin Order NO. 7 of 2016 dated May 31, 2016, it is clearly mentioned in Clause-1 (w) that "The PALPA, PIAC Working Agreement 2011-2013 stands reviewed to the extent of above agreed Clauses", meaning thereby those clauses which are specifically mentioned in the said Admin Order shall be the terms and conditions of Agreement but there was no change in carrier plan. The Admin Order 07/2016 was issued after MOU in which it is mentioned that all other terms and conditions shall remain as per existing PALPA Working Agreement 2011-2013 until further orders. Whereas in Clause 1.1 of Agreement it is provided that all arrangements and agreements in respect of the terms and conditions shall continue unless otherwise modified, cancelled or amended and in the event of any conflict between the provisions of this agreement and that of the aforesaid arrangements/agreements, provisions of this agreement shall prevail. Since the parties of MOU did not decide the methodology as mentioned in Clause-2 of MOU therefore Clause 1.1 of agreement shall prevail. The Clause-2 of MOU should be read with Clause-3 which states that the negotiations for a complete working Agreement should start from March 28, 2016 and shall be concluded by April 11, 2016 but parties have not completed the negotiations. So far as the Advertisement in daily Jang dated May 19, 2016 is concerned, it was clearly mentioned in it that the contract Pilot will be required to submit a Bank Guarantee of

Rs.25,00,000/- refundable after two (2) years of the productive service. In the MOU the ATR Captains were to be hired on contract basis which may extend up to five (5) years, whereas advertisement contained requirement of Bank Guarantee for two (2) years only, therefore the said advertisement was not issued in terms of Clause-2 of MOU.

7. It was further contended by the learned counsel for the defendants that the management offered to all First Officers to join as Captain ATR which has no relevancy with the MOU. The management had made this offer as per Clause 3.26 of Agreement. This offer circulated vide letter dated December 1, 2016 was opted by many Pilots. The plaintiffs were fully aware to this offer but they never raised any objection with regard to any effect on their seniority. So at this stage their objection is hit by the principle of estoppel.

8. He further argued that Clause 12.4 of the Working Agreement provides the mechanism for the redress of Pilots Grievances which the plaintiff failed to avail. Without resorting to the Departmental remedy by way of appeal or review/representation an aggrieved person could not approach this court directly. The learned counsel for the defendants further argued that in terms of Clause 1.8 of Agreement, the dispute with regard to the Agreement and or the interpretation of any terms and conditions shall be settled by an arbitration board. He further contended that the plaintiffs are governed under the Working Agreement 2011-2013 so in the event of any breach, the plaintiffs may sue for damages but they cannot file suit for declaration under Section 42 of Specific Relief Act. It was further averred that under Section 56 (f) of Specific Relief Act, injunction cannot be granted to prevent the breach of contract the performance of which would not specifically enforced nor a contract of personal service can be

enforced. He further opposed the grant of injunction for the reason that contract of personal service cannot be specifically enforced. The learned counsel for the defendants referred to following judicial precedents in support of his arguments:

1. **PLD 2000 Karachi 269 (Century Link Development Corporation (Pvt.) LTD vs. Habib Bank Ltd. and others). (b) Civil Procedure Code (V of 1908). Order XXXIX, Rules 1 & 2. For the purpose of grant of interim injunction, it is imminent that besides prima facie case, exposure to irreparable injury must be shown, additionally a plaintiff is obliged to establish balance of convenience in favour of grant of injunction and for the purpose of interlocutory matters, affidavits alone, have to be considered.**

2. **2013 PLC (C.S.) 768 (Ghulam Nabi Shah vs. Pakistan International Airlines Corporation and others). Suit for declaration, damages and permanent injunction. Plaintiff being employee of Pakistan International Airlines (PIA) sought implementation of decree for correction of his date of birth in service record and extension in his service accordingly. Plaintiff on alleged wrong date of birth had joined service, secured promotions and completed his tenure, but remained silent during such a long period, thus, his conduct was hit by principle of estoppel. Plaintiff while reaching age of superannuation had obtained such decree in order to get extension in service. Plaintiff at such belated stage was not entitled to claim any discretionary relief.**

3. **1974 SCMR 519 (Marghub Siddiqi vs. Hamid Ahmad Khan and others). Principles governing grant of permanent injunction under Specific Relief Act, 1877. Contract for personal service being contracts not specifically enforceable grant of injunction in service matters, held, opposed to principles governing grant of injunctions.**

4. **PLD 1961 Supreme Court 531 (Messrs Malik and Haq & another vs. Muhammad Shamsul Islam Chowdhury, and two others). The master is always entitled to say that he is prepared to pay damages for breach of contract of service but will not accept the services of the servant. A contract for personal service as will appear from section 21 (b) of the Specific Relief Act, 1877 cannot be specifically enforced. If specific performance be barred the only relief available is damages.**

5. **PLD 1997 Supreme Court 835 (Obaidullah and another vs. Habibullah and others). For a breach of a contract of employment in the absence of any Constitutional guarantee or other, statutory guarantee of continuity, compensation in money is an adequate relief in case of non-performance of a contract.**

6. **PLD 1984 Supreme Court 194 (Anwar Hussain vs. Agricultural Development Bank of Pakistan and others). Principle of master and servant applicable. Employee of such Corporation could not claim to be person possessed of any legal character within meaning of S. 42, Specific Relief Act, 1877 and in case of his wrongful dismissal from or termination of service, principle of master and servant will fully apply and he can only claim damages but not re-instatement to his post.**

9. In rebuttal the learned counsel for the plaintiffs articulated that the issue of Arbitration does not arise, the Working Agreement is between PALPA and PIAC and remedy is

restricted to a dispute between them however the members of PALPA are the beneficiaries of this working agreement but no right is vested in them to invoke arbitration clause individually. Neither PALPA nor PIAC has chosen to invoke Clause 1.7 and 1.8 of the working agreement. So far as non-availing the alternate remedy is concerned; he argued that the procedure for redress of grievance provided in Clause 12.4 of the Working Agreement does not apply. This grievance mechanism is not a remedy which could have resolved the dispute in hand, i.e. challenging the illegal action of the defendants so the plaintiffs have rightly approached this court and their suit is not barred or hit by any provisions of Specific Relief Act or any other law. So far as plea of estoppel is concerned, the learned counsel argued that when the course was fixed in June 2016, no pilot was out of turn hired either on Contract or on Option as Captain on ATRs but once the Captains on ATR were hired on contract basis, then vested rights created in favour of the plaintiffs in terms of Clause No.2 of MOU. At this moment the plaintiffs are entitled to be promoted directly on A-320 aircraft. No principle of Estoppel is attracted rather the principle of creation and protection of vested right and legitimate expectation has accrued in favour of the plaintiffs.

10. Heard the arguments. The wholeness of wrangle and difference of opinion between the parties is wandering and roaming around the implementation and enforcement of Memorandum of Understanding (MoU) dated 18.3.2016 executed between Director Flight Operations PIAC and PALPA through its President. In Clause 2 of this MoU it was coincided that for ATR Captains qualified human resource would be engaged on contract extendable up to 5 years. The methodology shall be worked out to place first officer of Boeing 777 as captain of A320 subject to completion of training as per

seniority. It was further agreed in Clause 3 that negotiation for a complete working agreement should start from 28th March 2016 and shall be concluded by 11th April 2016. As a goodwill gesture management of PIAC also agreed to provide some adhoc relief to the captains and first officers. For the ease of reference the text of MoU is reproduced as under:-

"Memorandum of Understanding
Dated: 18th March 2016

After thorough discussion, it was decided as follows:

1. The aircrew travelling on A320 will be booked in Economy Class. However, subject to availability they shall have priority over all non-revenue passengers to be upgraded to Business Class.

2. For ATR Captains qualified human resource would be hired on contract basis which may extend up to 5 years. The methodology shall be worked out to place First Officers of Boeing 777 as captain of A320 subject to completion of training as per seniority.

3. Furthermore, negotiation for a complete working agreement should start from 28th March 2016 and shall be concluded by 11th April 2016.

The TOR for the working agreement shall include:

i. Fix salary package
ii. Rationalization of career plan
iii. Rationalization of base strength as per requirement

4. As a goodwill gesture, management agreed to provide an Adhoc relief as follows:

a. Captain

i.	**Boeing 777**	**PKR 150,000**
ii.	**A320/A310**	**PKR 130,151**
iii.	**ATR**	**PKR 107, 500**

b. First Officer

i.	**Boing 777**	**PKR 100,113**
ii.	**A320/A310**	**PKR 66,713**
iii.	**ATR**	**PKR 51,430**

Sd/-	**Sd/-**
Captain Qasim Hayat)	**(Captain Amir Hashmi)**
Director Flight Operations	**President PALPA"**

11. The chronicle and sequence of events delineate that on 9.5.2016, an advertisement was published in the newspaper for career opportunity with the narratives that PIAC has planned to expand the operational capability and they need experienced Captains on contract basis. Talented and self-motivated persons who can accept the challenge to be a part of PIA as Captain on ATR-42/72 Type Aircraft may apply with a

condition precedent that upon accepting hiring contract, the candidate shall submit a Bank Guarantee of PKR 25,00,000/- refundable after 02 years of productive service on pro-rata basis.

12. The learned counsel shoulder to shoulder speak of an Admin Order No.07/2016 dated 31.5.2016 disseminated to put forward revised terms and conditions of service benefits and facilities for the pilots. The management in Paragraph 01 of the Admin Order make known that the terms and conditions of service, benefits and facilities of pilots have been revised w.e.f. 1st April, 2016 as agreed vide MoUs dated 18th March, 2016, 19th April, 2016 & 13th May, 2016 with PALPA and approved by the PIACL BoD in its 1st Meeting held on 09.05.2016. Besides mentioning various other terms and conditions of service benefits and facilities, it is mentioned in clause (t) that Supy travel will be regulated as per MoU dated 18.3.2016 with PALPA and in column (w) it is further stated that the PALPA and PIAC Working Agreement 2011-2013 stands reviewed to the extent of agreed clauses mentioned in this Admin Order No.7/2016.

13. Right away, I would like to behold and survey PALPA and PIAC Working Agreement dated 20.11.2013 which is in vogue. The recital of this working agreement epitomizes and reckons that PALPA has produced evidence that it is duly designated representative of the pilots employed by the corporation and authorized to negotiate on their behalf to conclude an agreement with the Corporation. In Clause 1.2, the PIAC recognized that the Association (PALPA) is the bargaining representative of all pilots who are members of the Association. The Association also recognized in the agreement the obligation of its members to faithfully discharge their duties and responsibilities in accordance with highest

standards of professional conduct. Simultaneously the Corporation also recognized its obligations to uphold the sanctity of the working agreement and ensured that no part of agreement is violated. In my understanding, Clause 1.9 of the agreement is profusely expressive and having an important effect which is reproduced as under:-

> **"1.9 INCORPORATION OF ANY SUPERIOR CLAUSE(S):**
>
> **Any administrative clause(s) or Memorandum of Understanding (M.o.U) that is superior in benefit to the clause(s) or M.o.U. contained in this Agreement and is part of any other Agreement(s) between the Corporation and any other Association(s)/Union(s), shall automatically be deemed to be incorporated in this Agreement, to the benefit of the members of the Association."**

14. In unison, Clause 5.9 of the Working Agreement linked to career plan of pilots is also somewhat reminiscent as under:-

> **"5.9 CARRER PLAN OF PILOTS:**
>
> **5.9.1 The promotion of Pilots to different equipment will be done according to the following career Plan and minimum specifications.**
>
> **5.9.1.1 A Pilot will start his/her career as ATR First Officer.**
>
> **5.9.1.2 First Officer ATR will then be promoted as First Officer on B737.**
> **5.9.1.3 First Officer B-737 will then be promoted as First Officer A-310.**
> **5.9.1.4 First Officer A-310 will then be promoted as First Officer B-777.**
> **5.9.1.5 First Officer B-777 will then be promoted as Captain ATR.**
> **5.9.1.6 An ATR Captain will then be promoted as Captain B-737.**
> **5.9.1.7 Captain B-737 will then be promoted as Captain A-310.**
> **5.9.1.8 Captain A-310 will then be promoted as Captain B-777.**
>
> **Note-1:-**
>
> **All promotions will be strictly as per seniority.**
>
> **Note-2:-**
>
> **B-747 aircraft will remain sidelined until further decision, and its promotion will remain on option/contract. Option for P1 and P2 positions will only be given to Captains and First Officers who have flown Jet aircraft, in consultation with PALPA. It is also agreed that pilots who opt for B-747 P1/P2 position will remain on this equipment for three (03) productive Hajj seasons or redundancy of the aircraft, whichever is earlier. After that they shall be placed on any other equipment in accordance with their seniority.**
> **A flow chart of revised Career Plan is attached as Annex-A.**
>
> **SPECIFICATIONS:**
>
> **The above career plan will be implemented subject to the following minimum specifications:**
>
> **(a) ATR First Officers:**

(i) CPL with valid instrument rating.

(b) B-737 First Officer:

(i) ATR P-2 - 5000 hours
(ii) Total experience - 1,000 hours

(c) A-310 First Officer:

(i) B-737 P-2 - 500 hours
(ii) Total experience - 1,500 hours

(d) B-777 First Officer:

(i) A-310 P-2 - 500 hours
(ii) Total experience - 2000 hours

(e) ATR Captain

(i) ATPL
(ii) B-777 P-2 - 500 hours

(f) B-737 Captain

(i) ATR P-1 - 500 hours
(ii) Total experience - 3500 hours

(g) A-310 Captain:

(i) B-737 P-1 - 500 hours
(ii) Total experience - 4,000 hours

(h) B-777 Captain:

(i) A-310 P-1 - 500 hours
(ii) Total experience - 4,500 Hrs.

Note-3:

B-747 (P-1/P-2) being declared sidelined equipment will not be a part of Career Plan. For promotion on B-747 as F/O, all F/Os on B-737/A-310/B-777 shall be given an option as per their seniority provided they have fulfilled the minimum requirement for promotion. All Captains who have flown Jets (refer Annex-A), shall be given option for promotion on B-747 Captain as per seniority, provided they have fulfilled the minimum requirement for promotion.

5.10. In case, there is a change/addition in airline's fleet, the Career Plan of pilots shall not be changed/altered without the concurrence of the Association."

15. Indeed the plaintiffs aspire for the implementation of MoU but they have not impleaded PALPA. The issue of non-joinder if any will be taken up again by me in the posterior fragment of this judgment. Come what may, the MoU in question was executed between PIAC and PALPA and the exactitude of this document is unambiguously reflected in the Admin Order No.7/2016. The legitimacy, truthfulness and veracity of the MoU is also protected in the superior clause 1.9 of the Working Agreement which unequivocally advocates that any

administrative clause(s) or MoU superior in benefit shall automatically be deemed to be incorporated in the agreement to the benefit of the members of the Association. Fundamentally, what decipher to me that the Working Agreement is a sacrosanct document in which PIAC recognized the role of PALPA as bargaining representative of all pilots and back and forth assured to put it into action for implementation. Had it been a settlement arrived amongst the employer and employee under the provisions of Industrial Relation Laws/labour laws, any individual workman/member of the union could have approached to the Labour Court/NIRC for protection of his rights secured and guaranteed under any law, award or settlement but here in this case pilots cannot be categorized or bear a resemblance to be covered or regulated in the regime and compass of labour laws being in officer genre. Any way the working agreement is somehow or the other a sort of settlement between the employer and the Association of Pilots and through this working agreement certain rights and benefits have been bestowed and conferred upon the pilots by means of collectively and communally agreed terms and conditions and parties to this working agreement as a sacred trust have assured vice versa for its implementation. The relationship of master and servant does not mean that in each and every case, the recourse should be made only for the claim of damages. In the case in hand all pilots are already in job and virtually they have approached this court for seeking directions of their promotion as agreed in MOU so the plaint does not appear to be barred under any law.

16. The Working Agreement was signed on 10.8.2012 but it was made effective from 1.8.2011 up to 31.7.2013 unless otherwise amended and until a new agreement is signed. The defendants have not denied the existence of working

agreement or MoU rather they admitted that in the MoU it was agreed that ATR Captains would be hired on contract basis and the methodology would be worked out to place first officer of Boeing 777 as Captain of A320 subject to completion of training as per seniority.

17. The plaintiffs' counsel pleaded that for implementation of MoU, the matter was put up before the Board of Directors on 9.5.2016. The Board approved the discontinuation of adhoc increase and after considering all other aspects approved fixed salary structure for pilots with 26% increase in the salary with some other benefits, however, in the Board's decision in Clause (e) it is clearly provided that the increase shall be subject to the annual savings which will be determined, monitored and ensured by the Finance Department. In this clause different heads are mentioned in which one of the components is Transition Cost of Rs.84.800 million. It was argued by the plaintiffs' counsel that the scheme of engaging ATR Captain on contract basis was rationalized and restructured to safe transition cost on ATR. Despite clear decision, the letter was issued for transition training on ATR instead of placing first officers of Boeing 777 as Captain of A320.

18. A large amount of emphasis made by the counsel for the defendants in opposition of interlocutory applications under deliberation that instead of approaching and filing the present suits, the recourse should have been made to Clause 1.8 which provides contrivance and mechanism for the settlement of dispute with regard to the explication and interpretation of the agreement. The remedy to calm down and resolve the dispute by dint of arbitration correlates the disputes converging to the interpretation of any terms and conditions which can be settled by an arbitration board comprising one

representative each of the corporation and Association and one member to be appointed with mutual agreement of the representative of Association and the corporation. As I discerned beforehand that there is no dispute existed on the MoU nor its execution has been denied by the defendants nor any question of interpretation of working agreement is involved. In fact the plaintiffs are perturbed and discontented due to non-implementation of MOU which is vigorously defended by the defendants on the basic plea of non-devising the methodology. So in all fairness, I feel no disinclination to hold that the condition for arbitration could not be invoked by the plaintiffs against the defendants in the presence of set of circumstances. Even otherwise, this condition is primarily in between PIAC and PALPA and not between an individual member of the Association.

19. The learned counsel for the defendants ardently made reliance on Clause 12.4 of the Working Agreement which is concomitant to the procedure laid down for redress of Grievances. In Clause 12.4.1, it is provided that grievance of the pilots arising due to violation of rules or terms and conditions of their service shall be considered as per procedure provided in clause 12.4.1.1 to 12.4.1.5. At this juncture, I would like to reiterate that in the present proceedings only the issue of MoU implementation is involved and nothing more. The defendants have expounded the raison d'etre of non-implementation is non-devising the methodology to go ahead. So in my view the defendants plea of not availing the remedy by the plaintiffs as provided under the grievance segment is mutually destructive. Two defence one with the admission of not devising the methodology and other for non-availing the remedy provided for redress of grievance cannot stand together. One more facet of great magnitude cannot be ignored that aforesaid grievance procedure cannot be equated

with the right of appeal provided under some statute as admittedly the PIAC has no statutory rules of service so except filing civil suit by the plaintiffs no other remedy is available to them for protection of their rights.

20. The plaintiffs submitted an unsigned letter dated 19.4.2017 communicated by Captain Khalid Hamza, President PALPA to Mr.Nayyar Hayat, Acting C.E.O., PIAC with the subject *"unilateral breach of MoU by Flight Operations Department"*. In this letter the president mentioned the conditions agreed in the MoU but the defendants in their pleadings denied to have received any such letter. So much sanctity cannot be attached to this letter on which even no acknowledgment is shown. However the same letter duly signed by PALPA, President is attached with the rejoinder filed by one of the plaintiffs Shariq-ul-Haq. Whether this letter was received by PIAC or not this cannot be decided at this stage. Notwithstanding, the record reflects that the defendants vide statement dated 22.9.2017 presented on 25.9.2017 brought some documents but one letter dated 6.7.2017 is most significant which was written by Capt. Rizwan Ahmed, General Secretary, PALPA to the Chairman PIAC. In fact this letter was communicated to draw attention to breach of Admin Order No.7/2016 dated 31.5.2016. At page 2, in Clause 7 of the letter, the General Secretary, PALPA lucidly articulated that 'No methodology has been devised yet to place first officers of B-777 as captain of A-320.". Likewise in clause 8 of the same letter he pointed out acute shortage of Crew on B-777 creating extra flying beyond 75 hours and utilizing off days resulting in heavy financial impact on the national exchequer. The aforesaid letter unambiguously establishes that formulating a methodology was condition precedent for implementation of MoU which has not been done seemingly by PIAC and PALPA

and due to their failure and default, the plaintiffs are suffering.

21. It is well settled exposition of law that Offer, acceptance, intention, certainty and consideration are not separate fundamental rudiments of an agreement/contract nor they are all separately required for formation of contract but they are densely interwoven so that in many cases one will not be present without one or more of the others. Intention and consideration are efficiently analyses of enforceability used to determine which promises are enforceable as contracts. Where parties entered into an express agreement it may be relatively easy to infer their intention to be legally bound at least where the essential terms of the agreement are expressed with sufficient certainty and the agreement is made in a business or commercial, as opposed to a family or social, context. An agreement may be made which expressly or impliedly anticipates that it will be superseded by a later, more formal, agreement. A letter of intent is one of examples of such an arrangement. Where the court finds that the parties have intended to enter into a binding legal agreement but have not expressly agreed all necessary terms, the court may imply terms by reference to the past practice of the parties or any relevant trade custom in order to give effect to their intentions. If intention is the key factor in the assessment of enforceability, it must be remembered that the test of intention is objective.

22. What is the eminence and status of ***Memorandum of Understanding?*** MOU means a document that expresses mutual accord on an issue between two or more parties. It is generally recognized as binding, even if no legal claim could be based on the rights and obligations laid down in them. To be legally operative, a memorandum of understanding must

(1) identify the contracting parties, (2) spell out the subject matter of the agreement and its objectives, (3) summarize the essential terms of the agreement and (4) must be signed by the contracting parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It most often is used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforcement agreement. A Memorandum of Understanding or MOU is put in place to establish a clear understanding of how the deal will practically function and each party's role and compensation. In international public law, a memorandum of understanding is used frequently. It has many practical advantages when compared with treaties. If the wordings used in the MOU are vague and unclear and do not create any binding effect, then the same cannot be enforced. MOU forces the participating parties to reach a semblance of a mutual understanding and in the process, the two sides naturally mediate and figure out what is most important in moving toward an eventual future agreement that benefits both sides. Although there can be legal distinctions between the two types of documents, (contract and MOU) but there may be no legal or practical difference if they are written with similar language. The key is whether the parties intend to be legally bound by the terms of the agreement. If so, they have likely created a legally enforceable contract regardless of whether they call it a contract or MOU. A contract is a legally enforceable agreement between two or more parties that creates an obligation to do (or not do) a particular thing. The parties must intend to create a legally enforceable agreement.

Reference:

http://www.businessdictionary.com/definition/memorandum-of-understanding.

https://www.lawteacher.net/free-law-essays/contract-law/memorandum-of-understanding.

https://www.investopedia.com/terms/m/mou.

www.changelabsolutions.org/sites/default/files/MOU-vs-Contracts.

23. The MoU was between PIAC and PALPA and PALPA itself communicated concern in its letter to the management that no methodology has been worked out to make headway. It appears that some features of MoU have been acted upon for instance the publication of advertisement in the newspaper for hiring ATR pilots on contract. In the MoU timeline was also agreed to structure a methodology which the parties failed to meet. In tandem, no condition is attached to this indenture for conveying any such understanding that failure to meet and settle the methodology within the timeframe will extinguish or culminate the very effect of MoU automatically. So for all intent and purpose, this document is in field and it is still open for the parties to assemble and decide the modalities. The purpose of union of workers or association of officers in any institution and organization is to espouse the cause and safeguard the rights and interest of their members but here PALPA is found fail in its duty. At least they could have made some efforts to convince and start the dialogues for reaching some modality to implement the MoU. The plaintiffs in their individual capacity have no say or dominion to negotiate or bargain with the management but they can legitimately expect that their association will come forward for rescue. Though the plaintiffs did not opt to implead PALPA but in my view the presence of PALPA is necessary to enable the court to completely, effectively and adequately adjudicate upon the question in dispute and being an association to look after the collective interests of their members, no prejudice will be caused if PALPA is impleaded in this suit merely to provide them an opportunity to engage in the dialogs with PIAC for formulating the methodology with regard to the promotions of pilots/plaintiffs as agreed in the MoU. It is well settled that the court at any stage may order the addition of a person as a necessary or proper party suo motu. For the purposes of

addition of parties, the court is governed by the provisions of Order 1 Rule 10 CPC. The power of adding parties is not a question of initial jurisdiction but of judicial discretion which has to be exercised in view of all the circumstances of the case. The object of this rule is to discourage contests on technicalities and to save honest and bona fide claimants from being non-suited. The addition of parties is a matter of discretion of the court. The expression 'at any stage of the proceedings' is by itself very clear which includes even up to the stage of passing of final decree in the suit. A person may be added as party to a suit when he ought to have been joined as plaintiff or defendant and is not joined so or when without his presence, the question in the suit cannot be completely decided.

24. Though the plaintiffs are Dominus litis, (masters of suit) whom the suits belong and who have real and direct interest in the decision of the case. They will derive benefits if the judgment comes in their favour or suffers the consequences of an adverse decision. The general rule with regard to impleading parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate. The necessary party is one who ought to have been joined and in whose absence no effective decision can take place whereas a proper party is a party who, though not a necessary party but is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. The object of Order I, Rule 10, C.P.C. is to avoid multiplicity of proceedings and litigation and to ensure that all proper parties are before court for proper adjudication on merits. It is well-settled proposition of law that court is

empowered under this provision to add any person as plaintiff or defendant in the suit at any stage even in appeals.

[Reference may be made to the orders *authored by me* in the cases reported in (i) 2012 CLC 1477, Mst. Farasa Aijaz vs. Messrs Qamran Construction (Pvt.) Ltd., (ii) 2017 YLR 1579, Aroma Travel Services (Pvt.) Ltd. vs. Faisal Al Abdullah Al Faisal, (iii) 2010 YLR 1666, Jiand Rai vs. Abid Esbhani, and (iv) 2010 CLC 1622 (Shams Mohiuddin Ansari vs. Messrs International Builders).

25. In the judgment authored by me in the case of **(Naseem-Ul-Haq & another v. Raes Aftab Ali Lashari)** reported in **2015 YLR 550 [Sindh],** I have discussed Section 42 of the Specific Relief Act in detail. Any man's legal character is generally taken as the same thing as a man's status. Words "right as to any property" are to be understood in a wider sense than "right to property" and words "interested to deny" denotes that defendant is interested in denying right of plaintiff or his legal character. Denial of right constitute a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. No doubt the provisions of Section 42 are not exhaustive and all-encompassing of virtues and ambiances in which declaration is to be given. Sometimes in the peculiar and distinctive circumstances of the case court may grant the declaration even not covered by Section 42 of the Specific Relief Act where in case general provision of law gives declaration sought. Legal character as used in Section 42 is equivalent to legal status and legal status is a legal right when it involves a peculiarity of the personality arising from anything unconnected with the nature of the act itself which the person of inherence can enforce against the person of incidence. Salmond pointed out in his book on Jurisprudence, rights of four distinct kinds: (1) rights (in the strict sense); (2), liberties: (3) powers; and (4) immunities. The word 'right' is used in a wider sense in Section 42 of the Specific Relief Act. Whereas in my another judgment in the case of **Al-Tamash Medical Society vs. Dr. Anwar Ye Bin Ju & others,** reported

in **2017 MLD 785,** I held that it is sine qua non as to whether the plaintiff in facts and circumstances of the case should or should not grant declaration. Looking into down-to-earth and pragmatic perseverance in this forward-looking advance era, one should not stick to the rigidities and complexities or acid test of legal character but it needs some more generous comprehension to meet up all exigencies. Lord Cottonham said, in Taylor v. Salmon:

> **"It is the duty of a court of equity to adapt its practice and course of proceedings, as far as possible, to the existing state of society and to apply its jurisdiction to all those new cases, which from the progress daily made in the affairs of men, must continually arise and not from too strict an adherence to forms and rules established under very different circumstances, decline to administer justice and to enforce rights for which there is no other remedy". (1838) 4 Myln & Cr 134. (C M Row. Law of Injunctions, Eighth Edition.)**

26. In my view there are two genres of lawsuits encompassing the relationship of master and servant. One scenario leads to the claim of dismissed or terminated employee who approaches to the court of law for reinstatement or in alternate award of damages/compensation against his wrongful dismissal/termination in which proceedings the master may say that he is prepared to pay damages for breach of contract of service but will not accept the services of the servant. The other genre in the same relationship is the case where an employee though in service and performing his duties satisfactorily but he is denied salary/wages and some other benefits payable to him during service. In this distinct and discrete class of cases, I have no reluctance and disinclination to hold that all such employees who are neither covered under the definition of workers or workmen so that they may approach labour courts or NIRC nor they are civil

servants to move Services Tribunal nor they can file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 in the High Court due to lack and nonexistence of statutory rules of service so the only remedy is left with them to file civil suit for satisfaction of their claims accrued to them during service including damages for the loss sustained due to nonpayment or refusal/denial of such service benefits by the employer without any lawful justification. There may be other point of view that in this particular situation also, the only remedy is to claim damages and not anything more but with all humility and self-efficacy, if an employee is forced to ask damages alone on each and every refusal or denial of service benefit or on each and every cause of action independently in the form of suit for damages solitary under the sacrosanct relationship of master and servant rather than lodging his claim for recovery and or restoration of that particular service benefit denied to him while in service then this would not only sheer violation of Article 10-A of our Constitution where fair trial and due process of law is guaranteed as a fundamental right but there shall also be a complete turmoil and chaos across-the-board in which situation, the employee during service till his superannuation would be continuously litigating only for claim of damages which does not meant for the relationship of master and servant but this is in fact exploitation and seems to be a relationship of master and slave. Laws exist to protect the fundamental human rights of the members of society and to ensure that they do not have to protect rights through their own actions. The function of the court is to do substantial justice and not to knockout or nonsuit the party on technicalities. At this juncture I would like to quote very celebrated phrase that ***"Law is made for man and not man for the law"***.

27. Now I would like to engage in the judicial precedents cited by the learned counsel for the parties. The learned counsel for the plaintiffs referred to the case of **Province of Punjab v. Malik Muhammad Ilyas** (supra), the court held that the contract should be interpreted according to intention of the parties, the construction must be liberal and with a spirit to save rather than destroy. In my view, it is well settled exposition of law for comprehending and interpreting any contract. He next cited the case of **Sadiq Amin Rahman** (**authored by me**) in which I have discussed in detail the niceties and nitty-gritties of master and servant relationship which I reaffirm in this case also. In the third case of **Bakhtawar etc. v. Amin,** (supra) the apex court discussed the consequence of interim orders violation and held that the court under its inherent jurisdiction may bring back a party to a position where it was originally stood as if the order had not been contravened. Whereas counsel for the defendants cited the case of **Century Link Development Corporation (Pvt.) Ltd.,** (supra) in which this court explicated the grant of interim injunction and held that besides prima facie case, exposure to irreparable injury must also be shown and the plaintiff is also obliged to establish balance of convenience for which affidavit alone has to be considered. In fact this case is based on essential ingredients required to be established for the grant of injunction. In the case in hand I do not think that the plaintiffs have failed to point out or jot down the basic ingredients in their case for the grant of injunction. Learned counsel also referred to the case of **Ghulam Nabi Shah.** (supra) In this case the judgment was authored by me, which is distinguishable predominantly for the reasons that at the verge of retirement the plaintiff had applied for change in his date of birth and he obtained the decree from civil court without joining PIAC. I do not consider that this case may

ameliorate any assistance to decide the case in hand. In the case of **Marghub Siddiqi,** (supra) the apex court held that contract for personal service cannot be specifically enforced. Here again I feel that this case is also distinguishable. The plaintiffs are already in job of PIAC. The matter relates to the implementation of MoU signed by PIAC and PALPA so in this particular scenario, the plaintiffs do not want to enforce any contract of personal service rather they want implementation of MoU. In the case of **Messrs Malik and Haq & another** (supra), the apex court held that in the case of personal service the specific performance is barred and the only remedy available to the employees is to claim damages. In this case as well as in the cases of **Marghub Siddiqui** and **Obaidullah and another** (supra) no such question was involved which might have related to the enforcement of collective deal between the employer and association of employees. So these cases are distinguishable and indeed not apropos to the facts and circumstances of the present case. In the case of **Anwar Hussain v. Agricultural Development Bank of Pakistan and others,** (supra) exactitudes of Section 42 of the Specific Relief Act were considered by the apex court. The apex court held that in case of any wrongful dismissal from or termination of service the principle of master and servant will apply and the person can only claim damages but not reinstatement to his post. No doubt that against the wrongful dismissal or termination the damages can be claimed which particular aspect has already been dealt with by me in the case of **Sadiq Amin Rahman** (supra), however, I would like to add here that presently I am not dealing the case of any dismissed or terminated employee but the plaintiffs before me are the serving pilots who have approached this court for the implementation of MoU.

28. In the wake of above discussion, the aforesaid civil miscellaneous applications are disposed of in the following terms:-

1. Pakistan Airline Pilots Association (PALPA) is impleaded as defendant No.3 in the suits. The counsel for the plaintiffs is directed to file amended title within seven days. The office is directed to issue notice to PALPA with the copy of this order on filing amended title by the plaintiffs' counsel.

2. Seeing as PIAC has recognized that PALPA is a bargaining representative of pilots so being a designated representative authorized to negotiate and conclude agreement with PIAC on behalf its members, PALPA is also directed to look into the matter for attaining and accomplishing some methodology in terms of MOU dated 18.3.2016 for further steps.

3. PIAC management is directed to convene a meeting with PALPA representatives within fifteen days to work out the methodology as agreed to be evolved between PIAC and PALPA in accordance with MOU dated 18.3.2016 to place First Officers of Boeing 777 as captain of A320 subject to completion of training as per seniority and communicate the result of negotiations to the plaintiffs in writing.

4. During the aforesaid negotiation period allowed for working out a methodology in terms of MOU, the management of PIAC shall not compel the plaintiffs to join transition training course for promotion as Captain ATR, however, the plaintiffs will continue to perform their duties being First Officer as per roster till such time the outcome of negotiations is intimated to them.

5. On account of filing present suits for promotion, the PIAC management shall not disturb the actual seniority of the plaintiffs in their present cadre. However the flying licenses of the plaintiffs shall be regulated in accordance with law.

Karachi:
Dated.08.02.2018 **Judge**