

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1498 / 2017

Plaintiff: Shariq-ul-Haq through Mr. Muhammad Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani Advocate.

Contemnors: Capt. Uzair Khan and others through Mr. Khalid Javed Khan Advocate.

Suit No. 1499 / 2017

Plaintiff: Faisal Mehmood through Mr. Muhammad Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani Advocate.

Contemnors: Capt. Uzair Khan and others through Mr. Khalid Javed Khan Advocate.

Suit No. 1500 / 2017

Plaintiff: Muhammad Faisal through Mr. Muhammad Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani Advocate.

Contemnors: Capt. Uzair Khan and others through Mr. Khalid Javed Khan Advocate.

Suit No. 1501 / 2017

Plaintiff: Abid Hamza through Mr. Muhammad Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui
Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani
Advocate.

Contemnors: Capt. Uzair Khan and others through
Mr. Khalid Javed Khan Advocate.

Suit No. 1502 / 2017

Plaintiff: Muhammad Adeel Javaid through Mr.
Muhammad Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui
Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani
Advocate.

Contemnors: Capt. Uzair Khan and others through
Mr. Khalid Javed Khan Advocate.

Suit No. 1508 / 2017

Plaintiff: Amir Mahmood through Mr. Muhammad
Haseeb Jamali Advocate.

Defendant: Pakistan International Airlines Corporation
No. 1. Ltd. through Mr. Abdul Haleem Siddiqui
Advocate.

Defendant: Pakistan Airlines Pilots' Association (PALPA)
No. 3. through Mr. Muhammad Ali Lakhani
Advocate.

Contemnors: Capt. Uzair Khan and others through
Mr. Khalid Javed Khan Advocate.

***For hearing of CMA Nos. 6989 & 6990/2018 (Suit No. 1498/2017),
CMA No. 6993 & 6994/2018 (Suit No. 1499/2017), CMA No. 6997 &
6998/2018 (Suit No. 1500/2017), CMA No. 7001 & 7002/2018 (Suit
No. 1501/2017), CMA No. 7005 & 7006/2018 (Suit No. 1502/2017),
CMA No. 7033 & 7034/2018 (Suit No. 1508/2017)***

Date of hearing: 07.12.2018, 11.12.2018 & 21.12.2018

Date of order: 14.01.2019

Muhammad Junaid Ghaffar, J: All listed applications have been filed with a common prayer seeking suspension and setting aside of Modality dated 25.4.2018, Circular dated 27.4.2018 and Transition Training Letter dated 30.4.2018, being in violation of Memorandum of Understanding (“**MOU**”), dated 18.3.2016, and order dated 8.2.2018 passed by this Court. Contempt applications have also been filed against alleged Contemnors in similar terms.

2. Learned Counsel for the Plaintiffs has contended that listed Suits have been filed for implementation of MOU dated 18.3.2016 entered into between Pakistan Airlines Corporation (“**PIA**”) and Pakistan Airline Pilots Association (“**PALPA**”), and through order dated 8.2.2018 passed by this Court, the entire issue has been decided in favour of the Plaintiffs and holds the key; that such order was not adhered to or implemented, rather an adverse initiative was taken, compelling the Plaintiffs to file listed applications and on 2.5.2018 an order was passed to the effect that if Plaintiffs do not want to join the transition course, then they shall not be compelled by PIA to join the ATR transition course till the next date, and such order still continues; that after passing of order dated 8.2.2018, PIA has issued modality dated 25.4.2018, Circular dated 27.4.2018 and letter for transition course dated 30.4.2018; however, all these impugned actions were in violation of the order of this Court dated 8.2.2018 and the M.O.U. between PIA and PALPA dated 18.3.2016; that the M.O.U. in question was approved by the Board of Directors of PIA wherein, at Para 3(ii) rationalization of carrier plan of the pilots was stressed upon; that the effect of transition cost was also considered; that it was also agreed to employ pilots on ATR on contract basis and promote the first officers of B-777 aircraft (Plaintiffs) to A-320 as Captains directly, to save the training cost of a

minimum of US\$ 22,000/- per pilot; that all such decisions were acted upon by putting an advertisement in the newspaper and issuing option letters to the pilots; that by such conduct the seniority of the Plaintiffs has already been by-passed; that this M.O.U. created a vested right in favour of the Plaintiffs and now they cannot be sent to work on ATR but directly to A-320; that to this effect PIA has made certain admissions in the written statement; that it has already been held by this Court that M.O.U. is valid and is part of the old working agreement pursuant to clause 5.9 thereof; that the findings of this Court vide order dated 8.2.2018 are to be read in totality, whereas, the impugned actions as above are in complete violation of the order of this Court; that the Defendants were never given a free hand to devise a new methodology; that the M.O.U. has to be implemented within its letter and spirit; that even otherwise, the seniority of the Plaintiffs would be seriously affected for no fault on their part; that the stance of PIA and PALPA in the High Court Appeal and so also before this Court is not based on true facts vis-à-vis. the non-availability of enough pilots to operate and run ATRs; that it has come on record through PIA's own documents that this part of the M.O.U. is going to save millions of rupees to PIA and therefore, this ought to have been implemented without fail; that lot of water has flown since 18.3.2016; that the juniors have been promoted, contract pilots have been hired, and therefore, the Plaintiffs cannot be penalized for the inaction on the part of PIA; that after joining as a Defendant, PALPA through its written statement dated 15.02.2018 has supported the stance of the Plaintiff; that PALPA never challenged the order dated 8.2.2018; that the modality if any, can be applied prospectively and for future purposes; but not on the case of the Plaintiffs; that a promise was made to the Plaintiffs to be directly promoted to A-320 as Captains

and therefore, now they cannot be compelled to fly on ATRs; that this is an issue of ego of the management and not in the largest interest of PIA; that Plaintiffs are being penalized for seeking remedy from the Court; hence, the impugned modality and circular be set-aside by allowing the listed application(s).

3. On the other hand, learned Counsel for PIA has contended that the order dated 8.2.2018 was only to the extent of arriving to a modality; that the M.O.U. dated 18.3.2016 had two parts, one in relation to hiring pilots on contract for ATR; and two, promotion of first officers of B-777 to A-320 as Captains; that this was contingent in nature and once the hiring of contract pilots for ATR could not materialize, then the promotions of first officers of B-777 as Captain A-320 could not be acted upon; that the carrier plan as contemplated in Para 5.9 of the working agreement still continues; that the order dated 8.2.2018 never directed PIA to promote these Plaintiffs as pleaded or prayed; that a proper modality has been worked out after due consultation in the larger interest of all by PIA and PALPA; that Plaintiffs cannot be given preference as against others, whereas, time and again it has been stated before the Court that their seniority has been protected; that this is a management issue and Courts have always been reluctant in interfering in such policy and management issues; that PIA has to take a decision after examining the overall situation including the availability of pilots as well as the competition; that even otherwise, it is settled law that promotion is not a vested right; that all pilots in PIA have gone through the same procedure of working on ATR before being promoted to A-320 as Captains and therefore, these Plaintiffs before the Court cannot seek any exception; that PIA badly need pilots to run its ATR operations and therefore, even

otherwise, PIA is not in a position to exempt these Plaintiffs; that no serious prejudice has been caused to the Plaintiffs, whereas, their seniority has been kept intact; that they may be directed to join the ATR training program and follow the same procedure for promotion to A-320 as directed. In support he has relied upon ***Muhammad Roshan Khan v. Ishtiaque Ali 1995 CLC 702) and M. Saleem Shaikh v. State Bank of Pakistan (2003 CLD 1094).***

4. Learned Counsel for PALPA submits that when order dated 8.2.2018 was passed, PALPA was not a party to these Suits and no proper assistance was provided to the Court, whereas, PALPA is one of the signatories of the M.O.U. of which the Plaintiffs seek implementation; hence, the Plaintiffs ought to have joined PALPA as a party at the very outset in these Suits; that the purpose of M.O.U. was relevant at that point of time as the fleet was being expanded and for such purposes, it was agreed that fresh induction would be made for ATR aircrafts on contract basis, and therefore, it was agreed that first officers of B-777 would be promoted as Captain A-320; that since the induction was not made as agreed, therefore, the idea was scrapped and the old working agreement still continues and it is only the Plaintiffs before the Court who have objected to such working agreement; that the arrangement was contingent and was not acted upon in its totality, therefore, no reliance could be placed on the said M.O.U; that PALPA as of today is not supporting the case of the Plaintiffs to the extent of their prayer regarding their direct promotion from first officers of B-777 to Captains A-320; that what the Plaintiffs are now seeking through these applications is beyond the scope of the Suit and after new modality has been reached between PIA and PALPA, the Suit has become infructuous; that it must also be kept in mind that

High Court Appeals against order dated 8.2.2018 and 3.7.2018 passed by this Court are pending, and therefore, any order passed now on the applications of the Plaintiffs may have effect on the Appellate proceedings; that if PALPA supports the case of the Plaintiffs all others could be seriously affected; that though earlier immediately upon joining as a defendant, written statement was filed supporting the case of the plaintiffs, but that was done by the outgoing committee of PALPA in haste and without proper consultation, whereas, an application seeking permission to amend the written statement is already pending.

5. While exercising his right of rebuttal, learned Counsel for the Plaintiffs submits that insofar as the modality and M.O.U. is concerned, the same has been taken care of by this Court in order dated 8.2.2018; that no serious effort was made by PIA to induct contract pilots as only one advertisement was given; that once the M.O.U. was acted upon, the parties cannot withdraw from it and therefore, the listed applications be allowed in favour of the Plaintiffs.

6. I have heard all the learned Counsel and perused the record. It is a matter of admitted fact that Plaintiffs came before this Court in these Suits seeking enforcement of M.O.U. dated 18.3.2016 entered into between PIA and PALPA and insofar as their case is concerned, it is premised upon one part of it which is in respect of promotion of first officers of B-777 as Captain of A-320 aircrafts without training or working on ATR Aircrafts. Their first injunction application was decided by the Court on 8.2.2018 with certain directions as contained in Para 28 of the said order. Sub-para (3) of Para 28 provided directions to PIA management 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 A-320 subject to completion of training as per seniority and communicate the result of negotiations to the Plaintiffs in writing. It appears that thereafter, PIA and PALPA had several meetings and subsequently the impugned modality dated 25.4.2018 Circular dated 27.4.2018 and Transition Training Letter dated 30.04.2018 were issued. Upon such issuance immediately, the Plaintiffs filed the above applications and on 2.5.2018 the same were taken up by the Court and while issuing notice it was observed that if Plaintiffs do not want to join the transition course then the Plaintiffs may not be compelled by PIA to join the ATR Transition Training Course till the next date. It further appears that immediately after passing of order dated 8.2.2018 some contempt applications were filed as by that time the directions as contained in sub-para 3 of Para 28 of the order dated 8.2.2018 were not complied with; however, those contempt applications stand dismissed vide order dated 3.7.2018 by this Court and as informed an Appeal has been filed by the Plaintiffs which is pending. Similarly, PIA has also filed an appeal against order dated 8.2.2018 which is also pending and some orders have been passed by the Appellate Court. Presently, the case of the Plaintiffs is that the order dated 8.2.2018 has not been implemented in the mode and manner as directed and therefore, the impugned Modality, Circular and Transition Letter are without lawful authority, whereas, the Plaintiffs cannot be compelled to join the transition course on ATR. Both these applications are pending after passing of order dated 2.5.2018. It would be advantageous to refer to the impugned Modality dated 25.4.2018, Circular dated 27.4.2018 and Transition Letter dated 30.4.2018, which reads as under:-

“Ref: DFO/FO/Pilots/2018

Date: 25th April, 2018

Modality Regarding Promotion of F/Os B-777 as Captains A-320

1. In compliance of the orders dated 7.3.2018 and 9.3.2018 passed by Honourable High Court of Sindh in HCA No. 46 of 2018 and the order dated 8.2.2018 passed in Suit No. 1498/2017 and others, the representatives of PIAC headed by the Chief of Flight Operations/DFO and Executive Committee headed by the President PALPA convened a meeting on 17.4.18 and discussed in details the matter relating to the career paths of the First Officers of B-777, who had gone to Court in the above suits.
2. After taking into account different factors, following was decided:-
 - a) All First Officers of B-777 should first be promoted / routed as Captain ATR, subject to fulfillment of regulatory requirements.
 - b) They shall be promoted on the next equipment i.e. A-320, as per seniority.
 - c) These 06 First Officers would be entitled to retain seniority position above the junior officers who were promoted to ATR before them. No pilot junior to these 06 first officers in seniority will be promoted on the A-320 before them.
 - d) The PALPA Executive Committee shall commence negotiations with the higher management of PIACL for a new PALPA-PIACL Working Agreement 2018-2020 for the betterment of the National Flag Carrier, vide letter No. HQ/Staff/21/PIA dated 2nd April 2018 sent by Aviation Division Islamabad to the Chief Executive Officer PIACL at the earliest, to ensure the above mentioned methodology shall be incorporated and form part of the said agreement.

Sd/-

CAPT. UZAIR KHAN
Chief of Flight Operations-PIACL

Sd/-

CAPTAIN RIZWAN GONDAL
President-PALPA

Sd/-

CAPT. WAQAR HASAN
Chief Pilot Scheduling –PIACL

Sd/-

CAPT. SHAIKH REHMAN
FAZAL HAQQI
Joint Secretary-1- PALPA
(officiating General Secretary
(PALPA)

“FLT OPS/DFO/2/Fri Apr 27 2018

Subject: **PROMOTION POLICY FOR B-777 FIRST OFFICERS**

Consequent to the MOU dated 18-03-2016 between PIACL and PALPA and in accordance with the directions of the Honourable High Court of Sindh given through its orders dated 08-02-2018, 07-03-2018 and 09-03-2018, after long and thoughtful negotiations between team of Flight operations headed by Chief of Flight Operations / DFO and team of PALPA headed by President PALPA, following has been decided and agreed upon between PIACL and PALPA:-

- i) All the First Officers of B-777 shall first be promoted / routed as Captain ATR, subject to compliance of regulatory requirements.
- ii) ATR Captain shall then be promoted to the next equipment i.e. A-320, as per seniority.

Sd/-
Fri Apr 27 2018
Capt. UZAIR KHAN (T.St)
Chief of Flight Operations
Flight Operation Department.”

“To F/O Sharif Haq (P-60682), F/O Adeel Javed (P-60708),
F/O Abid Hamza (P-54096), F/O Faisal Mehmood (P-56234),
F/O Faisal Choudhry (P-56239), F/O Amir Malik (P-61978)

CC :Chief Pilot Scheduling, Chief Pilot Crew Training
Ref :DFO/M/60/2018
Dated :April 30th 2018

Subject: Transition Training – ATR as P1

A course for training of Captains for ATRs is scheduled to commence with effect from 07th May 2018.

In the light of the modality worked out by PALPA and PIAC vide letter dated 25.4.2018 Ref DFO/FO/Pilots/2018 pursuant to the orders passed by Sindh High Court, all First Officers of B777 are to be promoted / routed as Captain ATR.

IN order to resume your flying operations as per the agreed modality, you would need to join the training so that you can be deputed as Captains of ATR as early as possible. Please rest assured that PIAC is very keen to protect your career prospects and for that purpose clause c of the above letter specifically protects your seniority. In due course and on completion of your tenure as Captains ATR, you would be entitled to be promoted as Captains of A-320.

We look forward for your cooperation in the larger interests of the Airline and to ensure smooth operation of its fleet so that passengers are served with the best of our abilities.

Sd/-
Capt. Uzair khan (T.St)
Chief of Flight Operations / DFO”

7. Insofar as the modality dated 25.4.2018 is concerned, the same has been reached between PIA and PALPA pursuant to order dated 8.2.2018 in this Suit and connected matters, and orders dated 7.3.2018 and 9.3.2018 passed in High Court Appeals. It has now been agreed that all first officers of B-777 should first be promoted / routed as Captain ATR, subject to fulfillment of regulatory requirements. It has been further agreed that they shall be promoted on the next equipment

i.e. A-320, as per seniority. Insofar as the Plaintiffs are concerned, it has been agreed that these six first officers would be entitled to retain seniority position above the junior officers who have been promoted to ATR before them and no pilot junior to these Plaintiffs in seniority will be promoted on A-320 before them, and finally it has been agreed that PALPA Executive Committee shall commence negotiations with the higher management of PIA for a new PALPA-PIA Working Agreement 2018-2020. On overall perusal of the modality, it appears that though the Plaintiffs entire claim has not been satisfied, but with utmost respect, it may be observed that it was never so directed by the Court vide its order dated 8.2.2018. The Plaintiffs interest has been well protected as to their seniority and this was way back in April 2018 but the Plaintiffs immediately, challenged this and refused to join the transition course followed by this modality. It is a matter of record that order dated 8.2.2018 has been challenged in Appeal and two orders have been passed on 7.3.2018 and 9.3.2018. In my view pendency of such Appeals has a direct nexus with and effect on the implementation of order dated 8.2.2018, as pleaded and prayed. In fact the Plaintiffs through these applications are seeking clarification and intent of the order passed on 8.2.2018, which is not permissible. Their contempt applications in respect of the said order also stands dismissed. It has been observed by the Court in that order that “It is only to the effect to convene a meeting within 15 days to work out methodology as agreed in the MOU for placing the First Officers of Boeing-777 as Captain of A-320, subject to completion of training as per seniority and communicate the result of negotiations in writing.” It has been further observed that “As to the second part the directions were only to evolve a **“methodology”**, and not more. It is not that entire prayer in the Suit has been granted at the injunctive stage, nor it could have been granted for that matter. The plaintiffs through contempt proceedings are in fact seeking the

entire relief in their Suit, which is yet to be decreed. Mere directions for evolving a **“methodology”** would in no manner amount to granting the prayer in the Suit or even in the injunction application; otherwise clear and specific directions would have been given in respect of promotion of all plaintiffs directly on to A-320 without any further ifs and buts.” It is a matter of record that while evolving new methodology and through transition training letter, the Plaintiffs have been informed and assured that their seniority will remain intact and they will soon be promoted after their assignment on ATR. Lastly, it is worth mentioning that High Court Appeal(s) have been filed against order(s) dated 8.2.2018 as well as 3.7.2018 whereby the contempt application was dismissed. The listed applications are in essence similar in nature to the contempt application. It is seeking implementation of order dated 8.2.2018 which has been appealed, and a restraining order against further proceedings pursuant to the new modality. In my candid view, the Plaintiffs ought to have proceeded with the Appeals to seek any further favorable order. As now it is not the domain of this Court to either clarify or interpret its order when it has already been appealed by one of the parties. Not only that, there are certain orders of the Appellate Court as well in field. Therefore, it will not be appropriate for this Court to pass any further orders, either clarifying, or having it implemented or even a restraint order for that matter.

8. Though, the order dated 3.7.2018 was passed in respect of a Contempt Application, but the reasoning assigned thereon, squarely applies to the present applications which also include a Contempt application. In fact the other application whereby, suspension of modality and circular is being sought, is also of the same nature, as in pith and substance, the plaintiffs seek implementation of the order dated 8.2.2018, as they interpret and understand. This Court has

already come to the conclusion that the order dated 8.2.2018 is not clearly directing PIA to submit to the claim of the Plaintiffs, and promote them as A-320 Captain without working on ATR. It was only to the extent of working out a modality which has been done, and their interest has been safeguarded by keeping their seniority intact. However, they are still persisting with their demand of being promoted directly, without taking an assignment on ATR Aircraft. This Court was conscious of the fact that no such directions could be given to PIA; and therefore, purposely, directed them to devise a modality for such purposes. The Plaintiffs may not be satisfied with such new modality, but then again it was never directed to satisfy the entire claim of the Plaintiffs.

9. There is also another aspect of the matter which now needs to be considered in view of the changed circumstances. It is a matter of record that when order dated 8.2.2018 was passed, PALPA was never a party, and no assistance was sought from PALPA in respect of the true intention and the circumstances which prevailed while agreeing on MOU dated 18.3.2016. It may further be observed that due to absence of PALPA it was also not considered that what exactly has been transpired after signing of the MOU, and non-induction of the contract pilots on ATR. Now they are before the Court, and though have filed their written statement supporting the case of the Plaintiffs, but then again, after induction of a new committee pursuant to fresh elections, another application has been filed to amend the written statement, whereas, insofar as listed applications are concerned, they have vehemently opposed the grant of the same. Moreover, since Appeals are also pending against order(s) dated 8.2.2018 and 3.7.2018, it would not be proper and just for this Court to dilate upon the entire issue and the

stance of the Plaintiffs, which may have emerged after passing of such orders and at the same time also to accept the claim of the Plaintiff's as pleaded as it may have effect on the outcome of the Appeals.

10. In view of hereinabove facts and circumstances of this case and discussion as above, I am of the view that all these listed applications do not merit any consideration, as Plaintiffs have not been able to make out any such case, hence, they are hereby dismissed.

Dated: 14.01.2019

J U D G E

ARSHAD/