

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No.D-3169 of 2019**

Fouzia Khan ..... Petitioner

Versus

Chairman/CEO P.I.A. & 2 others ..... Respondents

**C.P No.D-3170 of 2019**

Aliya Shabnum ..... Petitioner

Versus

Chairman/CEO P.I.A. & 2 others ..... Respondents

**C.P No.D-3171 of 2019**

Azra Parveen Butt ..... Petitioner

Versus

Chairman/CEO P.I.A. & 2 others ..... Respondents

**C.P No.D-3172 of 2019**

Husun Nayab ..... Petitioner

Versus

Chairman/CEO P.I.A. & 2 others ..... Respondents

**C.P No.D-3173 of 2019**

Rafi Ahmed ..... Petitioner

Versus

Chairman/CEO P.I.A. & 2 others ..... Respondents

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**Date of hearing: 08.05.2019**

**Date of order: 08.5.2019**

Mr. Kamran Iqbal Bhutta, Advocate for the Petitioners.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein. Basically the Petitioners have called in question the Transfer Orders dated 26.4.2019 issued by Pakistan International Airlines Company [**PIAC**], whereby they were transferred from Karachi station to Islamabad station.

2. Brief facts of the case as averred by the Petitioners are that the Petitioners are serving as Airhostess [Group-VI & VII] in PIAC, since 1986, 1988, 1989, 1996 & 2001 respectively. The Petitioners are aggrieved by and dissatisfied with the aforesaid impugned transfer letters dated 26.4.2019, whereby they have been transferred from Karachi to Islamabad on their respective posts.

3. Upon query by this Court as to how the captioned Petitions are maintainable against the transfer & posting issues, which fall within the ambit of expression `terms and conditions` of their service.

4. Mr. Kamran Iqbal Bhutta, the learned Counsel for the Petitioners has argued that the impugned transfer orders as discussed supra are based on malafide intention. Per learned Counsel, the case of the Petitioners falls within the ambit of the expression "Rotation policy from one city to another city" and without completing their tenure/rotation of posting as per PIA's Personal Policy Manual dated 15.11.2016 is illegal; that the

transfer orders issued by the Respondents are in violation of the dicta laid down by the Hon'ble Supreme Court of Pakistan in its various pronouncements; that Petitioners being eligible in all respect are entitled for completion of their minimum tenure of posting as Airhostess at their respective positions; that the impugned transfer orders are violative of section 24-A of the General Clauses Act; that the impugned orders do not reflect any reason of the transfer and posting of the Petitioners; that the transfer and posting of the Petitioners is based on victimization and without accommodation, thus not sustainable in law; that the Respondent-PIAC has violated the procedure as provided in Personnel Policy Manual 2016; that as per procedure rotation of employees within and outside the station of posting of the department within Pakistan is required to be initiated by Deputy General Manager HR concerned, which is to be implemented after approval of the Competent Authority; that there is no approval of the Competent Authority regarding transfer and posting of the Petitioners from one station to another station; that the Respondents have violated the Wedlock policy in some of the cases of the Petitioners as provided under the law; that the Petitioners were not at fault when they were ordered to be transferred and posted at Islamabad and on this account the family of the Petitioners have badly suffered as such this Court can take cognizance of the matter. Learned Counsel further added that during the entire service of the Petitioners, nothing adverse is available against them; that the aforesaid act of the Respondent-PIAC is against the basic principle of posting and transfer as well as principle of natural justice. Learned Counsel argued that when the ordinary tenure of posting i.e. rotation has been specified in

law and policy of PIAC such rotation is required to be respected; that due to transfers of the Petitioners from Karachi station, the education of their children is suffering, which cannot be compensated at any cost; that the transfer and posting is to be made due to exigency of service and not otherwise. He lastly prayed for allowing the instant petitions. Learned Counsel for the Petitioners, due to the urgency pointed out in the aforesaid matters has argued the entire case on merit.

5. We posted another question to the learned Counsel with regard to the issue of non-statutory rules of the service of the Respondent-PIAC. He, in reply to the query, has submitted that the Respondent-PIAC 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; that Respondent-PIAC is 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, this Court can exercise powers to issue Writ against the Respondent-PIAC. In support of his contention, he relied upon the cases of Pakistan Defence Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257). He further pointed out that this Court vide un-reported Judgment dated 07.3.2018 passed in C.P No.D-562/2012 has already held that the Petition against the PIAC is maintainable [available at Page-17 to the MoP]. He next submitted that the Petitioners have been forced to resign from their respective

posts or to report to Islamabad Station within a period of 06 days otherwise the consequences shall follow; that this is a hardship case and this Court can direct the Respondents to maintain status-quo or not to take any coercive action against the Petitioners. In support of his contention, he further relied upon various documents available with the Memo of Petition and argued that these Petitions are maintainable and can be heard and decided on merits.

6. We have heard the learned Counsel for the Petitioners and perused the material available on record as well as case laws cited at the bar.

7. The foremost questions which require our findings are as under:-

- (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?***

8. The issue of maintainability of the captioned Constitutional petitions is involved in the present proceedings in view of the decisions rendered by the Honorable Supreme Court of Pakistan in the cases of *Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others* (PLD 2010 SC 676), *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383), *PIA Corporation v. Syed Suleman Alam Rizvi*

**(2015 SCMR 1545)**, Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others **(2016 SCMR 14)**, Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others **(2017 SCMR 2010)** and Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others **(2019 SCMR 278)**, as such we would confine our self to that issue only and refrain ourselves to dilate upon the merits of the case on the issue of transfer and posting of the Petitioners, if we find these Petitions are not maintainable under the law.

9. To answer the first and second proposition, in our view the Respondent/PIAC 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 is 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.

10. To answer the third proposition of law, in present matter, Petitioners are seeking setting-aside the transfer & posting orders dated 26.4.2019 issued by Respondent-PIAC. 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). It is an established fact 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). In our view, the case of the petitioners is fully answered by the aforesaid judgments of the Honorable Supreme Court.

11. Much emphasis has been laid by the learned Counsel for the Petitioners on the decision given by this Court 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 in the aforesaid case 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. Relevant portion of the Judgment dated 07.03.2018 passed by this court is reproduced as under:-

“11. To answer the aforesaid proposition of law, in the present matter, Petitioner is 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. We are of the considered view that the regularization of the employees is not part of the terms and conditions of service of the

employees but, it depends upon the length of service, held by the Honorable Supreme Court of Pakistan in the unreported case of Pakistan State Oil Company (Civil Petitions No.409-K to 414-K of 2017)”

12. In the present Petitions, Petitioners are seeking setting aside the transfer orders issued by the Respondent-PIAC. In our view, the expression “terms and conditions” includes transfer and posting, we are fortified on this point by the decision of the Hon’ble Supreme Court in the case of *Ali Azhar Khan Balouch and others v. Province of Sindh and others* (2015 SCMR 456), 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 provides that it has no statutory rules of service. We may also state that where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant" as discussed supra. As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", therefore, if there is any violation of the breach of 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. Our view is further supported by the latest verdict of Honorable Supreme Court in the case of *Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others* (2019 SCMR 278).

13. In our view, once the Hon’ble Supreme Court of Pakistan has concluded in its order referred to hereinabove, this Court cannot travel into the merits of the case nor could take a different view.



14. The learned Counsel for the Petitioners while arguing the case has heavily relied upon the case of Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to stress that in view of the 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 shall 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 Petitioners, we feel no hesitation in drawing inference that the Respondent-PIAC is a statutory entity and Petitioners are not governed under statutory rules of service, hence their terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioners 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 Petitioners or any disciplinary proceedings undertaken against them 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 Petitioners as we see no violation of law in transfer and posting of

the Petitioners as agitated by the learned Counsel for the Petitioners.

17. For the aforesaid reasons, we are of the view that the relationship of Master and Servant exist between the Petitioners and the Respondent-PIAC and hence, their 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 i.e. 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 issue transfer and posting orders to its employees in accordance with its Service Rules and Regulations/Policy, 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 Petitions are not maintainable and the same are accordingly dismissed in *limine* along with the pending Application[s], with no order as to costs.

**JUDGE**

**JUDGE**

Nadir/-