

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3189 of 2019

Captain ® Javed Afzal & 05 others Petitioners

Versus

Pakistan International Airlines
Corporation Limited Respondent

Date of hearing: 09.05.2019

Date of order: 09.05.2019

Mr. Mujtaba Sohail Raja, Advocate for the Petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through the captioned petition, basically the Petitioners are asking for implementation of the Judgment dated 13.12.2018 passed by the Honorable Supreme Court in the case of Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others [2019 SCMR 278], and seek further direction to the Respondent-PIAC to make payment of monthly pension to them in terms of Circular No.21/2003. The relevant portion of the judgment dated 13th December, 2018 passed by the Hon'ble Supreme Court of Pakistan is reproduced as under:-

“5. We have heard the counsel for the parties. After MLR-52 rescinded the Trust Deed of 1980 in 1981, pension benefits were being calculated first under pension scheme of 1982 then under PFF Rules of 1988 which were followed by Admin Order 34 of 2003 and finally under Admin Order No. 08 of 2004. The appellants who retired on 2008, 2009 and 2014 are now seeking calculation of retirement benefits on the basis of Trust Deed of 1980 that as stated earlier stood

*rescinded in 1981. In Admin Order No. 34/2003 it is no doubt stated that pension, commutation and gratuity shall be calculated on the basis of the salary frozen on 31.12.2002 without taking into consideration future annual increments thereby resulting in the salary component to become stagnant as its effect was that no matter how much the salary increased after 31.12.2002 the pension was to be calculated on the salary drawn on 31.12.2002 **but the anomaly so created was reversed by the respondent No.1 through Circular No. 21/2003 issued on 31.07.2003 which provided that future revision in pension shall be linked with last drawn salary. So the grievance that pension was not being calculated on last drawn salary also stood redressed in 2003. Thus it is clear that the appellants/pilots shall be entitled to the pension on the basis of the last drawn salary which they were getting at the time of their retirement.** It is only in 2014 that the pensioners are seeking calculation of pensionary benefits on the basis of the Trust Deed of 1980 that stood revoked way back in 1981 under MLR-52 and replaced by other pension schemes hence the constitution petition also suffered from laches.”*

2. Brief facts of the case as averred by the Petitioners in the Memo of Petition are that they are retired Pilot officers of Pakistan International Airline Corporation ["**PIAC**"]. On 02.05.2014, they filed Constitution Petition No. D-2353/2014 before this Court, by calling in question the method of calculation of their pension by the Respondent-PIAC and sought relief that the said calculation of pension contribution should, retrospectively from 01.01.2003, be pursuant to the methodology detailed in the Trust Deed dated 12.02.1980, which created PIA PALPA FENA Pension Fund. The aforesaid Petition was dismissed by this Court vide judgment dated 23.09.2016. An excerpt of the Judgment passed by this Court is reproduced as under:-

“In the light of above reasons and on the well settled legal position, we are of the considered view that the Petitioners’ grievances cannot be addressed and effectively remedied in a constitutional petition on want of master-servant relationship between the rival parties and on account of the evidence that need to be examined to give just and proper finding as to the execution of the trust, therefore the instant constitution petition is dismissed, however, the Petitioners may file civil suit for the redressal of their grievances before the appropriate forum, which may, keeping in view that the matter has been inordinately delayed, and the Petitioners are of advance ages, be disposed of as expeditiously as possible.”

Petitioners being aggrieved by and dissatisfied with the impugned judgment 23.09.2016 filed Civil Appeal No. 585 of 2018 before the

Honorable Supreme Court, which was too dismissed on 16th January, 2019 with the following observation:-

“6. 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 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", Article 199 of the Constitution of Pakistan 1973 cannot be invoked. Reliance is placed on PIA Corporation v. Syed Suleman Alam Rizvi (1996 SCMR 1185), Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In view of what has been discussed above, we find no legal justification to interfere in the impugned judgment. This appeal is, therefore, dismissed.”

3. Upon query by this Court as to how the captioned Petition is maintainable before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, on the premise that in the earlier round of litigation, the Petitioners were non-suited by this Court vide judgment dated 23.09.2016 passed in Constitution Petition No. D-2353/2014 and affirmed by the Hon'ble Supreme Court of Pakistan on 16th January, 2019 in Civil Appeal No. 585 of 2018.

4. Mr. Mujtaba Sohail Raja, the learned Counsel for the Petitioners has argued that the Petitioners have come forward for enforcement of the paragraph No.5 of the Judgment passed by the Honorable Supreme Court [**2019 SCMR 278**], which reads as under:-

“but the anomaly so created was reversed by the respondent No.1 through Circular No. 21/2003 issued on 31.07.2003 which provided that future revision in pension shall be linked with last drawn salary. So the grievance that pension was not being calculated on last drawn salary also stood redressed in 2003. Thus it is clear that the appellants/pilots shall be entitled to the pension on the basis of the last drawn salary which they were getting at the time of their retirement.”

He next contended that this Court is competent to enforce the judgment of the Honorable Supreme Court of Pakistan under Article 187(2) of the Constitution of the Islamic Republic of

Pakistan 1973; that the Respondent-PIAC is not implementing the aforesaid portion of the judgment passed by the Honorable Supreme Court in its' letter and spirit. He lastly prayed for allowing the instant Petition. Learned Counsel for the Petitioners, due to the urgency pointed out in the aforesaid matter 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 public sector company and falls within the definition of Section 2(g) of Public Sector Companies, (Corporate Governance) Rules, 2013 and 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 various documents available with the Memo of Petition and argued that the instant Petition is maintainable and can be heard and appropriate directions can be issued to the Respondent-PIAC to implement the Judgment passed by the Honorable Supreme Court.

6. We have heard the learned Counsel for the Petitioners on the point of Maintainability of the instant Petition and perused the material available on record

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

- (i) *Whether PIAC has statutory rules of service and writ could be issued against the Respondent-PIAC under Article 199 of the Constitution?*
- (ii) **Whether the instant Petition is maintainable under Article 199 of the Constitution, once the Hon'ble Supreme Court of Pakistan has concluded in its judgment in the case of Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278) and dismissed the petition of the Petitioner, and whether this Court cannot travel into the merits of the case?**

8. The issue of maintainability of the captioned Constitutional petition 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 to that issue only and refrain ourselves to dilate upon the merits of the case on the issue involved in this petition, if we find this Petition is not maintainable under the law.

9. To answer the aforesaid proposition of law, in present matter, the only issue raised by the Petitioners before this Court with regard to the enforcement of the Paragraph No. 5 of judgment of the Honorable Supreme Court of Pakistan, as discussed supra under Article 187(2) of the Constitution. It appears from the record

that the judgment of this Court in the aforesaid matter of the Petitioners attained finality after the decision rendered by the Honorable Supreme Court in the case of Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278), whereby the Civil Appeal of the Petitioners was dismissed on merits. In our view, the findings recorded by the Honourable Supreme Court against the Petitioners cannot be appealed/assailed by resorting to filling of Writ Petition before this court under Article 187(2) of the Constitution. Our view is supported by the verdict of the Honorable Supreme Court in the case of Peer MUKARRAM-UL-HAQ vs. FEDERATION OF PAKISTAN and others [2015 P L C (C.S.) 201].

10. We have noticed that the Petitioners approached this Court through Constitution Petition No. D-2353/2014, which was dismissed vide judgment dated 23.09.2016. Therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within mischief of constructive res-judicata. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280).

11. Reverting to the plea raised by the Petitioners that they have approached this court for implementation of the Judgment of the Honorable Supreme Court, suffice it to say that, 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. In this context the Hon'ble Apex Court in the order dated 27.09.2016 passed in Cr.Org Petition No.106 to 111 of 2016 has held as follows:-

“Once the employees were de-notified in compliance with the judgments of this Court, the employees aggrieved have to approach this Court in review instead of obtaining interim orders from the Sindh High Court.”(Emphasis Added).

12. We are of the view that the only remedy available to the Petitioners is to approach the Hon’ble Apex Court and not this Court under Article 199 of the Constitution.

13. 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 Respondent-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 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.

14. Perusal of record shows that the Petitioners through this petition are seeking enforcement of the trust deed and rules made thereunder for the calculation of their pension amount and seeking details of the funds invested and contributions made into the said trust fund by the Respondent-PIAC and as per judgment passed by this court in the aforesaid matter, the Respondent-PIAC is relying on MLR-52 in terms of which the said trust was terminated and

they subsequently alerted their formula of calculation of pensionary benefits and thereafter pension has been calculated as per the new admin orders issued from time to time. In our view, the expression "terms and conditions" includes pensionary benefits.

15. 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 Islamic Republic of Pakistan 1973.

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 purposes, these are contractual terms for internal use.

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, 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).

18. In the light of above discussion and the case law referred above, the instant Petition is not maintainable and the same is dismissed in *limine* along with the pending Application[s]

JUDGE

JUDGE

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