IN THE HIGH COURT OF SINDH, AT KARACHI

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

H.C.A. No. 42 of 2016

Mst. Rani .....Appellant

V/s

Pakistan International Airline Corporation & another .....Respondents

Dates of hearing: 29.10.2018 & 28.11.2018.

M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocates for the Appellant.

Mr. Amir Malik, Advocate for the Respondent No.1.

Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The present Appellant has assailed the order of the learned Single Judge (Original-Side) dated 09.2.2016 and Decree dated 16.02.2016 passed in Civil Suit No. 524 of 2014 (*impugned order*), whereby the plaint of the Appellant was rejected under Order VII Rule 11 CPC.

2. The case of the Appellant is that during her tenure of Service in PIAC, she was served with Charge-sheet/statement of allegations on account of shop lifting at Dubai Duty Free Shop. Appellant has submitted that an enquiry was conducted by the enquiry officer, who probed the allegations and she was found

guilty of the charges leveled against her, however a lenient view was proposed to be taken against her. Appellant has submitted that PIAC did not agree with the opinion of the enquiry officer and she was finally dismissed from service vide letter dated 24.9.2013. Appellant being aggrieved by and dissatisfied with the dismissal from service order, assailed the same before the Managing Director PIAC, through the Departmental Appeal, however the same was not acceded to by the management of PIAC vide letter dated 21.11.2013. Appellant being aggrieved by and dissatisfied with the dismissal of the Departmental Appeal challenged the same before the Chairman PIAC, which was not replied, thereafter the Appellant has filed the Civil Suit No 524 of 2014 on 01.4.2014 before the learned Single Judge of this Court (O.S), which plaint of the Appellant was rejected under order VII Rule 11 CPC, by the order dated 09.2.2016, followed by the Decree, which was prepared on 16.2.2016. Appellant being aggrieved by and dissatisfied with the aforesaid Order and Decree has preferred the present Appeal on 03.2.2016.

3. Mr. Muhammad Ali Lakhani, learned counsel for the Appellant, submitted that the impugned order was not sustainable in law; that the learned Single Judge has failed to answer the questions of law determined for final adjudication of the dispute between the parties; that the learned Single Judge has failed to adjudicate the matter in accordance with law; that the learned Single Judge has misled himself on the maintainability of the proceedings; that the learned Single Judge has failed to appreciate that PIAC had acted

in violation of the law. The learned Single Judge has failed to appreciate the basic intent of the principle of "*Master and Servant*" and has opined against the Appellant; that the learned Single Judge has failed to appreciate that the actions of PIAC as impugned through the proceedings were ultra vires of the Constitution; that the learned Single Judge has failed to appreciate that PIAC was bound to act in accordance with Articles 4, 5 and 10-A of the Constitution; that the Rule of "*Master and Servant*" is alien to the jurisprudential standard enforceable within Pakistan; that the learned Single Judge has failed to appreciate the concept of "*Master and Servant*" which has been rendered redundant due to efflux of time. The learned Single Judge has failed to take into consideration the fact that the Rule of "*Master and Servant*" is inapplicable to cases where there is no allegation of violation of the law. The learned Single Judge has failed to appreciate the principles of natural justice and the public duty to act fairly and honestly; that the Learned Single Judge has failed to appreciate the recommendations of the inquiry officer. The inquiry Officer has, in the facts of the present proceedings, contended that the Appellant be given a "lenient consideration". The "Competent Authority" of PIAC has not specified and/or supplied reasons for issuance of the dismissal order despite the fact that the inquiry Officer suggested otherwise. Learned counsel, in support of his contention has relied upon the case of ***Muhammad Akhter Shirani & others vs. Punjab Textbook Board & others (2004 SCMR 1077)*** and argued that public functionaries are duty-bound

to carry out lawful orders of their superiors. He next relied upon the case of ***Pakistan Defence Officers Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010)*** and argued that violation of the principles of natural justice has always been treated as violation of law. He next relied upon in the case of ***Muhammad Rafi vs. Federation of Pakistan & others (2016 PLC (C.S) 328)*** and argued that in absence of statutory rules of service the only remedy was to file a Suit against the government owned corporations. He next relied upon the case of ***Muhammad Ali Akhter & others vs. Provincial Government of Gilgit Baltistan & others (2017 PLC (C.S) 40)*** and argued that the Suit was maintainable with regard to the question of the relationship of "Master & Servant" between the parties. He next relied upon the case of ***Secretary, Government of Punjab & others vs. Khalid Hussain Hamdani & others (2013 SCMR 817)*** and argued that the impugned order is not sustainable under the law and is liable to be set aside on the premise that the nature of charges leveled against the Petitioner were without any evidence, she was allegedly held guilty and unlawfully major penalty of dismissal from service was imposed upon her, therefore, the case of the Appellant needs to be remanded to the learned Single Judge to decide the matter on merits afresh. He next relied upon the case of ***Asif Yousuf vs. Secretary, Revenue Division & others (2014 SCMR 147)*** and argued that there was no material available before the Competent Authority to pass an order of the dismissal from service of the Appellant. He next relied upon the case of ***Arif Majeed & others***

vs. Board of Governors Karachi Grammar School (2004 CLC 1029) and argued that whenever there is a right there must be a remedy to enforce it. He further added that if the Appellant was found not entitled to a declaration and injunction in terms of section 42 of Specific Relief Act, the learned Single Judge was empowered to examine whether the relief by way of cancellation of the order passed by the respondents could be granted under section 39 of the Specific Relief Act. He lastly prayed for allowing the Appeal.

4. Conversely, Mr. Amir Malik, learned counsel for Respondent-PIAC argued the case for respondent and supported the impugned Order and Decree passed by the learned Single Judge in Suit No.524 of 2014. He submitted that the Suit of the Appellant was barred under Section 21 of the Specific Relief Act as the relationship between the parties was that of "master and servant"; that the Appellant was an employee of Pay Group IV at the time of her dismissal from service. Her grievance, if any, therefore, comes within the purview of Industrial Relation Act 2013 and under Section 1(3) III of the said Act; that the jurisdiction in respect of the Appellant's grievance, if any, is vested with Labour Court under Section 45 read with Section 2(XV) of the said Act IV 2013; that the suit of the Appellant is without cause of action for the reason that the Appellant herself had admitted the commission of offence of shop lifting and had signed an apology letter, as is reflected from annexure A-5/1 & A-5/2 to the plaint. He lastly prayed for dismissal of the appeal.

5. We have given serious thoughts to the respective arguments of the learned counsel for the parties and have also perused the record and the decisions cited before us.

6. Issue in the present proceedings is whether the Plaint in the Suit was lawfully rejected under the facts and circumstances?

7. In order to initiate this discussion, it may be appropriate to reproduce the contents of the prayer clauses of the Plaint filed in the Suit:-

> **A. "Letter dated 24.9.2013 bearing 'LAOO' No. CF.092013087/SP-1902/1984 is illegal, malafide, has been issued in the absence of lawful authority and/or jurisdiction and without the judicious application of main, and ultra vires of Articles 4,9 and 10-A of the Constitution of the Islamic Repu8blic of Pakistan, 1973, as also Section 24-A of the General clauses Act and the Pakistan International Airline Corporation Employees (Service & Discipline)Regulations of 1985;**
>
> **B. In furtherance thereof, declare that the 'Letter' dated 24.9.2013bearing LAOO' No. CF-092013087/SP-1902/1984, does not tantamount to a unilateral repudiation of the plaintiff's contract of service with the defendant No.1;**
>
> **C. As a result of 'I' and 'ii', declare that all proceedings culminating in the issuance of 'Letter' dated 24.9.2013 bearing 'LAOO' No.CF-09201087/SP-1902/1984, are illegal, non-judicious, and ultra vires the law;**
>
> **D. Declare that the Review dated 2.12.2013 filed by the plaintiff as against the 'Letter' dated 24.9.2013 bearing 'LAOO' No.CF-092013087/SP-1902/1984, by virtue of having remained un-responded to for a reasonable period of time, stands accepted by the efflux thereof:**
>
> **E. Without prejudice to the relief(s) as prayed for herein above, and strictly as an alternative, grant a mandatory Injunction directing the Defendant No.1 to conduct a fresh inquiry as against the plaintiff whilst ensuring that it acts within the parameters and dispositions of law;**
>
> **F. For the purpose of 'v' , constitute a transparent and independent 'Inquiry Committee' clothed with the powers as supplied to a body so constituted under and through the Pakistan International Airline Corporation Employees (Service & Discipline) Regulations of 1985;**
>
> **G. Pending adjudication of the cause agitated herein, grant a Permanent Injunction restraining the defendants, and/or any other person(s) acting under them, through them, and/or on their behalf from causing any hindrances and/or interruptions in the plaintiff's discharge of her duties as a member of the Cabin Crew. Resultantly, suspend the operation of the 'Letter' dated 24.9.2013 bearing LAOO No. CF-092013087/Sp-1902/1984;**
>
> **H. Grant any other relief(s) as may be deemed appropriate, necessary and/or just in the given circumstances of the case."**

8. It appears from the foregoing that the basic claim of the Appellant was in respect of her reinstatement in Service. This factum was also recognized by the learned Single Judge in the impugned order, wherein it is recorded that:-

> **"8. The conclusion from above discussion leaves me with no other conclusion but to say that instant suit, confined to declaratory decree & Mandatory relief alone, is not sustainable before the Court.**
>
> **9. Though, the above discussion leaves nothing to discuss the merits of the case anymore. However, the pleadings of the plaintiff itself would show that prima facie no violation of law is there because she (plaintiff) was served with explanation; followed by show cause, inquiry; even final show cause and an opportunity of personal hearing.**
>
> **10. In result of the above discussion, the plaint of the plaintiff is hereby rejected being not maintainable before this court. However, this shall not prejudice the rights of the plaintiff to seek damages if law permits and she legally establishes."**

9. We have noticed that both the parties in the original proceedings agreed to the legal issues involved in the matter and sought disposal of the Suit proceedings on the issue of maintainability of the Suit vide order dated 05.11.2014.

10. We have scanned the impugned order and the decree passed by the learned single judge; the learned Single Judge of this Court (O.S) rejected the plaint of the Appellant being barred by law, he premised his findings on the issue of maintainability of the Suit and gave verdict against the Appellant with the findings that, since the Respondent-Corporation have no Statutory Rules of Service,

thus relationship between the Appellant and the Respondent-Corporation was that of 'Master & Servant' and observed that in the case of dismissal from service of an employee of the Corporation the remedy is to seek damages and not reinstatement in service.

11. The pivotal question remains to be answered whether the Civil Court has jurisdiction to pass a Decree to reinstate the service of any employee of Government Owned and Controlled Statutory Organization, having non Statutory Rules of Service, under the Code of Civil Procedure?

12. To appreciate and elaborate on the aforesaid point of law, at this juncture, it would be appropriate to carry out an analysis of Order VII Rule 11 of the Code of Civil Procedure 1908, the said provision is reproduced below:

> **a) Where it does not disclose a cause of action;**
>
> **b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**
>
> **c) Where the relief claimed is property valued; but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;**
>
> **d) Where the suit appears from the statement in the plaint to be barred by any law.**

13. We have noticed that the Civil Court is bound by the use of the mandatory word "shall" to reject a Plaint if it "appears" from the statement in the Plaint to be barred by any law. So the

objection raised by the learned counsel for the Appellant on the aforesaid proposition is not sustainable under the law.

14. We now need to examine the ground on the basis of which a Suit has been dismissed. We have examined the Plaint and found that the Appellant sought reinstatement of her Service which was a contractual obligation, which factum is disclosed in paragraph-07 of the memo of plaint.

15. We have noticed that under Section 21 of the Specific Relief Act, which provides that certain contracts cannot be specifically enforced. An excerpt of the same is reproduced below:-

> **"21. Contracts not specifically enforceable. The following contracts cannot be specifically enforced:-**
>
> **(a) a contract for the non-performance of which compensation in money is an adequate relief;**
>
> **(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or violation of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;**
>
> **(c) a contract the terms of which the Court cannot find with reasonable certainty;**
>
> **(d) a contract which is in its nature revocable;**
>
> **(e) a contract made by trustees either in excess of their powers or in breach of their trust;**
>
> **(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;**
>
> **(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three year from its date;**
>
> **(h) a contract of which a material part of the subject-matter, supposed by both**

> **parties to exist, has before it has been made, ceased to exist."**

16. Prima-facie the impunged dismissal from service order/contract dated 24.09.2013 does not appear to be enforceable under the aforesaid provision of law and therefore, no decree could be obtained on the basis of such an Agreement based on terms and conditions of service to procure reinstatement and its breach by any of the parties cannot be enforced, being a voidable contract.

17. To elaborate further on the issue involved in the present proceedings, it is expedient to refer to Section 9 of the Civil Procedure Code, which confers general jurisdiction upon the courts to try all Suits of a civil nature. In order to appreciate the scope of Section 9 of CPC, the same is reproduced as under:-

> **"(9) Courts to try all Civil Suits unless barred. ----the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.**
>
> **Explanation: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."**

18. In the light of the preceding paragraph, we are of the considered view that Civil Courts are Courts of ultimate jurisdiction with regard to a Civil right, duty or obligation, unless the jurisdiction is either expressly or impliedly barred. Section 9 of the Civil Procedure Code only confers jurisdiction upon courts and

does not grant a substantive right of action. The right of action is to be established by reference to the substantive law. In the present matter, Appellant has asked for enforcement of terms and conditions of a contract, which prima-facie is a voidable contract, which as per the law cannot be enforced through civil proceedings except for damages, for the simple reason that the Appellant through the aforesaid contract seeks to procure reinstatement in service from the Respondent-PIAC on the basis of breach of terms and conditions of service, which is not permissible under the law to be enforced.

19. Let us take the second proposition of law, 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). Since much emphasis has been laid on the point of law that when the matters pertaining to the terms and conditions of service of Employees of a Respondents-PIAC, civil 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 aforesaid proposition set forth by the Honorable Supreme Court of Pakistan, regarding Non-Statutory

Rules of Service of the Respondent-PIAC is true appreciation of law. Since the Appellant's service was governed as per the terms of her employment letter and terms and conditions of service attached thereto, therefore, if there was any violation of the breach of contract including the terms and conditions of the service, the same is not enforceable under section 9 of CPC and the only remedy available to an aggrieved person is to institute suit for damages /certain relief(s) as admissible under the law. In our view, the approach of the learned Single Judge was quite correct so far as rule of "Master and Servant" is concerned. At this stage, the learned counsel for the Appellant, while arguing the case has heavily relied upon **Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707)** to stress that in view of the recent Judgment of the Hon'ble Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and there are violation of statute/ Ordinance, the same can be enforced through civil proceedings as well and rule of Master and Servant has been diluted.

20. 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, then only constitutional petition will be maintainable and not the suit. 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."**

21. In the aforesaid judgment, a 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.

22. Applying the aforesaid principles of law to the case of the Appellant, we feel no hesitation in drawing inference that the Respondent-PIAC is a statutory entity and Appellant's terms of service are not governed under statutory rules of service hence terms and conditions of service are not enforceable through civil proceedings as well as under Constitutional Petition. The case of Appellant 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 Appellant or any disciplinary proceedings undertaken against her 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, hence, the law laid down by the Hon'ble Supreme Court in Pakistan Defence Housing Authority (supra), does not support the case of the Appellant, as we see no

violation of law as agitated by the Appellant in the suit proceedings before the learned Single Judge.

23. At this stage, we would like to dilate upon the crucial issues of contractual obligations between the parties and principle of relationship of master and servant, more particularly, on the consideration of the case laws mentioned above, it is, therefore, clear that a contract of service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions: –

> **(i) Where a public servant is sought to be removed from service in contravention of the provisions of Article 25 of the Constitution;**
>
> **(ii) Where a worker is sought to be reinstated on being dismissed under the Industrial Law; and**
>
> **(iii) Where a statutory body acts in breach or violation of the mandatory provisions of the statute.**

24. On the issue of enforcement of service contractual obligations and relationship of "Master & Servant" prima-facie the following viewpoints are important to be noted:-

> **i. There are two distinct classes of cases which might arise when we are considering the relationship between employer and employee. The relationship may be governed by contract or it may be governed by statute or statutory regulations. When it is governed by contract, the question arises whether the general principles of the law of contract are applicable to the contract of employment or the law governing the contract of employment is a separate and sui generis body of rules.**

ii. The crucial question then is as to what is the effect of repudiation of the contract of employment by the employer. If an employer repudiates the contract of employment by dismissing his employee, can the employee refuse to accept the dismissal as terminating the contract and seek to treat the contract as still subsisting?

iii. The answer to this question given by general contract principles would seem to be that the repudiation is of no effect unless accepted, in other words, the contracting party faced with a wrongful repudiation may opt to refuse to accept the repudiation and may hold the repudiation to a continuance of his contractual obligation. But does this rule apply to wrongful repudiation of the contract of employment? The trend of the decisions seems to be that it does not. It seems to be generally recognized that wrongful repudiation of the contract of employment by the employer effectively terminates the employment: the termination being wrongful entitles the employee to claim damages, but the employee cannot refuse to accept the repudiation and seek to treat the contract of employment as continuing.

iv. What is the principle behind this departure from the general rule of law of contract? The reason seems to be that a contract of employment is not ordinarily one which is specifically enforced. If it cannot be specifically enforced, it would be futile to contend that the unaccepted repudiation is of no effect and the contract continues to subsist between the parties.

v. The law in such a case, therefore, adopts a more realistic posture and holds that the repudiation effectively terminates the contract and the employee can only claim damages for wrongful breach of the contract.

vi. Now a contract of employment is not specifically enforced because ordinarily it is a contract of service and, as pointed out in the first illustration to clause (b) of Section 21 of the Specific Relief Act, 1877, a contract of service cannot be specifically enforced. In our view, where the relationship of master and servant is purely contractual, it is well settled that a contract of service is not specifically enforceable, having regard to the bar contained in Section 21(g) of the Specific Relief Act. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance.

vii. Civil Courts will neither declare such termination to be a nullity nor declare that the

contract of employment subsists nor grant the consequential relief of reinstatement, in view of aforesaid three well recognized exceptions to this rule.

viii. Here the case of the Appellant was not covered under any of the exceptions referred to in the cases noted above. It is settled legal position that contract of personal services cannot be specifically enforced either by the Master or the Servant. The legal remedy in such relationship is only by way of claiming damages unless the case of such employee falls under any of the exceptions referred to above.

ix. Whether in the relationship of Master and Servant, the termination can be declared as nullity? In our view, any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment.

x. A declaration of unlawful termination and restoration to service in such a case of contract of employment is not permissible under the Law of Specific Relief Act.

xi. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

xii. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

xiii. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

25. We have noticed that the Appellant was appointed as Airhostess on 07.07.2012 and her service was confirmed on the aforesaid position vide Letter dated 02.10.2012. As per her profile, which prima-facie shows her as a workman as defined under Section 2(xxxiii) of the Industrial Relations Act, 2012 which says that *"worker" and "workman" mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity".* On the issue of workman, we are fortified by the decision rendered by the Hon'ble Supreme Court in the case of National Bank of Pakistan vs. Anwar Shah & others (2015 SCMR 434). Prima-facie the learned Bench of the NIRC under the relevant law is competent to exercise jurisdiction to adjudicate and determine an industrial dispute or any other matter which is referred to, or brought before it. At this stage, learned counsel for the Appellant pointed out that she was promoted to Pay Group-V and was classified as Officer before her termination, therefore, she cannot avail the remedy before the learned NIRC.

26. Record reflects that the Respondent-Company terminated her service with the reasons as discussed supra and it was a termination simplicitor under Clause 75 (a), (t) & (ap) of PIA Employees (Service & Discipline) Regulations, 1985 which is the terms and conditions of appointment of Appellant. In our view the decision of the employer in the present case to terminate the services of the Appellant cannot be said to have any element of public policy. Her case was purely governed by the contract of employment entered into between the employee and the employer. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application.

27. We concur with the view of the learned Single Judge that where the relationship between a Corporation and its employees was that of "*Master & Servant*" and that remedy for wrongful termination of service of an employee is a Suit for damages only and not relief for reinstatement.

28. We have also noticed that the Appellant has only sought Declaration and Permanent Injunction and no relief for damages has been sought in the plaint, therefore, in view of such pleadings of the parties, we conclude that the Appellant's reinstatement in service cannot be made through any Decree of the Civil Court, since the Appellant relinquished her claim of damages, if any, accrued to her due to purported wrongful dismissal from service, therefore, this Court cannot come to rescue the Appellant and order for her reinstatement in service at the appellate stage, which is continuation of suit proceedings.

29. We may observe here that the Civil Suits filed by the aggrieved person against the statutory bodies with regard to their terms and conditions of service in the organization, they cannot invoke the jurisdiction of civil Court to seek enforcement of their terms and conditions of service. Section 9 of the Code of Civil Procedure provides complete mechanism relatable to the Jurisdiction of Courts to try all civil suits unless barred by any law. The provision as contained in Article 212 of the Constitution ousts the jurisdiction of all other Courts in respect of matters of civil servants/ statuary bodies having statutory rules of service and in respect of matters relating to their terms and conditions of persons in the service of Pakistan, including disciplinary matters. Section 9 of Civil Procedure Code bars jurisdiction of the employees of statutory organization with regard to their terms and conditions of service and therefore a suit for reinstatement on the subject cannot be filed by an employee.

30. We have noticed that in the impugned order and Decree, the learned Single Judge has dealt with every aspect of the matter and has rightly concluded in the impugned Order that suit is not maintainable. The suit filed by the Appellant thus is not only barred by law but the Appellant has also failed to make out any case for interference by this Court. Our view is supported, on the aforesaid issues, by the decisions rendered by the Hon'ble Supreme Court & the High Courts upon the cases of ***Muhammad Yousuf Shah vs. Pakistan International Airline Corporation*** **(PLD 1981 SC 224),** ***Pakistan International Airline***

Corporation & others vs. Tanveer ur Rehman and others **(PLD 2010 SC 676),** ***Abdul Wahab & others vs. HBL & others*** **(2013 SCMR 1383),** ***Raziuddin vs. Chairman Pakistan International Airline Corporation & others*** **(PLD 1992 SC 531),** ***A George vs. Pakistan International Airline Corporation (PLD 1971 Lah. 748) & UBL vs. Ahsan Akhter (1998 SCMR 68) & Abdul Majeed Khan vs Tasveen Abdul Haleem (2012 PLC (C.S) 574)***.

31. The case laws cited by the learned counsel for the Appellant are quite distinguishable from the facts and circumstances of the present case.

32. In the light of above facts and circumstance of the case, the High Court Appeal No. 42 of 2016 filed by the Appellant is misconceived, and is dismissed along with the listed application(s).

Karachi **JUDGE**
Dated: 03.12.2018

JUDGE

Nadir/PA