

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1396 of 2010

[Aurangzaib Qureshi and others v. The Chairman, Pakistan International Airlines & another]

Date of hearing : 31.01.2019, 28.02.2019 and 08.03.2019.  
Date of Decision : 23.08.2019.  
Plaintiffs : Aurangzaib Qureshi and others, through M/s. Arshad Khan Tanoli and Danish, Advocates.  
Defendants 1 & 2 : The Chairman, PIA and another, through M/s. Khalid Javed and Munawar Juna, Advocates.

## JUDGMENT

**Muhammad Faisal Kamal Alam, J:** - Plaintiffs have collectively filed this *lis* with the following prayer clause\_

- “(a) *Directing the defendants to pay the plaintiff Rs.400 (Four Hundred Million) as damages / compensation for mental torture, Agony, tampering the official documents and prevented the plaintiff to leave Pakistan without any reason.*
- (b) *Directing the defendants to reinstate the plaintiffs with all the consequential benefits.*
- (c) *Interest at the Bank rate may be awarded.*
- (d) *The costs of suit u/s 35 and-A CPC may also be awarded.*
- (e) *Any other relief / relief which this Honorable Court deem fit and proper in the circumstances of the case.”*

2. The Plaintiffs have basically agitated their grievance against the Defendants that the Plaintiffs were discriminated against when they were re-employed by Defendant – PIA in pursuance of the decision of Review Board.

3. Mr. Arshad Khan Tanoli, Advocate, has argued that all the Plaintiffs were the affectees of Martial Law Regulation – 52 (“**MLR 52**”), where under the Plaintiffs were removed from services in the year 1981. After restoration of Civilian dispensation, a Review Board was constituted by the President of Pakistan to look into the injustices meted out to various employees and the affectees of MLR 52, as a result of which the Plaintiffs were reemployed in service in the year 1990. It is further argued that the Plaintiffs were not given any financial benefits and their seniority was not counted from the time when they were initially inducted into Defendant – PIA but their cases were considered as fresh employees by Defendants, which is discriminatory treatment, as in certain cases some other employees, *particularly*, Akber Khan and 22 others, were given the benefits of past service seniority as well as financial back benefits. It is further argued that the decision of Review Board was purportedly stated reinstatement in service with past service seniority and full back benefits, but the original recommendation of Review Board was tempered with by the Management of Defendants and this has been highlighted in another document of the Defendants, viz. Minute No.9 dated 18.10.1995.

It is averred that Minute-1 dated 21.06.1995 has admitted the fact that Plaintiffs and other affectees of MLR 52, were removed from service without any rhyme or reason and hence they should be adequately compensated. The Plaintiffs have referred to another precedent of retrenchment of 250 Employees of Defendant – PIA in the year 1995, who were subsequently reinstated in service with seniority and back benefits.

4. It is pleaded in the plaint that the Plaintiffs are not even receiving the actual pensionary benefits as applicable to them under the Admin Order No.32 of 1978 dated 24.07.1978. On account of various acts of Defendant – PIA, resulted in causing losses and mental torment to Plaintiffs, thus the

latter (Plaintiffs) have claimed damages in the sum of Rs.400 Million (Rupees Four Hundred Million only), besides other reliefs as already mentioned in the foregoing paragraphs. Reliance is placed on the following reported decisions\_

1. 1991 S C M R page-1041  
[*I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others*]
2. 2015 S C M R page-1545  
[*PIA Corporation v. Syed Suleman Alam Rizvi and others*]
3. 2013 S C M R page-1707  
[*Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed*]
4. 2018 P L C (C.S.) Note page-32  
[*Mustafa F. Ansari and others v. Pakistan through Secretary, Ministry of Defence and others*]

5. Mr. Khalid Javed, Advocate, representing the Defendants, has controverted the submissions of Plaintiffs. He argued so also pleaded in his Written Statement, that the Plaintiffs and other affectees of MLR 52 were re-employed in Defendant – PIA as fresh employees and that is why they were also given fresh employment numbers. While disputing other allegations of discrimination and committing any tampering in the documents, the main defence set up by Defendants is that the present suit is not maintainable, *inter alia*, because Plaintiffs after accepting re-employment as recommended by the Review Board and enjoying all the benefits of such employment, have filed this proceeding after a lapse of many years. A list of employees is also available with the Written Statement, which has also been mentioned in the testimony of witness of Defendants, that out of present Plaintiffs many were already retired when the present proceeding was filed. It is further argued that this issue of reinstatement and re-employment was already decided by the Honorable Supreme Court in a decision delivered in Civil Review Petition Nos.7-K to 13-K of 2001, which is also filed with the Written Statement and has been

referred to in the evidence of Defendants. The legal team of Defendants cited the following decisions:

- i. P L D 1961 Supreme Court page-531  
[*Messrs Malik and Haq and another v. Muhammad Shamsul Islam Chowdhury and two others*]
- ii. 1987 S C M R page-1776  
[*Qari Yar Muhammad v. Anjuman-e-Islamia*]
- iii. P L D 1971 Lahore page-748  
[*A. George v. Pakistan International Airlines Corporation*]
- iv. P L D 2010 Supreme Court page-676  
[*Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others*]
- v. S B L R 2017 Sindh page-31  
[*Pakistan Airline Pilots Association & others v. Pakistan International Airline corporation & another*]
- vi. 2016 S C M R page-14  
[*Pakistan International Airlines Corporation v. Aziz-ur-Rehman Chaudhry and another*]
- vii. 2019 S C M R page-278  
[*Pakistan Airline Pilots Association and others v. Pakistan International Airline and another*]

6. Arguments heard and record perused.

7. From the pleadings of the parties, on 21.04.2014, following Issues were framed\_\_

- 1) *Whether the suit as filed is maintainable?*
- 2) *Whether the Plaintiffs were unlawfully removed from service of PIA in the year of 1981, under Martial Law Regulation No.52, without any reason?*
- 3) *Whether the Plaintiffs are entitled for reinstatement in service from the date of termination with all back benefits as well as consequential benefits including seniority?*
- 4) *Whether the Defendants failed to comply with the recommendation of the review board in respect of the Plaintiffs?*
- 5) *Whether the Plaintiffs have suffered mental torture and agony and are entitled for compensation?*
- 6) *To what relief the Plaintiffs are entitled?*
- 7) *What should the decree be?*

8. The Issue-wise finding is mentioned herein under:

Issue No.1	_____	As under.
Issue No.2	_____	Affirmative.
Issue No.3	_____	Negative.
Issue No.4	_____	Negative.
Issue No.5	_____	Negative.
Issue No.6	_____	As under.
Issue No.7	_____	Suit dismissed with costs.

9. **Discussion / Reasons of the Issues.**

**ISSUE NO.2:**

10. The undisputed record of the case clearly shows that Plaintiffs were unlawfully removed and that is why Review Board was formed after restoration of Civilian Government, which Review Board made recommendations and the affectees of MLR 52 were taken back into the service; whether the Review Board recommended reemployment or reinstatement in Service, as agitated by Plaintiff and disputed by Defendants (as stated in the foregoing paragraphs), will be discussed in the following part of the judgment. Hence Issue No.2 is answered in Affirmative.

**ISSUES NO.3 AND 4:**

11. Issue No.4 should be decided first. The recommendation of Review Board has been produced by the Plaintiffs as Exhibit 5/4 and is available at page-45 of the evidence file. This document states the name of Plaintiff No.1 and his erstwhile designation. Paragraph 4 of this recommendation, inter alia, states that since the impugned Order, whereby services of the Plaintiff No.1 was terminated was void, therefore, the Plaintiff should be reemployed by Defendants. Similar recommendations were issued in case of other Plaintiffs. It is this document about which it is the common stance of Plaintiffs that it has been tampered with. In support of this the Plaintiffs

have relied upon another document bearing title M-9 which has been exhibited as 5/5 and to strengthen their stance about discrimination, Plaintiffs have produced document bearing title 'Minute-1', dated 21.06.1995. In the first document, viz. M-9 dated 18.10.1995, a reference has been made to the opinion of legal Associates of Defendants, according to which the original recommendation of the Review Board was 'allegedly tampered' by Defendant – Management for ulterior motives, which could lead to further complications and adverse consequences; *whereas*, the document Minute-1 (Exhibit 5/12), inter alia, has recommended that subject to fulfillment of conditions enumerated in the said document, the affectees of MRL 52 may be given certain benefits including that of seniority and the gap between the earlier service and the reemployment may be counted towards pensionable service. However, Plaintiffs have overlooked a very basic condition mentioned in this document – Minute-1; which is, that the employees, who would be given such benefit, had to pay back the amount of gratuity / commutation and other benefits which they received on termination of their previous employment. In his cross examination, the Plaintiffs' witness (Plaintiff No.1), has admitted that he did not return any service benefits, which he received when his employment was terminated under MLR 52.

*Secondly*, since Plaintiffs are claiming relief of damages and reinstatement in the service on the basis of the above documents, *particularly*, Exhibit 5/4 – the Recommendations of Review Board, the onus to prove that the same was tampered with, is on Plaintiffs. Evaluation of the evidence of both witnesses leads to the conclusion that this point could not be proved by the Plaintiffs.

*Thirdly and most significantly*, this very aspect was set at rest by the Honourable Supreme Court in its decision handed down in Civil Review Petition Nos.7-K to 13-K of 2001 (CRP), filed by present Defendants

against the affectees of MLR 52, including the present Plaintiff No.1. The Honourable Supreme Court has held, while rejecting the plea of discrimination, as also agitated by the present Plaintiffs, that the afore-referred Review Board did not recommend the reinstatement of the Respondents, that is, affectees of MLR 52, but only reinstatement in service. It is also very pertinent to note that in the above decision of the Honourable Supreme Court, **the relevant portion of the recommendation of the Review Board has been reproduced, which is identical to the recommendations as contained in paragraph-4 of Review Board document, produced in evidence by the Plaintiffs as Exhibit 5/4.** Therefore, the allegation of tampering this document (Exhibit 5/4) has even otherwise been disproved. More so, it was clarified by the Honourable Supreme Court in the above order that since respondents / affectees of MLR 52 were reinstated in service, therefore, their claim for entitlement of back benefits inclusive of seniority, is not sustainable; same is applicable to present Plaintiffs. Consequently, the earlier Judgment of the Honourable Supreme Court given in Civil Petition Nos.365-K, 373-375-K and 383-385-K of 2000, in which the stance of affectees of MRL 52, including the present Plaintiff No.1, was accepted, has been subsequently and substantially modified. *Regretfully*, the Plaintiffs have not disclosed this important aspect of the case in their pleadings.

12. *Fourthly*, It is also relevant to mention the Judgment handed down by the Honourable Supreme Court in the case of *Pakistan International Airlines Corporation v. Aziz-ur-Rehman Chaudhry and another*, reported in **2016 S C M R page-14**, as cited by Mr. Khalid Javed, Advocate. The Honourable Apex Court allowed the Appeal of present Defendants against the decision of this Court, by holding that when Respondent No.1 (one of the affectees of MLR 52) accepted his reemployment on the terms and conditions as contained in his appointment letter dated 10.04.1990 and

continued to serve the PIA until he reached the age of superannuation and retired on 30.06.2003 and received all the retirement benefits, his constitutional petition filed before this Court on 04.06.2009, after a passage of about 19 years from his reemployment, suffered from laches. It was further held that the claim of Respondent – Employee was also hit by the doctrine of past and closed transaction. The plea of discrimination, as agitated by the present Plaintiffs in the subject *lis*, was also rejected in the aforesaid reported case and earlier decision of the Apex Court in the afore-referred CRP was also mentioned, rather, reiterated.

Adverting to the case law relied upon by the legal team of Plaintiffs. The famous decision of I.A. Sharwani (*supra*) could not strengthen the case of present Plaintiffs and the same is clearly distinguishable, *inter alia*, as the said decision was given in the case of Civil Servants (Petitioners of the reported case) one of whom was also elevated as Additional Judge of the High Court; and the issue involved in the reported case was not earlier decided by the Honourable Supreme Court, as has happened in the present *lis*. Similarly, another reported decision of PIA Corporation v. Syed Suleman Alam Rizvi and others (*ibid*) extends a limited help to the case of present Plaintiffs to the extent only that for redressal of their grievance, Writ Jurisdiction of the High Court cannot be invoked but a suit has to be filed, which has been done by the Plaintiffs. However, maintainability of present suit has to be decided on its own merits. Interestingly, in this reported judgment of PIA Corporation v. Syed Suleman Alam Rizvi and others (*ibid*), the Honourable Apex Court disagreed with the contention of Respondents / Employees of PIA, for applying the principle laid down in the case of *Hameed Akhtar Niazi* [1996 S C M R page-1185], because, the Honourable Apex Court is of the view that terms and conditions of service of employees of PIA are not statutory, whereas, the rule laid down in *Hameed Akhter Niazi* case (*ibid*) pertains to the matter relating to the Civil



Servants, whose relationship and terms and conditions of service are governed by the Civil Servant Act, 1973. The other recent decision reported in 2018 P L C Note page-32 (*supra*) handed down by this Court is also distinguishable, because in the said case, the employees of Defendant – PIA were able to prove their grievance, while their mandatory retirement from service was held illegal and that is why relief of damages was given in the last reported decision; *whereas*, the present Plaintiffs after accepting offer of re-employment by Defendants, joined the services and later retired upon attaining superannuation, barring couple of Plaintiffs, who were dismissed from service. Admittedly, the mandatory Retirement Scheme impugned in the last reported case is not the subject matter of the present *lis*. The Plaintiffs have failed to prove with any positive evidence that Defendants – Organization failed to comply with the recommendations of the Review Board, after re-employing Plaintiffs. This aspect has also been attended to by the Apex Court in its afore-referred decision given in CRP (7-K to 13-K of 2001, available at page-127 of the evidence file), relevant portion whereof is reproduced herein under\_

***“4. In terms of this policy decision, the petitioners were offered reemployment through letter dated 20-5-1990 of which clauses A & B are relevant which are reproduced below:-***

***“(a) On accepting this offer, you shall re-join in the same pay group in which you were on the date of ceasure of your employment in PIAC. You shall, however, be entitled to such advance increments as you would have earned had you remained in the service of the Corporation.***

***(b) On re-joining PIAC, your basic pay will be Rs.....1900.00.....in pay Group .....IV..... in the scale of Rs.1220-60-1760-70-2670..... plus usual admissible allowance, with effect from the date of your reporting for duty on 01-02-1990 or thereafter.”***

***5. Learned counsel for the respondents when questioned admitted that without raising any objection, the respondents accepted the said offer and as consequence thereof, they***

*joined the service on the pay and scale which had been mentioned in clause “b” above.*

6. ....

7. ....

8. *We have also noticed that the Review Board did not recommend the reinstatement of the respondent whereas the recommendations were made for reemployment. It being not a case of reinstatement in service, therefore, the claim of the respondents that on reemployment, they should be given all the back benefits inclusive of seniority/pay etc. is not sustainable.*

9. ....

10. *Learned counsel for the respondents when questioned, admitted on the instructions of Malik Khalid Hussain, respondent, that the respondents have been granted advance increments as is envisaged by clause A of the said offer, therefore, in our view nothing else remains to be done in these cases.”*

**Consequently**, Issue No.4 is answered in Negative and against the present Plaintiffs.

13. After the two decisions of the Honourable Supreme Court as mentioned in the preceding paragraphs viz. in CRP and Pakistan International Airlines Corporation v. Aziz-ur-Rehman Chaudhry and another, it has been conclusively decided that Plaintiffs were re-employed in the Defendant – Organization, which they accepted without any objection and have continuously received the service benefits. Since there was no recommendation for reinstatement in service, therefore, the Plaintiffs are not entitled for reinstatement with all back benefits including seniority. Hence Issue No.3 is also answered in Negative and against the Plaintiffs.

**ISSUES NO.1, 5, 6 AND 7:**

14. The witness of Defendants in his evidence has referred to the list appended by the Defendants with their Written Statement, showing the

employment status of Plaintiffs. This portion of testimony has not been disputed by the Plaintiffs. It is necessary to mention the present status of Plaintiffs as under\_

- i. Plaintiff No.1 (Aurangzaib Qureshi), who has also testified on behalf of other Plaintiffs, was retired from the service on 04.04.2002.**
- ii. Plaintiff No.2 (Mehboob Ellahi Mirza) retired on 01.03.2010.
- iii. Plaintiff No.3 (Saeed Ahmed Bhatti) retired on 01.03.2010.
- iv. Plaintiff No.4 (Rasool Khan) dismissed from service.
- v. Plaintiff No.5 (Muhammad Amin) retired on 06.02.2001.**
- vi. Plaintiff No.6 (Malik Muhammad Ashraf) retired on 24.04.2013.
- vii. Plaintiff No.7 (Syed Mehboob Hussain Qadri) retired on 20.05.2019.
- viii. Plaintiff No.8 (Aijaz Ahmed Chohan) retired on 13.11.2000.**
- ix. Plaintiff No.9 (Maqsood Ahmed) retired on 10.06.2017.
- x. Plaintiff No.10 (Muhammad Yasin) retired.
- xi. Plaintiff No.11 (Ishrat Ali Shirazi) retired.
- xii. Plaintiff No.12 (Chaudhry Ahmed Hasan) retired.
- xiii. Plaintiff No.13 (Khyber Zaman) retired.
- xiv. Plaintiff No.14 (Muhammad Ayoob Siddiqui) retired.
- xv. Plaintiff No.15 (Chaudhry Razak Ahmed) retired.
- xvi. Plaintiff No.16 (Jamshed Rasool Malhi) retired on 08.10.2010.
- xvii. Plaintiff No.17 (Chaudhry Gulzar Ahmed) retired.
- xviii. Plaintiff No.18 (Wasiuddin Ahmed Khan) retired on 30.10.2007.**
- xix. Plaintiff No.19 (Muhammad Afsar) retired on 14.10.2014.
- xx. Plaintiff No.20 (Naseem Anwer) retired on 01.01.2003.**
- xxi. Plaintiff No.21 (Qaiser Khan) retired on 04.07.2010.
- xxii. Plaintiff No.22 (Mrs. Naeema Abbas) retired on 15.10.2002.**
- xxiii. Plaintiff No.23 (Mr. Eid Muhammad Khokhar) retired on 30.09.2005.**
- xxiv. Plaintiff No.24 (Muhammad Aijaz) retired on 31.08.2011.
- xxv. Plaintiff No.25 (Fazal Raheem), status Nil.

- xxvi. Plaintiff No.26 (Zulfiqar Idrees), status Nil.
- xxvii. Plaintiff No.27 (Tehmidullah) retired on 05.06.2006.**
- xxviii. Plaintiff No.28 (Ismatullah) retired on 11.02.2005.**
- xxix. Plaintiff No.29 (Fazal-ur-Rehman) \_\_\_\_.

15. Originally the plaint was presented on 01.09.2010 by the present Plaintiff No.1 and 62 other Plaintiffs and their number rose to 89 in the intervening period, but **vide an order dated 29.09.2015**, most of the Plaintiffs withdrew from the suit and at present 29 Plaintiffs are left.

The undisputed record shows that many Plaintiffs including the Plaintiff No.1 filed the present proceeding after many years from the date of their retirement. It is a common fact that all the Plaintiffs have received all their service dues. Nothing has been brought in the evidence, on behalf of the Plaintiffs that they have not received or receiving applicable pensionary benefit; or the recommendation of the Review Board, except for reinstatement, which Issue has already been decided, as mentioned in the foregoing paragraphs, was not complied with by the Defendants. The sole witness on behalf of Plaintiffs, that is, Plaintiff No.1, in his evidence has stated that Plaintiffs have claimed damages for the mental anguish they have suffered. But at the same time the Plaintiffs could not prove the acts, deeds and above all 'causation factor', attributed to Defendants, due to which the Plaintiffs have suffered financial losses and mental distress. Undisputedly, most of the Plaintiffs received their letters of reemployment during the year 1990-1991 and many of them after retirement have already taken their retirement dues from Defendants. There is no complaint that applicable retirement / service dues have not been paid by the Defendants. The Plea / stance of Plaintiffs about the discriminatory treatment and their evidence with regard to extending benefits to other employees, have already been decided in the above referred decisions of the Honourable Supreme Court; hence nothing has been left to be decided in the present proceeding.

16. Consequently, Issue No.5 is decided in Negative and against the Plaintiffs. With regards to Issues No.1, 6 and 7, the upshot of the above discussion leads to the conclusion that the present suit merits dismissal and is accordingly dismissed.

**Judge**

**Karachi Dated: 23.08.2019.**

Riaz / P.S.