

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.1027 of 2022

Syed Qadir Dad Shah

Versus

Pakistan International Airline Company Limited (PIACL)

Date	Order with signature of Judge
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**Date of hearing: 16.11.2022 and 17.11.2022**

Mr. Muhammad Saad Siddiqui for plaintiff.

Mr. Jawad A. Sarwana for defendants No.1 to 4.

Mr. Abdul Qayoom Abbasi for defendants No.2, 6, 8 and 9

Qazi Ayazuddin, Assistant Attorney General for defendant No.10.

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**Muhammad Shafi Siddiqui, J.**- Plaintiff in this suit has impugned and challenged the amendment brought to “Job Description Manual” dated 20.05.2022 that concern with the qualification (pre-qualification) of Chief Flight Surgeon/Flight Surgeon and through application bearing CMA No.10542 of 2022 under order XXXIX Rule 1 and 2 CPC seeks its (amendment’s) suspension, which application is being decided through this order.

2. Plaintiff claimed to be an employee of Pakistan International Airline Company Limited (PIACL)/defendant No.1 and claimed to have been promoted as Chief Flight Surgeon to PG-IX on 05.11.2019. The impugned Job Description Manual dated 20.05.2022 denies such entitlements, either being a job description, as claimed, or the work being performed or should have been performed, as being undisputed.

3. I have heard learned counsel appearing for the parties and perused material available on record.

4. The facts may not be as relevant as application of law is, for the purposes of deciding controversy to the extent of injunction application only. Defendant No.1 being a flag-carrier airline of Pakistan has its medical division and operates throughout Pakistan and at international stations, which services are being provided under the umbrellas such as administration wing, general medical center and aircrew medical center. For the purpose of deciding the controversy we need to understand operation of these three:

- i) Administration wing, a medical service section, manages the overall administration and financial side of affairs of defendant No.1's employees;
- ii) General Medical Center is responsible for looking after medical need of the ground staff, such as engineers, office employees, area staff as well as retired employees and their families.
- iii) The crucial one, which may also concern with the present dispute, is Aircrew Medical Center, which is prima facie a statutory operation. It looks after flying staff of defendant No.1 which includes pilots, cabin crew and flight attendants etc.

5. The administrative wing thus is diversified into two classes i.e. General Medical Center and Aircrew Medical Center. The Deputy Chief Medical Officer may have been performing duties as PG-IX but it is the General Medical Center Division, which for all material purposes has no access to the aircrew staff.

6. It may have been a case of plaintiff that he was looking after such crew members as well but then it is the operation of law that has its mandate and to be given effect. The Chief Flight Surgeon of Aircrew Medical Center has a special privilege of being an Airline Aviation

Medical Officer (AAMA)/Designated Medical Examiner (DMEX) i.e. one year on job training from Pakistan Civil Aviation Airline at the airline's Crew Medical Center which may then be followed by a formal application and prerequisites such as passing of examination in obtaining requisite certificate, to be eligible to act accordingly. After acquiring such prerequisites, procedure as required under Chief Flight Surgeon Regulatory requirement as set out in PCAA Air Navigation Order, to be followed.

7. Defendant No.1 claimed to have realized that the designation of plaintiff as Deputy Chief Medical Officer/Chief Flight Surgeon was only their mistake as it lacks the above requirement. Thus, a lien cannot be claimed on such basis to continue as such an officer, being Chief Flight Surgeon, as he (plaintiff), lacks the credential of being a trained Airline Aviation Medical Officer and/or Air Designated Medical Examiner for the Aircrew. Undoubtedly the aircrew needs to be looked after by specially trained staff and for this reason such job training is inevitable. The normal take care of an employee (patient) of defendant No.1 are different from those who operate flights and there could be no two opinions about it. The officials of defendant No.1 may have awoken late in realizing their duties and it is they who could be blamed for earlier flight operations through untrained staff but the passengers cannot be left at the mercy of those who lack such qualification/training, be it an "on job training".

8. I am of the view that it is a necessary formal training that is required as being Airline Aviation Medical Officer/Designated Medical Examiner and it is inevitable for effective monitoring of aircrew staff. It is not too late for the plaintiff to apply and if he so chooses that may be dealt with strictly in accordance with law. However, for the purposes of this injunction application I am of the view that plaintiff has not been

able to make out a prima facie case, nor balance of inconvenience is in his favour and no loss will be caused in case the injunction of the nature, as claimed in the application, which in view of facts and circumstances, as narrated above, is refused as the same cannot be granted; hence the application being misconceived is dismissed.

9. While I was going through the record and proceedings of the file I have noted that Manager Legal Litigation of defendant No.1 has filed a counter-affidavit to this injunction application. In paragraph A3 he stated as under:-

*“A3 That the ex-parte ad-interim order dated 15.07.2022 passed by this Hon’ble Court is illegal, arbitrary, capricious, fanciful and not sustainable in law and/or fact. CMA No.10542/2022 is a highly suspect basis of the said Impugned Order and is not maintainable and liable to be dismissed forthwith”*

(The text is as recorded in the counter-affidavit)

10. It is not expected of Mr. Sarwana specially and Fayyaz Ali to attribute such statement to a Court passing such order. Notice be issued to the deponent of this affidavit i.e. Fayyaz Ali Shah Masoomi, Manager Legal Litigation in the defendant No.1, as well as counsel appearing for defendant No.1 to explain that the statement so made is not contemptuous.

11. Connected suit bearing No.3079 of 2021 appears to be on different footing. Let it may not be treated as part-heard and be fixed according to roster.

Dated: 15.12.2022

**J U D G E**

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Suit No.1027 of 2022

<b>Date</b>	<b>Order with signature of Judge</b>
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For orders on CMA 19157/22

**Dated: 17.12.2022**

Mr. Jawad A. Sarwana Advocate along with Fayyaz Ali Shah Masoomi, Manager Legal Litigation of defendant No.1/PIACL.

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Urgency granted.

In pursuance of order dated 15.12.2022 the Court noticed a paragraph in the counter-affidavit, as referred in the said order, which was prima facie not in terms of requirement of relevant provisions of Sindh Chief Court Rules which relates to drafting and pleadings of the affidavits, counter-affidavits and rejoinders etc. and was found deviated. In relation thereto, notices to the advocate and the deponent of such counter-affidavit were issued for its explanation. The affidavits have been filed by both i.e. counsel and the deponent of counter-affidavit stating that it was an inadvertent error and they had no such intention while filing such counter-affidavit. Learned counsel as well as the deponent of the affidavit are in attendance and reiterate contents of their respective affidavits placed before me today, whereby apologetic explanation forwarded. Since the contents of the affidavit filed with urgent application today are satisfactory and the intent is clear, I accept them.

I am also of the view that all such cases where department's legal head prepares the respective pleadings, it is their prime responsibility and that they should be careful in future. The relevant remarks attributed to the counsel and the deponent of the counter-affidavit in the referred order dated 15.12.2022 passed in this suit are expunged accordingly

**Judge**