

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Justice Zafar Ahmed Rajput.

Justice Mrs. Rashida Asad.

Constitution Petition No. D-7277 of 2021

Petitioners	:	Sami uddin s/o Hameed uddin, through Mr. Haroon Shah, Advocate.
Respondent No.1	:	Federation of Pakistan, through its Secretary, Ministry of Aviation, Government of Pakistan, Through Mr. Muhammad Qasim, Deputy Attorney General.
Respondents No.2 to 4	:	Managing Director, Manager Human Resource (HR Engineering) & Account Officer, Final Settlement, Pakistan International Airline Company Limited, through Mr. Harchand Rai, Advocate =====
Date of hearing	:	08.05.2024
Date of order	:	08.05.2024 =====

ORDER

ZAFAR AHMED RAJPUT, J:- The petitioner initially executed an agreement, dated 20.09.1976, with the respondent No. 2 [*Managing Director, Pakistan International Airlines Company Limited (“PIACL”)*] regarding Apprenticeship commencing from 20.09.1976 to 19.09.1980; thereafter the respondent No. 2 appointed him against permanent post of Engine Technician in Pay Group III (Tech) vide appointment letter dated 26.09.1979. Subsequently, the petitioner was promoted as Senior Technician in Pay Group-IV(T), vide letter dated 18.12.1980; thereafter, on completion of 60 years of age, on 11.05.2016, he was retired as Crew Chief. He received only an amount of Rs.3,632,434/- through cheque towards his provident fund; therefore, through instant Constitution Petition he, *inter-alia*, seeks release of his Pension, Gratuity and other dues.

2. The respondents No. 2 to 4 have filed their joint objections/comments to the petition wherein they have raised legal objection regarding maintainability of this petition on the ground that the employees of PIACL are not governed by any statutory rules and regulations. Besides, it has been stated that at the time of his appointment, the petitioner mentioned his date of birth as 12.05.1956; hence, he was retired from service on 11.05.2016; however, on verification of documents it was revealed that his actual date of birth is 12.05.1952 and; thus, he worked four years beyond his actual superannuation date and availed four years excess salary and benefits from PIACL by disobeying its rules and regulations. It has further been stated that the petitioner had already received an amount of Rs.3,632,434/- on account of Provident Fund; however, management decided that salary and emolument received by him for four years starting from 2012 to 2016 should be deducted from the final settlement. As per Final Settlement Sheets, an amount of Rs.56,90,754/- is recoverable from petitioner on account of working beyond actual superannuation date which included the provident fund and interest thereon whereas less amount is in his final settlement amount i.e. gratuity Rs.574,836/, commutation Rs.512,437/- and monthly pension amount is Rs.7,186/-; hence, petitioner is required to deposit the balance amount in PIACL account.

3. Heard, record perused.

4. As regards the legal objections of the respondents No. 2 to 4, it may be observed that under the Pakistan International Airlines Corporation Act, 1956, Pakistan International Airlines Corporation (“**the Corporation**”) was established by the Federal Government of Pakistan, *inter alia*, to take over the undertaking of the Orient Airways Limited, and to make further and better provision for the operation and development of air-transport services, internal as well as international, to the greatest possible advantage in the interest of the country. Subsequently, vide Pakistan International Airlines Corporation (Conversion) Act,

2016 (“**the Act of 2016**”), the Corporation was converted into a public company (*PIACL*) limited by shares under Companies Act, 1984. Under sub-section (6) of section 3 of the Act of 2016, all employees of the Corporation are deemed to be employees of the company on the same remuneration and other conditions of service, right and privileges including but not limited to the provisions as to their pension, provident fund and gratuity. Under Explanation to sub-section 4 of the section 4 (*ibid*) the Federal Government shall have majority shares of the company and not less than fifty one percent. Section 2(1)(g) of the Public Sector Companies (Corporate Governance) Rules, 2013 (“**the Rules, 2013**”) defines a “Public Sector Company”, as under:

Rule 2(1)(g) “Public Sector Company” means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty one percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under section 42 of the Act.

It is, therefore, apparent that *PIACL* is a Public Sector Company created under the Statute. The Federal Government makes appointment and plays a pivotal role in its policy making. It being a statutory body performs some of the functions of the Federation/State and through the exercise of public power, it create public employment. Though *PIACL* has no statutory service rules yet, its employees are “persons in corporation services” within the scope of section (3)(6) of the Act of 2016. Therefore, *PIACL* is a “person” within the meanings of Article 199 (1) (a)(ii) read with Article 199 (5) of the Constitution of Islamic Republic of Pakistan. If the actions or order passed by a statutory body are violative of the Statute creating it and/or Rules/Regulations framed under the Statute, the same

could be interfered with by the High Court under Article 199 of the Constitution. In the instant case, since the petitioner has sought enforcement of his right and privileges as to his pensionary benefits, the instant petition is maintainable in law. Reliance in this regard may be placed in the case of *Pakistan defence Officer's Housing Authority and others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)*.

5. As regards the other objections, we are of the considered view that for all practical purposes the date of birth of an employee recorded in his service book/record is the date to determine his age for attaining the superannuation. In the instant case the petitioner served PIACL for considerable period of 40 years; however, PIACL never raised any objection regarding his actual date of birth during his entire period of service and after his retirement such objection has been raised and consequently PIACL made a claim of recovery of Rs.5,690,754/- on account of petitioner's working beyond actual superannuation date, whereas it is an admitted position that even for the said period the petitioner served PIACL.

6. We; therefore, allow this petition by directing to respondents to pay all emoluments/service benefits to the petitioner within 90 days hereof.

Above are the reasons of our short order dated 08.05.2024.

JUDGE

JUDGE

Athar Zai