

IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No. 104 of 2017

Pakistan International Airlines Corporation

Versus

Nadir Ali Shah & others

Date of hearing: 25.1.2018

Appellant: Through Mr. Amir Malik, Advocate

Respondents No.1: Through Mr. S. Ghulam Nabi Shah, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This second appeal is filed against concurrent findings of two Courts below. The respondent has filed a suit for recovery of Rs.1,19,96,109/- which included basic salary, house rent, utility allowance and other benefits including gratuity of the contractual period. Suit was decreed by the trial Court to the extent of increment in salary, gratuity and damages, whereas the appellate Court dismissed the appeal of appellant which order is impugned in this second appeal.

Learned Counsel for the appellant submits that the claim of damages is against "Personal Policies Manual" and as such the terms in the contract which are contrary to such policies and not binding. He further submits that the claim of damages is not based on legitimate reasoning as it is only a personal feeling and emotion of a judge which should not be counted while passing judgment with reference to a claim of damages. He has relied upon the cases of *Syed Moinuddin v. Abdul Rehman Khan reported in 2009 YLR 1914* and *Sajid Ahmed Ansari v. Aga Khan University Hospital & others reported in PLD 2008 Karachi 80*.



I have heard the learned Counsel and perused the material available on record.

The respondent on reaching the age of superannuation was retired on 14.4.2006. He was soon reemployed on 02.5.2006 on the basis of a contract on last drawn salary and the appointment letter dated 08.5.2006 was followed by a memorandum dated 08.4.2006 having independent terms of his employment.

The first contractual appointment was for six months followed by an appointment letter of further period w.e.f. 15.10.2006 which is for a period of one year that was further followed by employment agreement of 07.12.2006, with further extension of 18 months on the same terms and conditions. Such reemployment correspondence is available on record in between pages 59 to 85. The contractual employment is thus for three years. The Personal Policies Manual as relied upon by the appellant Counsel is not applicable to a case of employment on contractual basis. These terms of "Personal Policies Manual" would bind an employee who retires on reaching the age of superannuation and would not bind an employee who was employed otherwise on the basis of independent terms of a contract of re-employment. Hence the claim of pension or gratuity cannot be distinguished or discarded on the basis of terms of Personal Policies Manual. The cases cited by the learned Counsel for the appellant are not relevant in view of the facts and circumstances of the instant case.

Insofar as the claim of damages is concerned, the two Courts below have come to the conclusion that the claim of gratuity and increment in salary was lawful and was not given by the appellant to the respondent. It is a deliberate attempt to frustrate an employee who has served the appellant airline for a number of years. It is nothing but a malaifde attempt to deprive a person who is lawfully entitled for claim



of gratuity and increment as incorporated in the contract terms of which were executed with application of mind.

Insofar as the permission of Prime Minister of Pakistan is concerned, this is sole responsibility of the employer who has to obtain such permission. The employee cannot be saddled with this responsibility and cannot be deprived of his lawful right on account of such permission. It is nobody but the employer/airline to obtain such permission and is also responsible for such consequences.

I do not find any reason to interfere with the reasoning of two Courts below, hence the appeal is dismissed.

Judge