

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.83 of 2022

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[Haroon Abdullah Vs. Pakistan Airline Pilots Association]

Date of hearing : 08.04.2025
Date of decision : 08.04.2025
Appellant : Through Mr. Muhammad Ali Lakhani,
Advocate
Respondent No.1 : Through Mr. Imtiaz Ali Ansari, Advocates.

JUDGMENT

MUHAMMAD IQBAL KALHORO J: Appellant has filed this appeal against a judgment dated 16.02.2022 and decree drawn on 17.02.2022, whereby suit No.2041/2019 filed by appellant against respondents was dismissed by learned Single Judge with a cost of Rs.25000/- to be paid by appellant to the respondents.

2. Appellant, a retired Airline pilot, and a member of Pakistan Airline Pilots' Association (PALPA), filed aforesaid suit when elections to different offices of PALPA were due and he was denied an opportunity to contest election against office of President PALPA on the ground that a retired pilot was not eligible to contest the election. During pendency of the suit, when the election was again announced, under an interim order, appellant was issued a nomination form for contesting election for the same office and the issue was left to PALPA to decide his eligibility. The PALPA however, went against the view of appellant and rejected his form on the same ground. With this background, appellant has made following prayers in the suit:-

- a. Declare that the Plaintiff is entitled to participate in biannual elections against principal offices of the Defendant No.1;
- b. Declare that the provisions of the Defendant No.1's Constitution limiting rights of retiree members must be read down;
- c. Declare that restrictions on the right of active participation by retired members in activities of the Defendant No.1 (including its electoral process) are illegal and unlawful;
- d. Grant a mandatory injunction directing the Defendants No. 1 and 2 and /or persons acting under them, through them and/or on their behalves to receive and process the Plaintiff's nomination form against a principal office;
- e. Grant a permanent injunction restraining the Defendants No. 1 and 2 and/or persons acting under them, through them and/or on their behalves from taking any further steps towards the electoral process (including ordering balloting and announcement of results) pending present cause;"

3. Since the suit involved a question of interpretation of different articles of Constitution (bylaws) of PALPA, learned Single Judge proceeded to frame following issues for deciding the controversy between the parties:-

- (1) Whether Defendant No.1's Constitution (read its 'bye-laws') derogate upon its documents of incorporation viz. (registered) Memorandum and Articles of Association? If not, what would be the effect thereof?
- (ii) Whether Defendant No.1's Constitution expressly bars/prohibits retired members from contesting for/holding Principal Offices? If not, what would be the effect thereof?
- (iii) Whether a retired member can/should be disqualified from his/her right to franchise? If not, what would be the effect thereof?
- (iv) What should the decree be?

4. Issue No.2 being directly relevant to the controversy was discussed at length by learned Single Judge and replied in affirmative. It was held that PALPA Constitution expressly bars a retired pilot member from contesting election to principal offices of PALPA. While replying to issue No.3, learned Single Judge has held that although the retired member has a right to franchise but it is limited to vote for two seats of Executive Committee Members (ECM) reserved for retired/permanently medically grounded pilots. In view of such findings, learned Single Judge proceeded to dismiss the suit with costs vide impugned judgment and decree, hence this appeal.

5. Learned counsel for appellant has argued that there is no ouster clause in the Constitution prohibiting a retired member of PALPA from contesting election against the principal offices including office of President; learned Single Judge has not properly interpreted the relevant articles of the Constitution and has erred in holding that the Constitution puts an embargo over a retired member of PALPA to contest election against any of principal offices of Association. To support his case, he has read relevant articles: 3.1.1 (composition of Executive Committee), 5.1.4.3 (relevant to election to all principal offices and executive members), and 6.1.3.1 (laying down Rules and Procedure for holding election).

6. On the other hand, learned counsel for respondents has argued that PALPA Constitution clearly admits two different categories of pilots viz. serving and retired or permanently medically grounded pilots; that active pilot members are eligible to vote for principal offices for seats of the ECM reserved for active pilots; whereas the second category's right to vote is confined to two seats reserved for retired etc. pilots; the appellant, who is a co-founder of PALPA, Constitution, when was General Secretary, PALPA had rejected the form of one Captain Sohail Baloch, who wished to contest election for President at the time when his superannuation was prior to the expiry of term of incoming president, hence the appellant knows personally that for retired pilots, the Constitution has no provision to grant them permission for election against the principal offices.

He further emphasized that wisdom to allow only serving pilots to contest the election against principal offices is to enable them to stay in contact with the Management /Employer and to resolve day-to-day matters confronted by the pilots during service. The object of the PALPA Constitution would be frustrated, if a retired pilot is allowed to contest election for principal offices of the Executive Committee; that when there are two seats reserved for retired/permanently medically grounded pilots, the question of allowing them to contest the election against other offices does not arise and it would be against the spirit of the Constitution.

7. We have heard the parties and perused material available on record. The definition of Executive Committee is provided in Article 3.1.1 of the constitution, which reads as under:-

3.1.1 COMPOSITION

The Executive Committee of the Association shall consist of the Principal Officers and the Executive Members. All posts of the Executive Committee are honorary and voluntary in nature subject to the prescribed rules.

The Principal Officers of the Association shall be:

President

Vice President

General Secretary

Three Joint Secretaries

Treasurer

The Executive Members shall be nine (9) in number.

Seven (7) Executive Committee Member shall be elected from serving pilots and two (2) from retired/permanently medically grounded pilots.

Out of the Executive Committee comprising of serving Pilots, one Executive Committee Member shall be selected as IFALPA Director and one as ITF representative, for a period of two years."

It is clear that the Executive Committee consists of two parts i.e. the principal offices, and (09) members of ECM. The emphasis of the learned counsel for respondent No.1 has been on the second part of the Executive Committee: ECM to set up his case. He has argued that against 09 members, seven members are elected from serving pilots by serving pilots and two from retired etc. pilots on the vote of retired/etc. pilots. According to him, this arrangement makes it very clear that the retired pilot's vote is only for two seats reserved for their own category. It appears that learned Single Judge has got influenced by such view to hold that when a particular category of seats i.e. seats for retired etc. pilots, has been provided in the Constitution, the retired pilots' right to franchise would be limited to only such category. They would only be eligible to vote or vie for such category and not otherwise. To explain further this point, learned Single Judge has reproduced Article 5.1.4.3, which reads as follows:-

"5.1.4.3. To elect a President, Vice President, General Secretary, Three Joint Secretaries, Treasurer and 7 (seven) members from active pilot members and two (2) members from retired/medically grounded pilots' cadre as Executive Members of the Association.

8. It may be said that above Article is essentially a sub Article of Article 5.1.4 which caters to business of the Annual General Meeting (AGM). Such business, among others, mandates AGM to make a decision for holding election for a president, Vice President, General Secretary, three joint Secretaries, Treasurer and seven members from active pilots and two members from retired etc. pilots as Executive Members of the Association. Providing definition of business of AGM does not amount to admitting to two categories of pilots or creating or denying a certain right in favour of or to one. This provision simply spells out that when AGM of the Association is held, it could make or discuss a proposal for holding election against various posts of the Executive Committee including the 09 members as ECM of the Association. From no angle this Article lays credence to argument led by learned counsel for respondents that it provides a distinction between serving pilots and retired etc. pilots, insofar as their right to vote to the offices to the Executive Committee is concerned. Instead, this Article, in our view, refers to a prerogative of AGM to take up, inter alia, the issue of election to the various offices of the Executive Committee which, as explained below, consists two parts: principal offices and seven members from active pilots out of 09, and two members from retired etc. pilots, and decide it. The whole scheme under this provision is to explain business of AGM and not to introduce two categories of pilots or draw a distinction between serving and retired pilots insofar as aim and object of the Association is concerned.

9. For further explanation, Article 6.1.3.1. is reproduced hereunder:-

Any member pilot who wishes to contest election for a particular post of the Executive Committee shall be required to submit the duly completed relevant Proposal Form (Serving/retired or permanently grounded Pilot) to the Association within fifteen (15) days of the publication of the Proposal Form and obtain the receipt thereof. Such Form shall be proposed and seconded by members in good standing, along with the signature of the member proposed, showing his willingness to contest for the post. The membership will elect the Executive Committee from the final published list. The Active Pilots shall vote only for the Active Pilots contesting for the Executive Committee; and Retired/Permanently Medically Grounded Pilots shall vote only for the Retired/Permanently Medically Grounded Pilots who are contesting for the post of two Retired/Permanently Medically Grounded Pilots as Executive Committee Members. (Emphasis supplied)

The limit, highlighted above in Article, to the right of retired members to vote for the two seats reserved for retired etc. pilots in the ECM is understandable in that it ensures representation of retired pilots in one of the necessary components of the Executive Committee i.e. the ECM. The ECM within the Executive Committees is a different category as it does not exercise any of the executive powers as done

by executive offices. Its function is mainly confined to tendering advices and assisting in decision making process to ensure smooth working of the Association. Introducing in ECM two separate seats for retired etc. pilots and mandating only the retired pilots to vote for them is only to consolidate prospect of election of retired etc. pilots against such seats. Otherwise, looking at the higher number of serving pilots or for any other reason, the retired pilots would not have stood any chance to get elected and render advisory role which is an essential component of overall functions of the Executive Committee.

10. However, no such bar can understandably be conceptualized for the principal offices of the Association as these seats require open competition to be held among all the members without any necessity to lodge retired pilots in them. This is why these seats have been left open to be elected by all and sundry i.e. retired and serving pilots. These offices entail executive functions to be performed independently and exclusively for improving wellbeing of the members of the Association. No rider can possibly be attached to ensure representation of a retired pilot against such seat. Each seat is separate and individual and not like ECM that has 9 members. When each executive office is independent and separate, no quota for retired pilots can be introduced to make sure their presence. Against one- seat one-member, the only possible recourse can be an open election among all the members. Whereas, when more than one seats in a particular category, like ECM in this case, is set forth, it would become mandatory to safeguard rights of a certain kind of members, who on account of some impediment i.e. retirement etc. are not otherwise poised suitably to compete with the category the majority of votes are drawn from. This is what has been inherited by this provision when it lays down an open field for everyone who wishes to contest election against the main offices, but when it covers the general seats in ECM it tends to ensure atleast two seats for retired pilots. This can be further comprehended from the fact that the Constitution otherwise does not distinguish between retired and active members of the Association.

11. Membership to the Association is defined in Article 2.1.1, according to which, any person, who is Pakistani national and is a regularly employee or retired /permanently medically grounded pilot of PIA Corporation and whose purpose is aligned with those of the Association shall be eligible for membership of the Association subject to completion of the procedure prescribed therein. This membership criteria admits all the pilots of PIA irrespective of the fact whether they are serving or retired etc. to be eligible for membership. Going by this eligibility criteria which does not distinguish between retired and serving pilots, it is not difficult to assume that all the members are competent to vote in the contest for any of the principal offices. Nowhere in the Constitution, a slight reference has

been made that a retired member would not be eligible for casting vote in the election on principal offices. Therefore, any imaginary restriction imposed upon retired etc. pilots to contest or vote for any of the principal offices would be against the spirit of the Constitution.

12. This point is further explained from a reverse engineering of Article 6.1.3.1. This Article lays down that any member pilot (when it says any member, by its implication, a retired /permanently medically grounded pilot is also included as per definition in Article 2.1.1), who wishes to contest election for a particular post of Executive Committee (here there is no reference to any reserved seats of the ECM, rather it has been said that to contest election for a particular post of Executive Committee which will include all principal offices), he shall be required to submit duly completed relevant proposal form (serving / retired /permanently medically grounded pilot) to the Association within 15 days.

13. It is clear that even the retired etc. pilots have been recognized to second and propose candidature of any member, who wishes to contest election for any of the post of Executive Committee. The clear connotation of words demonstrates that it does not rule out participation of retired etc. pilots in the process of election, nor does it posit a suggestion in favour of only serving pilots to be eligible to complete the relevant proposal of a candidate who wishes to contest the election against principal offices. When a retired member of the Association is eligible to propose and second candidature of any member who wishes to contest the election, the interpretation that only serving pilots can vote or compete for the principal offices would amount to defeating the very meaning of this provision.

14. We have seen that learned Single Judge while reproducing the last paragraph /part of this Article has held that only active pilots have a right to contest the election for the Executive Committee. A retired etc. pilot's right would be confined to only vote for the two reserved seats for them. This interpretation in our view is in negation of the holistic view of this provision. For, this provision firstly admits that any member pilot can contest election for any particular post of the Executive Committee, and then secondly it recognizes competency and eligibility of any member including a retired etc. pilot to propose and second the candidature of a member for any office of the Executive Committee, which will include the principal offices. It is only when this provision addresses election to 09 members of ECM, it specifically lays down a condition that active pilots shall vote only for active pilots (contesting seven seats of ECM), whereas retired etc. pilots will be competent to only vote for two seats reserved for retired etc. pilots as member of ECM.

15. We have already held that the Executive Committee consists of two parts, which has also been recognized by the learned Single Judge in his order, and its nine members ECM is different and distinct than the component comprising executive offices. The reason to confine right of retired pilots to vote for two reserved seats for their category is to make sure an unhindered representation of retired pilots in the ECM. This is so obvious to understand and there is no ambiguity in the meaning in the second part of this Article, the specific words "Executive Committee Members" have been mentioned at the end of it to demonstrate that the second paragraph is about ECM and has nothing to do with the first part of the provision dealing with the principal offices.

16. Learned Single Judge has erred by reading the entire Article conjointly without appreciating the fact that second paragraph was only meant for and confined to the election against nine members of ECM and not relevant to the principal offices of the Executive Committee. The election to which has been left open understandably so as to let every member flex his muscle and represent the Association, if elected. And since it is based on one-seat for one-member formula, no contingent proposition can be borrowed to change such formula into one-seat for two or more-members to ensure representation of a particular category of members. The rider that retired members would vote for two seats reserved for the retired etc. pilots in ECM will not be stretched to have any bearing to the election of principal offices, particularly when no such intrusion is visible in the Constitution. Apparently, insofar as the said offices i.e. Executive offices are concerned, no condition has been provided in this provision, nor the Constitution admits such distinction anywhere. Meaning thereby that every member regardless of his status as retired or otherwise is competent to contest the election and is eligible to propose and second such candidature and competent to vote for it. It is only in regard to the special category of the ECM in which since two seats have been reserved for retired etc. pilots, the right to vote for such seats has been conferred to their own category, for the reasons as explained above.

17. Next, the Constitution does not distinguish between retired and serving pilots as members of the Association, any contrary view drawn to restrict right of vote of the retired etc. pilots to only the member of ECM would be apparently against the terms of binding contract (Constitution) among its members. If however such interpretation is adopted, the retired /permanently medically grounded pilots would stand disenfranchised and their membership rights would be limited to only electing two members of ECM. The status of their membership then would be reduced to almost non-active and there would be left no need to grant them active membership of the Association. Such category of members is not recognized anywhere in the Book, and if accepted would be an anomaly

raising questions over wisdom of letting the retired pilots to be member of the Association, when their importance is confined to only electing two seats in the ECM, which can otherwise be easily coopted by the members of the Association from among the retired pilots.

18. Insofar as, the appellant's own decision as the General Secretary of Association rejecting the form of one candidate on the same ground is concerned, it was taken by him on his own understanding of the Constitution. It will not imply that any other authority including this court cannot differ with his understanding and take its own view. Then, his understanding of the Constitution will not change what is otherwise obvious to everyone i.e. the letter and spirit of the Constitution, which, as it stands, does not rule out active participation of retired etc. pilots in the affairs of the Association. Lastly, his understanding of the Constitution, when found not in accordance with it, cannot be allowed to hamper or abridge his personal right, under the Constitution, as a member of the Association. Therefore, we repel the argument that in the light of his own decision, the appellant is not entitled to contest the election for the office of president of the Association

19. In view of above discussion, we allow this appeal, set-aside impugned judgment and decree, as a result suit of the appellant stands decreed as prayed with no order as to costs.

The Appeal stands disposed of alongwith pending application.

These are the reasons of our short order dated 08.04.2025, whereby this appeal was allowed.

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