

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-1073 of 2009

Aziz ur Rehman Chaudhry

Versus

Pakistan International Airlines Corporation & another

BEFORE:

Mr. Justice Faisal Arab
Mr. Justice Muhammad Shafi Siddiqui

Date of Hearing: 24.04.2013, 25.04.2013 & 07.05.2013

Petitioner: In person.

Respondents: Through Mr. Khalid Javed Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner in this petition has challenged discriminative treatment given to the affectees of MLR-52. The petitioner is seeking similar treatment as were given to some other employees who were also terminated under MLR 52 and were reemployed on the same terms and conditions but were also given back benefits.

2. The brief facts of the case are that the petitioner was appointed in respondent PIA as Radio Mechanic in PG-III on 07.03.1968 and was promoted to PG-IV on 15.06.1971 and PG-V on 27.06.1974 as Master Technician after attaining class III and class II engineering qualifications prescribed for promotion in the engineering department.

3. Initially his services were terminated on 10.09.1976 without any reason and then subsequently reinstated on 21.07.1977 with full back benefits. Petitioner submitted that he was posted in Radio Maintenance as Officer Engineer on 21.11.1977 and remained there until he was terminated on 24.08.1981 under MLR 52. He submitted that he was again reemployed on the said post on 01.02.1990. The services of many other employees were also terminated under MLR 52 and identical letters of termination of services were issued to them who were also reemployed on the same or subsequent dates, pursuant to a uniform policy formulated by the Government.

4. He submitted that a Review Board was constituted by the government for the purpose of receiving applications from the affectees of MLR 52 so that their cases could be reviewed. Consequent to the constitution of said Review Board hundreds of affected employees, including petitioner as well as others such as Ghulam Mustafa Shah, Akbar Khan, Tasleem Khan, Khalid-ul-Haq, Mian Inayat Rasool and others, submitted their review petition before the Board which were considered and granted by the Review Board with directions to reemploy them with seniority. Consequent upon said recommendations the respondents issued letters to various employees recommended by the Board for reemployment and in the offer letters the aggrieved persons were given offer to re-join the same pay group instead of

reinstatement with back benefits. The petitioner submitted that since identical treatments were given to all the affected persons, therefore, he re-joined the service on such terms despite the fact that his termination was declared as void, capricious and illegal by the Review Board. Petitioner argued that such letters were also issued to Ghulam Mustafa Shah, Inayat Rasool and Muhammad Akbar Khan and many others who were also reemployed but were later on reinstated under the P.M. directives and under influence of some high officials and were paid financial benefits which were not granted to other re-employed employees and hence the recommendation of the Review Board was not adhered to and the uniform offer letter was also modified according to the whims and wishes of the respondents in the case of many selective employees who were given selective treatment of reinstatement with back benefits.

5. He argued that such discrimination provided legitimate reasons to many individuals to start litigation before this Court as well as before Hon'ble Supreme Court which resulted in providing certain financial/service benefits to many employees under a compromise. However such benefits were not provided to the petitioner hence the petitioner was discriminated.

6. Petitioner submitted that after order dated 18.12.1995 passed in CP No.D-22 of 1995 by Hon'ble Supreme Court (interms whereof some affectees were reinstated under a compromise), the petitioner approached the respondent on 28.12.1995 for providing him copy of the competent authority's approval for dispensation of his service under MLR 52 or in its absence he urged that he be reinstated from the date of his dispensation as has been done by the respondents with other employees while entering into compromise with them and his case be also considered in line with the

decision of the employees mentioned above. He argued that in February, 1996 or thereabout 26 compromises were entered into by the respondents with those who had approached this Court or Hon'ble Supreme Court. The petitioner then along with others filed C.P. No.D-10/1996, 13/1996, 16/1996, 11/1997, 12/1997 and 17/1997 before the Hon'ble Supreme Court of Pakistan and these petitions were disposed of by a common judgment dated 23.02.1998 as not maintainable since alternate remedy was already provided under the law.

7. The grievance of the petitioner is that he was discriminated as his case is identical to the cases of Ghulam Mustafa Shah, Akbar Khan, Tasleem Khan, Khalid-ul-Haq, Mian Inayat Rasool and many others who compromised with the respondent but the petitioner was deprived of financial/service benefits.

8. Petitioner submitted that he has also filed an appeal before the Federal Service Tribunal bearing No.745(K)(CE) of 2003 and the same was dismissed on 12.02.2006. Aggrieved with the said judgment of FST the petitioner filed Civil Petition No.155-K of 2006. On filing a Review Petition No.93-K of 2007 in the aforesaid Petition No.155-K of 2006 the Hon'ble Supreme Court on taking into consideration the facts and circumstances of the case allowed the petitioner to approach this Court in exercise of constitutional jurisdiction within two weeks for its decision in accordance with law. In compliance of the said order petitioner has filed the instant petition.

9. Petitioner argued that his service was terminated arbitrarily and illegally under MLR 52 without mentioning any reason and that the word

“seniority” has been deliberately deleted from the offer letters though it was accepted by the petitioner only on the pretext that all were given like treatment. He argued that he would have been satisfied had similar treatment been given to all the affectees of MLR 52. However, since apparent discrimination was faced by him, therefore, he sought exercise of his fundamental right as guaranteed under the Constitution of Islamic Republic of Pakistan. He submitted that he was discriminated and was not granted financial and service benefits although his case was identical with other employees to whom financial and service benefits were provided, besides recommendations of the Review Board. He also belongs to the same class of persons who are the affectees of MLR 52. He submitted that earlier petitions which were preferred before the Hon’ble Supreme Court under Article 184(3) of the Constitution of Pakistan were dismissed as no question of public importance was raised therein to confer the jurisdiction upon the Hon’ble Supreme Court to entertain such dispute and the issue of discrimination was not discussed.

10. In reply to the arguments of the learned Counsel for the petitioner, Mr. Khalid Javed objected to the maintainability of this petition and submitted that the PIAC Employees (Services & Disciplinary) Regulations, 1985 are not statutory Rules and hence the petition would not lie. He argued that the Hon’ble Supreme Court was pleased to hold that the relationship between the PIAC and its employees is of master and servant. It is urged that the petition purported to have been filed pursuant to the order dated 21.5.2009 passed in Civil Review Petition No.93-K/2007. However after the decision of the Hon’ble Supreme Court in the case of Pakistan International Airline Corporation & others & Tanveer-ur-Rahman & others

(PLD 2010 SC 676), the question of maintainability stood decided. He submitted that the question of termination of the petitioner by virtue of MLR-52 dated 24.8.1981 is a past and closed transaction as he was reemployed on the recommendation of Review Board and pursuant to such reemployment he stood retired on 22.6.2003 and was paid his retirement benefits and the difference of the pensionary benefit was also settled pursuant to the order passed by the Hon'ble Supreme Court in Civil Petition No. 530/2009, hence this petition besides being not maintainable has also become infructuous. He argued that his reappointment was considered as fresh and he was issued fresh "P" No. 49544 whereas his earlier "P" number was 22330 as such his previous service was not counted towards his reemployment. He argued that the respondents acted strictly under the service regulations and the directions of the concerned ministry and granted benefits to those ex-employees who were covered under the recommendation of Review Board and no different treatment was given to the petitioner by the respondents. He argued that the question now raised by the petitioner has already been decided by the Federal Service Tribunal, this Court as well as by the Hon'ble Supreme Court. Learned Counsel argued that in compliance of the earlier judgment of the Federal Service Tribunal which matter went up to Hon'ble Supreme Court, the respondent has made payments to the petitioner and also filed compliance report before the Hon'ble Supreme Court.

11. We have heard the learned Counsel and perused the record.

12. The respondent has raised the preliminary questions as to the maintainability of this petition, therefore, we are inclined to first deal with this issue before proceeding further.

13. Learned counsel for the respondents relied upon the following judgments to challenge the maintainability of the petition.

- i) *Pakistan International Airline Corporation & others & Tanveer-ur-Rahman & others* (PLD 2010 SC 676) (also reported in SBLR 2010 SC 303).
- ii) *Raziuddin v. Chairman, Pakistan International Airlines Corporation & 2 others* (PLD 1992 SC 531)
- iii) *Muhammad Yusuf Shah v. Pakistan International Airlines Corporation* (PLD 1981 SC 224)

14. The first out of above referred judgment substantially deals with the issue to consider whether period of 90 days prescribed in clause 'c' Para 109 of the judgment passed by the Supreme Court in the case titled Muhammad Mubeen-us-Salam and another v. Federation of Pakistan and others was applicable to the constitution petition filed under Article 199 of the Constitution for which no period of limitation was prescribed under the law subject to question of laches and whether the Constitution Petition against Pakistan International Airlines being a corporation having no statutory rules would be maintainable in case of disputes as regards the terms and conditions of its employment, more particularly as Pakistan International Airline was not performing any function in connection with the affairs of the Federation. The referred case law is distinguishable from the facts of this case as none of the above referred question involved in the instant case nor pressed by the petitioner. The only submission made by the petitioner was the discrimination that he has faced in terms of his reemployment when others of the same class were given financial/back benefits. Hence the

referred judgment does not apply to the facts, circumstances and point involved in this case.

15. The second above referred judgment deals with the relationship of the employees of the corporation which is held to be that of 'master and servant' and the issue of discrimination is not involved in this referred judgment as well.

16. In the third referred judgment the employee was dismissed from service who filed a declaratory suit. It was held by the Hon'ble Supreme Court that the relationship being governed simply by theory of 'master and servant', suit for declaration of dismissal was not maintainable, which is again not the case here in this petition.

17. The petitioner has raised a question that violates the fundamental rights provided to him in terms of Article 25 of the Constitution of the Islamic Republic of Pakistan. We are, therefore, of the view that under the facts and circumstances of the case when the petitioner's basic fundamental right is being violated, he can invoke the constitutional jurisdiction under Article 199 of the Constitution to safe guard his fundamental rights.

18. We now proceed to determine as to whether any discrimination, as pleaded by the petitioner was faced by him or otherwise.

19. The case of the petitioner is substantially revolves around discrimination. The affectees of MLR-52 which formed a particular class of persons which may be called affectees of MLR-52 were subjected to selective treatment. The only question which is to be decided is whether the policy framed and treatment met by affectees of MLR-52 constitute

discrimination and/or such different treatment which is not opposed by respondent was based on intelligible differentia.

20. Although the petitioner was recommended to be reemployed along with all other affectees after treating the termination order of petitioner dated 24.8.1981 as arbitrary, capricious, unlawful and illegal, however despite this, reemployment was not in line with the recommendation made by board. The petitioner has also placed the copy of the dispensation of service of one Muhammad Akbar Khan dated 18.8.1981 which is similar to the dismissal order of the petitioner. The case of Muhammad Akbar Khan was discussed by the Review Board and it was held that the order of dispensation of service of Muhammad Akbar Khan was void ab-initio and the Federal Government recommended to reemploy the petitioner at the post with the same seniority which he would have enjoyed had his service not terminated. The case of termination of one Khalid Bin Haq was considered by the Review Board to be void ab-initio. Similarly the case of Ghulam Mustafa Shah was also recommended by the Review Board with his reinstatement with payment of arrears equal to 1/3rd pay and full house rent. However, all these affectees were given offer letters and they were offered reemployment despite the orders of the Review Board that they should be given seniority as far as their previous length of service is concerned. Petitioner has placed copies of the letters issued by the Pakistan International Airlines Corporation to different affectees which are available on record in terms whereof and pursuant to the compromise arrived at before the Hon'ble Supreme Court in Civil Petition No. 22/1995 titled as Muhammad Akbar Khan & others v. PIAC Management, the compromise

before Hon'ble Supreme Court provided them the service benefits as well as seniority in respect of the service which was terminated by virtue of MLR 52.

21. In terms of a letter dated 17.1.1990 the Ministry of Defence was pleased to observe that the Federal Government in exercise of powers available to it under subsection (2) of Section 5 of the Pakistan International Airlines Corporation Act, 1956 formed a policy which is as under:-

- “(a) Those ex-employees whose recommendation for re-employment by the Review Board has been specifically and separately endorsed by the Ministry of Defence, Aviation Division may be offered re-employment in the service of the Corporation in the same pay group/level in which they were working on the date of the termination, dismissal or retirement of their service. The Management may grant to them such number of advance increments in the same pay group as it may deem appropriate in a case to case basis. However, this will be done only in exceptional cases and not as a rule. The re-employed personnel will be given fresh ‘P’ numbers. This re-employment will be considered as fresh employment.*
- (b) Those ex-employees recommended for employment by the Review Board and endorsed by the Ministry of Defence, Aviation Division for a employment, who are either unwilling or unable to take up employment shall be entitled, in lieu of re-employment, to a lump sum compensation to be calculated at the rate of 1/3rd of their basic salary and house rent from the date of their removal, retirement, dispensation or dismissal from service till 31st January, 1990.”*

22. Such offer letters in purported compliance of the policy of the Federal Government was issued to the affectees of MLR-52 some of which are available on record. On such policy and issuance of the letters to the

affectees, some of the affectees have pursued their matters such as Muhammad Akbar Khan, Ghulam Mustafa Shah and Inayat Rasool etc. It was also clarified that by virtue of letter dated 24.8.1993 by Ministry of Defence, Government of Pakistan available at page 219, that the services of Ghulam Mustafa Shah were not terminated by way of mistaken identity as such he was given reemployment offer and that his services were dispensed with under para 6(ii) of MLR-52 on account being habitual absenteeism and alleged involvement in corruption etc. The relevant text is reproduced as under.

“4. Recommendations of the Review Board were conveyed to PIAC for implementation in November, 1990. Instead of re-instating him from 17-7-1981, PIA reemployed him afresh. PIA were asked again in April 1991 to implement recommendations of the Review Board. In response, PIA informed that their representative who appeared before the Review Board had made an incorrect statement that services of Mr. Ghulam Mustafa Shah were dispensed with due to ‘mistaken identity’. According to PIA, services of Mr. Ghulam Mustafa Shah were dispensed with under para 6(ii) of MLR-52 on account of being unproductive, habitual, absenteeism and alleged involvement in corruption, etc.

23. It was also observed in the said letter that if G.M. Shah is allowed previous seniority and other service benefits it will result in the opening of a pandora’s box and generate unending demands from more than 800 affectees of MLR-52. However, it is apparent that Ghulam Mustafa Shah being an influential person was able to persuade the respondents since recommendations were forwarded from Prime Minister Secretariat, Law & Justice Division etc. to consider his matter. The Administration Department

of PIAC also observed in their letter dated 26.10.1993 that the case of Ghulam Mustafa Shah and Ghulam Mujtaba Shah are not of mistaken identity. It was observed in the letter as under:-

“4. It was argued that the following facts and circumstances, which culminated in the action taken by PIA against Mr. Ghulam Mustafa Shah, P-32033 were entirely different from that of Mr. Ghulam Mujtaba Shah, P-31736:

(a) Both had different Staff Nos. and designations.

(b) Services of Mr. Mustafa Shah were terminated under Para 6(ii) of MLR-52 on 13.9.1991 on grounds altogether different from that of Mr. Ghulam Mujtaba Shah, under orders from the Chairman, PIAC.

(c) Mr. Ghulam Mujtaba Shah, Traffic Supervisor was proceeded against under Para 4(1) of MLR-52, after completing departmental proceedings against him for misconduct. He was dismissed from service vide Director Administration’s letter No. DA/P-31736/83 dated 31.1.1983.

(d) Different terminal benefits accrued to them individually as admissible under rules.”

24. The respondents rooted the cause of discrimination by entering into a compromise with 22 petitioners in C.P. No. 22/1995 before the Hon’ble Supreme Court. The said order dated 18.12.1995 is reproduced as under:-

“Mr. Abdul Mujeeb Pirzada, learned ASC for the petitioners, has stated that the first four petitions mentioned in the caption have been listed today for hearing, whereas the last petition, which is fifth in serial number, namely, Constitutional Petition No.22/95, and

which is a direct petition filed in this Court by M. Akbar Khan and twenty-one others, is not listed although it involves the same subject matter and compromise in writing is also filed in it. We directed the office to produce the record of the said petition, which is now placed before us.

2. The petitioners in all the above mentioned petitions are employees of the Pakistan International Airlines Corporation and were shutted out from service. Their cases were considered by a Review Board which was constituted by the government which has ordered their re-employment in the service of PIAC. The petitioners held grievance that their previous service should be considered to ensure continuation in service and for the purpose of other fringe benefits connected therewith they filed writ petitions in the High Court which have been dismissed. In the result, the petitioners have filed in this Court petitions for leave to appeal with the exception of Constitutional Petition No. 22/1995 which is a direct petition filed in this Court by twenty-two petitioners belonging to lower group of service.

3. It is stated that in CP 108-K/95, which is filed by Ghulam Nabi Shah, and in Constitutional petition No.22/95, which is filed by M. Akbar Khan and twenty-one others, compromises arrived at between the parties have been filed in writing which are signed by them and their Counsel but respondent PIAC has filed application for deletion of one sentence from the said agreements which does not suit them. Mr. Ghulam Basit, learned ASC for PIAC, present in the Court has stated that on reconsideration PIAC has come to conclusion that this particular sentence would prove to be very expensive and unaffordable. The learned counsel present for the parties in both these petitions state that after deletion of this particular sentence, compromise is acceptable to them and can be acted upon. In the result, both these petitions are disposed of in terms of the compromise available in

the record minus the last sentence in paragraph 3(c) which is reproduced as under:

“After placement/promotion upon restoration of seniority as mentioned above, the petitioner will be upgraded in one step higher pay Group.”

4. So far the other petitions, as mentioned above, are concerned, with the consent of the counsel for the parties they are adjourned to a date in office to enable them to negotiate for compromise.”

25. It appears from the record that a review petition in respect of the aforesaid order passed in CP No.22-K and 108-K of 1995 was filed which review application was dismissed vide order dated 26.09.2000 in the following terms:-

“The applicants through CMA No. 339/1998, under section 12(2) of C.P.C have prayed for setting aside the judgment of this Court dated 18/12/1995 passed in Constitutional Petition No.22/95.

2. The applicants are employees of Pakistan International Airlines, Karachi Airport. It is alleged that the respondents Nos.1 to 8 along with about 3,000 employees of Pakistan International Airlines were removed from service under MLR No.52 and later on in the year 1989, a review board was constituted to examine the case of the respondents Nos.1 to 8 along with other employees to make appropriate recommendations in such cases. Accordingly, the review board recommended the cases of the employees along with respondents Nos.1 to 8 and the respondent No.10 passed necessary order thereon. Thereafter, the respondents Nos.1 to 8 along with respondents No.11 to 24 filed Constitutional Petition No.22 of 1995 before this Court with a prayer for giving them all back benefits along with seniority and promotions etc over and above, the recommendations of review board and decision of the Government.

3. *It appears that in the said petition CMA No. 707/95 was filed for compromise which was accepted, and the petition was disposed of as such, minus the last sentence in paragraph 3(c) of the compromise which is as follows:-*

“After placement/promotion upon restoration of seniority as mentioned above, the petitioner will be upgraded in one step higher pay Group.”

4. *It is case of the applicants that the judgment in the said petition was obtained by fraud and misrepresentation. It is alleged that said compromise was mala fide and was illegally filed by an unauthorized officer with political motive only to favour the respondents Nos. 1 to 8 and 11 to 24, who had a direct support of the then government. Further, it is argued that this Court had no jurisdiction, under Article 184(3) of the Constitution, as neither the question of enforcement of fundamental rights was raised nor any issue of public importance was involved. It is noted that paragraph 3(c) and 4(c) of said compromise as under:-*

“3(c) The petitioners will be placed/ promoted in the higher pay group as per Corporation rules on restoration of level of seniority as para (b) above. After placement/ promotion upon-restoration of level of seniority as mentioned above, the petitioner will be upgraded in one step higher Pay Group.”

4(c) The petitioners will be placed/ promoted etc to higher pay group on restoration of original seniority as per (b) above. After placement/ promotion upon restoration of original seniority as mentioned above, the petitioner will be upgraded in one step higher Pay group.”

5. *This Court, as pointed out earlier, deleted above quoted under-lined portion of paragraph 3(c) and accepted the compromise minus said portion.*

6. *Paragraph 4(c) of the compromise is merely repetition of paragraph 3(c) and the last sentence is the same, which was ordered to be deleted vide judgment dated 18th December, 1985. Since the last sentence in both aforesaid paragraphs is the same and it was deleted from paragraph 3(c), the said sentence shall also be deemed to have been deleted from paragraph 4(c).*

7. *As regards, the pleas of fraud, mala fide and alleged unauthorized compromise, it is noted that nothing material has been pointed out to substantiate these pleas.*

8. *With the above observations, the application is dismissed.”*

26. There was yet another review application bearing No.238 of 2001 which was disposed of in the following terms:-

“4. Thus in view of the above arrangements between the parties Civil Review Petition and CMA are disposed of in the terms that notwithstanding the contents of the judgment dated 18.12.1995. Lawful rights of the respondents who had subsequently moved an application under section 12(2) C.P.C. and succeeded in getting order dated 26th September 2000 shall not be affected. As far as the petitioners are concerned their rights shall be governed independently in terms of the judgment dated 18.12.1995.”

27. It appears that some employees also approached Hon'ble Supreme Court by filing C.P. No. 365-K, 373-K to 375-K and 382-K to 385-K of 2000 which petitioners were also given back benefits on the same terms as were given to the petitioner in C.P. No. 108-K/1995 and C.P.No.22/1995. The

order passed in the said petitions bearing No. 365-K and others were reviewed in Civil Review Petition Nos. 7-K to 13-K of 2001 on the strength that the Review Board did not recommend the reinstatement of the private respondents in CP Nos.365-K, 373-K to 375-K and 382-K to 385-K of 2000 and recommendation of only reemployment was made. However, the Hon'ble Supreme Court was not shown the orders of the Review Board in the case of Muhammad Akbar Khan & others and Ghulam Nabi Shah, who were also recommended for re-employment and not for reinstatement yet the respondent/PIAC compromised with them and were reinstated with back benefits.

28. From the record available before us, it appears that Muhammad Akbar Khan was recommended for reemployment and not for reinstatement yet under the garb of a compromise he was allowed to be reinstated with all back benefits of previous service and this treatment was given to all 23 reemployed employees. It is on the strength of this reinstatement that other employees filed petitions.

29. In the case of Civil Review Petition Nos. 7-K to 13-K of 2001 perhaps the private respondents who were denied this right were not able to establish that Inayat Rasool and Muhammad Akbar Khan & others were reemployed and they were given benefits only under the garb of compromise which fact has been satisfactorily established by the petitioner in this petition.

30. We have seen the order of the Review Board passed in relation to Muhammad Akbar Khan (P-25456) who was only allowed to be reemployed as the case of the petitioner is. Similarly the Review Board also directed the

respondents to re-employ Major Khalidul Haq Mian. It appears that only G.M. Shah (P.32033) was ordered to be reinstated by the Review Board. However, one thing is very significant that under a common policy all the affectees of MLR 52 were allowed to rejoin PIA only on the terms and conditions of fresh reemployment which only provides that the previous service benefit are not available hence the cases of all the affectees are similar. It was only the compromise by which the aforesaid affectees in C.P. No. 22/1995 and 108-K/95 were given back benefits.

31. The Hon'ble Supreme Court in an unreported judgment in the case of Syed Zulfiqar Ali Mehdi & others v. Pakistan International Airlines Corporation & another passed in (C.P. No.10/1990) and others wherein petitioner was also party observed as under:

“We now proceed to examine the controversies raised by the petitioners in the above case in the light of the above stated principles. The issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large. The objective ‘public’ necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of ‘public importance’. Firstly, the controversy raised in the above petitions that the petitioners who were dismissed under MLR-52 were not allowed back benefits on re-employment in the service of PIAC, cannot be treated as an issue of ‘public importance’ as the decision of this issue is hardly of any significance to the people at large or the whole community. The issue

concerns only to a very limited number of employees of PIAC. Secondly, the allegations of discrimination made by the petitions are denied by the PIAC both on legal as well as factual aspects of the cases of petitioners as well as of and therefore, an enquiry into the factual aspects of the cases of petitioners as well as of those who were allegedly given preferential treatment by PIAC, has to be undertaken to decide the controversy. Such an exercise cannot be appropriately undertaken in these proceedings. It is also rightly pointed out by the learned counsel for the respondent PIAC, that the case of each petitioner is to be decided taking into consideration the facts and merits of his case, for which elaborate and alternate remedy is provided under the law. We are, therefore, of the view that no question of public importance in the above petitions arises so as to confer the jurisdiction on this Court to entertain these petitions under Article 184(3) of the Constitution. We, accordingly, dismiss these petitions as not maintainable. No order as to costs."

32. Perusal of the above judgment reflects that the petitioner was non-suited on account of jurisdictional defect as no question of public importance was raised in the earlier Petitions under Article 184 of the Constitution filed by the petitioner along with others. However, the question of discrimination was not discussed. It is apparent that cases of petitioner in C.P. No.22/95 and 108-K/95 are at par with the case of the petitioner inasmuch as the Review Board in all the cases held that the orders of termination dated 24.8.1981 under MLR-52 were arbitrary, capricious, illegal and unlawful and hence different treatment to the petitioner is an apparent discrimination. The judgments referred in this case by respondent does not touches the question of discrimination. Counsel for the respondent did not argue that the cases of Inayat Rasool, Muhammad Akbar Khan and G.M. Shah & others are not at par with the case of the

petitioner. All that was urged by the learned Counsel for the respondent was that it is past and closed transaction and hence this issue cannot be reopened once the petitioner accepted the terms of reemployment. We may observe that on the same terms and conditions all the affectees of MLR-52 were reemployed, however some affectees were given back benefits. Such indifferent treatment by any corporation or department create sense of inferiority amongst the employees and in this way frustration multiplies amongst such under privileged employees on account of discriminative compromises. The Hon'ble Supreme Court vide order dated 21.5.2009 allowed the petitioner to approach this Court in exercise of constitutional jurisdiction within the time prescribed therein which the petitioner did and soon after his retirement, he approached the Service Tribunal in 2003 in terms of Appeal No. 745-(K)(CE)/2003 hence there are no laches involved in this petition as the petitioner has been pursuing his case vigilantly.

33. Accordingly, we allow this petition to the extent that the petitioner who is also an affectee of MLR 52 should not be given discriminatory treatment and the treatment given to 23 other affectees with whom the respondent entered into compromise shall also be provided to the petitioner.

34. Above are reasons of our short order dated 07.05.2013 whereby the petition was allowed.

Judge

Judge