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IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

Present:

Mr. Justice Mushir Alam
Mr. Justice Faisal Arab
Mr. Justice Sajjad Ali Shah

Civil Appeals No.144-K and 145-K of 2016

Against the judgment dated 02.11.2015 passed by
High Court of Sindh, Karachi in CP No. D-1595 of
2006

Pakistan International Airlines Corporation (In CA 144-k/16)

Zaeem Aziz Qureshi (In CA 145-k/16)
Appellant(s)

VERSUS

Zacem Aziz Qureshi (In CA 144-k/16)

Federation of Pakistan & Pakistan International
Airlines Corporation (In CA 145-k/16)
Respondent(s)

For the Appellant(s) : Mr.Khalid Javed, ASC
(In CA 144-k/16)

For the Appellant(s) : Mr. Salahuddin Ahmed, ASC
(In CA 145-k/16)

For the Respondent(s) : Mr. Salahuddin Ahmed, ASC
(In CA 144-k/16)

For the Respondent(s) : Mr.Khalid Javed, ASC
(In CA 145-k/16)

Date of Hearing : 12.06.2018

JUDGMENT

Mushir Alam, J.-.

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Civil Appeal No.144-K of 2016

Senior Counsel Associate
Supreme Court of Pakistan
Karachi.

Both these instant appeals arises out of common leave
granting order dated 22.11.2016 arising out of a common judgment
dated 02.11.2015 passed by a learned Division Bench of the High
Court of Sindh, Karachi in Constitution Petition No.D-1595 of 2006
whereby Zaheem Aziz Qureshi respondent in Civil Appeal No.144-K
of 2016 since reported as Zaeem Aziz Qureshi Versus PIAC [2016
PLC (CS) 272] in first mentioned appeal had challenged order dated

24.5.2006 H.R Manager (Marketing) conveyed the decision of management *“to compulsorily retire you from PIA service and all recoverable amount on account of loss caused to the Corporation shall be adjusted against your final settlement dues. Accordingly, you are compulsorily retired from services of Corporation with immediate effect”*.

2. Brief facts as may be necessary to appreciate the contention of both the learned counsel for the parties appear to be that respondent-Zaheem Aziz Qureshi was inducted in the Appellant-Corporation as Sales Promotion Officer on 15.4.1976 in Group-6 and was promoted from time to time in Pay Group-8 as Manager (Marketing).

3. Zaheem Aziz Qureshi was proceeded under section 3(1) (b) of the Removal from Service (Special Powers) Ordinance, 2000 (RSO) on the charge of financial impropriety. Notice of inquiry was served on 3.8.2004, inquiry officer was appointed, he participated in the inquiry. In inquiry report dated 7.10.2004 (Page-51) charges were proved and major penalty demoting to a lower pay group together with the recovery of the financial loss was proposed.

4. With the approval of the Chairman & CEO being Chairman & CEO he was called upon to show cause on 29.7.2005 (page 83) against *“the gravity of the allegations proved against you, warrants your dismissal from service alongwith recovery of Rs.48,69,158/-.”* He filed the reply on 5th August, 2005. After consideration of his reply and personal hearing on 26.5.2006 he was compulsory retired from

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service. The order of the compulsory retirement dated 24.5.2006 was communicated by the H.R. Manager in the following terms:

"LAOO No.MK-05-2006-387
HRM(M)/DL/33139/06
 May 24, 2006

Mr.Zaeem A.Qureshi
 P-33139
 Asstt. Manager (Marketing)
PIA Head Office -KHI

COMPLUSORY RETIREMENT FROM PIA SERVICE

1. This has reference to Charge sheet/statement of allegations dated 03.08.2004 issued to you under Removal from Service (Special Powers) Ordinance 2000, as amended up-to-date on account of irregularities, committed by you during your posting tenure at Paris as Manager France and at Oslo as Manager Norway.

2. The Competent Authority ordered departmental enquiry against you and you were advised to appear before the Enquiry Officer on 16.08.2004. You participated in the enquiry proceedings. The Enquiry Officer after conducting impartial enquiry, held you guilty of charges as enumerated in the statement of allegations. Subsequently in order to provide another opportunity to defend your case with regard to the findings of the Enquiry Officer, you were issued show cause notice and personal hearing dated 29.07.2005 asking you to give written reply as to why the proposed punishment of dismissal from service alongwith recovery of financial loss caused to the corporation should not be imposed upon you, on account of committing the acts/ omissions as proved in the enquiry report which has constituted the ground of action against you. Your reply to above referred show cause notice was not found satisfactory.

3. You were also provided an opportunity of personal hearing with the Chairman & CEO, on 26.08.2005 to defend your case. You availed this opportunity but failed to defend the charges.

4. After careful consideration and perusal of the record of your case, Management has decided to compulsorily retire you from PIA service and all recoverable amount on account of loss caused to the Corporation shall be adjusted against your final settlement dues. Accordingly, you are hereby compulsorily retired form service of the Corporation with immediate effect.

5. Your dues, if any shall be settled on production of attached clearance from duly completed and subject to surrendering the following PIA documents/property.

- i) PIA ID Card ii) PIA family ID Card(s)
 iii) PIA Passport/Apron permit, if any iv) Any other PIA property.

Sd/-
 (RASHID AHMAD)
H.R. Manager (Mktg)

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Against which a representation dated 2.6.2006, was filed by him as required under section 9 of RSO, 2000. In para 15 of the reply he conceded that the order of "compulsorily retirement was passed by



Competent Authority” but it was passed ignoring certain facts, which he elaborated, in his representation. His representation was not responded, therefore, he filed appeal before the Federal Service Tribunal. The appeal did not proceed for want of jurisdiction and ultimately Constitution Petition No.D-1595 of 2006 was filed against the compulsory retirement from service. During the pendency of petition, the respondent attained superannuation and stood retired from service on 19.2.2013.

5. Petition came up for hearing and vide impugned judgment dated 2.11.2015 the learned Division Bench of the Sindh High Court, Karachi held the inquiry to be in accordance with the RSO, 2000 and so also it was held while concluding in para-7 that *“the competent authority is not bound to follow the report of the inquiry officer which in the very term of section is of recommendatory. The recommendations, in view of section 3, 5 and 8 of the Ordinance cannot be construed to be binding upon the competent authority”*. Learned Bench of the High Court, while attending to objection as to non-signing of order of compulsory retirement Chairman, CEO of PIAC being the competent authority and the effect of minutes of meeting of Employee Leadership Team (ELT) dated 24.5.2006 held in para 8 *“In our considerate view, the provisions of RSO 2000 were meant to provide measures inter alia dismissal, removal etc. of certain persons from government service and corporation service with the intention to provide speedy disposal of some cases and the matters connected therewith or ancillary thereto. This special law was crafted for special purposes in which an internally constituted “Employee Leadership Team” (ELT) was foreign and unfamiliar. While exercising*

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the powers under RSO 2000, the authority was obliged to follow the letters of law in its true fundamental nature and perspective. The compulsory retirement order cannot be defended on the premise that since the Chairman/CEO of PIA was present in the ELT meeting therefore, there was no need to sign the compulsory retirement order by him. The RSO 2000 itself provided complete procedure and mechanism since the inception of inquiry till dismissal or removal from service, therefore, we are of the firm standpoint that the compulsory retirement order was not issued by the competent authority but an incompetent person in contravention of Section 8 of the RSO, 2000” and consequently compulsory retirement order dated 24th May, 2006 was set aside holding that it was issued by incompetent person in violation of section 8 of RSO, 2000. It was further held that “however the setting aside of aforesaid compulsory retirement order shall not preclude and impede the competent authority from passing an appropriate order afresh after right and proper consideration of inquiry report in accordance with law.”

6. Main thrust of the arguments of Mr. Khalid Javed, learned counsel for the appellant was that the right of hearing within the contemplation of RSO, 2000 though was afforded by the Chairman & CEO of the Appellant-Corporation which decision was also deliberated in ELT Meeting and the compulsory retirement was concurred by the management in the meeting headed by the Chairman & CEO who is the competent authority under RSO, 2000.

It was stated that the respondent has not denied the fact that personal hearing was given by the competent authority. It was also pointed out that the matter was placed before the Chairman & CEO.

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The following order was passed "case was discussed in ELT Meeting and the decision of the compulsory retirement from PIA service was taken" which though was communicated by H.R. Manager but was endorsed by the competent authority.

7. Contention of Mr. Salahuddin Ahmed, learned ASC for the respondent (in Civil Appeal No.145-K of 2016) was that since the decision was required to be taken by the Chairman & CEO himself and not by entire management. No doubt RSO, 2000 is a statutory dispensation and the action ought to be taken by the authority empowered to take such action as noted above. It is matter of record that personal hearing was accorded by the Chairman & CEO himself and after hearing the respondent and examining the inquiry report decided to compulsory retire the respondent taken in a Board Meeting of PIAC which was headed by Chairman being competent authority, that under the signature of the Chairman as reproduced above. It was concurred that decision of compulsory retirement from PIAC was taken. In a case reported as Maharashtra State Mining Corpn versus Sunil, s/o Pundikarao Pathak (2006) 5 Supreme Court Cases 96. In a service matter the High Court held that an act by legally incompetent authority is invalid. It was further held that such invalid act could not be subsequently rectified by ratification of the competent authority. The matter was considered by the Supreme Court of India and in paras-7 and 10 which reads as under:

- "7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently "rectified" by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the

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Latin maxim *ratihabitu mandato aequiparatur*, namely, "a subsequent ratification of an act is equivalent to a prior authority to perform such act". Therefore, ratification assumes an invalid act which is retrospectively validated.

10. In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors on 20-2-1991 and the Board of Directors unquestionably had the power to terminate the services of the respondent. On the basis of the authorities noted, it must follow that since the order of the Managing Director had been ratified by the Board or Directors such ratification related back to the date of the order and validated it."

8. The above decision was followed by the Supreme Court of India in the case of **GOA Shipyard Ltd versus Babu Thomas (2007) 10 Supreme Court Cases 662** the Court referred with approval case of **Balbir Chand versus Food Corpn. of India Ltd (1997) 3 Supreme Court Cases 371**, para No.3 with the approval which is as follows:

"The learned Counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a judgment of this Court in *Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank*. It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now a well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the

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Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, the appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution". (emphasis supplied)

9. In instant case position is reversed, the decision was taken in the meeting of ELT, of which Chairman PIAC (being competent authority) was chairing the meeting and it could be said that other members of ELT wherein "*dictated command*" yet such decision was further endorsed by the Chairman PIA (competent authority at the foot of minute of dated 8th May, 2006 (page 382 – 383) of internal Audit recorded in his hands "*case was discussed in ELT and the decision of compulsorily retirement from PIA service was taken.*"

10. In the light of above, when the contention of Mr. Salahuddin Ahmed learned counsel for the appellant (in C.A 145-K of 2016) is considered, seems to be more of form than of substance as noted

above. Since PIAC is a corporate entity the right of hearing within the contemplation of sub-section (2) of section 3 of RSO, 2000 was accorded by the competent authority. The decision was also taken by the Chairman & CEO though in presence of the other members

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of the Board of Directors such minutes is duly signed by the Chairman & CEO and even otherwise independently also Chairman of the Appellant-Corporation had endorsed the decision of the compulsory retirement of the Respondent-Zaeem Aziz Qureshi (at the foot of minutes of dated 8.5.2006, as reproduced on preceding paragraph) which is a substantial compliance of sub-section (1) of section 3 of RSO, 2000. Learned Bench of the High Court fell into error while drawing conclusion that no independent decision was taken by the Chairman & CEO. Learned counsel appearing for Mr. Zaeem Qureshi was not able to point out any prejudice caused to him whereby order of competent authority taken in ELT meeting, meaning thereby the decision was even concerned by larger and higher forum, was communicated by H.R. Manager (Marketing), which practice is common in corporate environment. Even in the representation made by Mr. Zaeem Qureshi under section 9 of the RSO, 2000, he admitted that order was made by competent authority.

11. Accordingly, such conclusion is set aside and the Civil Appeal No.144-K of 2016 is allowed.

Civil Appeal No.145-K of 2016

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12. Appellant-Zahaem Qurashi (in CA 145-K of 2016) whereby has challenged the compulsorily retirement the learned Bench of the High Court while placing reliance on Mehboob Ahmed Soomro versus Federation of Pakistan & others (2010 PLC (C.S) 911).

Para-9 concluded of the impugned judgment which read as under:

“Concomitantly, another important facet cannot be ignored in tandem that under the constitutional jurisdiction we

cannot sit over the inquiry report, which was the dominion of the competent authority. Serious allegations were levelled and proved in the inquiry and exact figure of loss was also mentioned in the show cause notice therefore the inquiry report cannot be wiped out or wrecked due to reason alone that retirement order was not signed by the competent authority but the circumstances demand that the management may be afforded an opportunity to make another study of the case”.

13. Mr. Salahuddin Ahmed, learned counsel for the Appellant-Zaeem Aziz Qureshi (in Civil Appeal No.145-k of 2016) argued with vehemence that many of the financial impropriety as noted in the impugned inquiry was not substantiated and lesser demand was raised and even otherwise than entire amount has been recovered, it is merely an irregularity which should not be meted out with severe punishment. It may be observed that appellant has served the Respondent-Corporation for more than 20 years and was compulsory retired from service with all benefits. The very fact that financial loss caused to the corporation was recovered from his due is sufficient to show that the allegation of financial improprieties was not all together without subsistence.

14. Accordingly, no exception to the conclusion drawn by learned Bench of the High Court is called for. Therefore, the Civil Appeal No.145-K of 2015 is dismissed.

Sd/= Mushir Alam, J
Sd/= Faisai Arab, J
Sd/= Sajjad Ali Shah, J

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Sajjad
7/9/2018
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Karachi.

 Announced in open Court on 06.9.2018

Judge

H.G.
Approved for Reporting.

106/9/2018