

ORDER SHEET
HIGH COURT OF SINDH, KARACHI.
HCA. NO. 323/2015.

Date	Order with signature of Judge
------	-------------------------------

Present.

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Muhammad Iqbal Mahar.

Appellant: Pakistan International Airlines Corp. through Mr. Salman Talibuddin Advocate and Ms. Sara Malkani, Advocate.

Respondent: Syed Muhammad Mehdi Raza Rizvi through Mr. Muhammad Ali Lakhani Advocate.

Date of Hg: 5.04.2016 & 15.4.2016

Muhammad Iqbal Mahar, J.:- The instant High Court Appeal is directed against the judgment dated 06.10.2015 and decree dated 13.10.2015 passed by the learned single Judge of this Court in Suit No.1954/2014. Learned counsel for the parties agreed that this matter may be heard and decided at katcha peshi stage.

2. The brief facts are that vide advertisement dated 11.7.2010 PIAC called applications for Cadet Pilot. The respondent being eligible applied for said position and was elected to serve PIAC in the aforementioned capacity and appointment letter was issued on 10.1.2012 but later on he received Termination letter dated 4.2.2014 in which it was stated that the Management has decided to terminate his service with immediate effect on account of fake intermediate certificate. The respondent immediately filed appeal before the Managing Director, PIAC. After hearing the respondent, the Managing Director PIAC disregarded Termination letter and proceeded to verify the respondent's academic record vide letter

dated 6.3.2014, which was verified and PIAC was informed by Controller of Examination, Board of Intermediate and Secondary Education, Rawalpindi through letter dated 6.3.2014. Thereafter PIAC proceeded to issue Minute-1 dated 10.3.2014 which is available at page 81 of the instant Appeal, but the PIAC deprived the respondent his benefits of service hence he filed Suit No. 1954/2014 for Declaration & Permanent Injunction with the following prayers:

DECLARE:

- i. That the Plaintiff is, in view of “Minute 1” dated 10.03.2014 bearing Reference No.GM (Spl. Projects) Degrees, entitled to all recurring benefits of service, including (but not limited to) grant of financial benefits, seniority, and selection for technical training exercises;
- ii. That the Defendant has, under and through the issuance of “Minute 1” dated 10.03.2014 bearing Reference No.GM (Spl. Projects) Degrees, contracted with the Plaintiff recurring benefits of service, including (but not limited to) grant of financial benefits, seniority and selection for technical training exercises;
- iii. (As a consequence of “i” and “ii” hereinabove) That the actions of the Defendant are ultra vires “Minute 1” dated 10.03.2014 bearing Reference No.GM (Spl. Projects) Degrees;

GRANT:

- iv. A permanent injunction restraining the Defendant, and /or any other person(s) acting under it, through it, and / or on its behalf, from creating any hindrances, hurdles, and/ or in any manner interfering with the Plaintiff’s exercise of his recurring benefits of service, including (but not limited to) grant of financial benefits, seniority and selection for technical exercises;
- v. A mandatory injunction by causing a direction upon the Defendant, and / or any other persons(s) acting under it, through it, and /or on its behalf, to ensure the due and timely supply of the Plaintiff’s recurring benefits of service, including (but not limited to) grant of financial benefits, seniority and selection for technical training exercises;
- vi. Any other relief(s) as may be deemed appropriate in the given circumstances of the case.
- vii. Cost of the proceedings.

3. The appellant appeared and filed written statement and refuted the claim of the respondent by way of raising certain legal as well as factual grounds and stated that the Intermediate Certificate/Result Card of respondent was declared bogus and that the Managing Director was not competent to reinstate the respondent in service. The learned Trial Court with the consent of parties decided to dispose of the suit without recording evidence and on the basis of material available on record framed following issues:

- i. Whether the suit is maintainable ?
- ii. Whether termination order dated 4.2.2014 is still in field in view of the subsequent orders and observation passed by the Higher Authority who issued termination order ?
- iii. What should the decree be ?

Parties were heard and the suit was decreed.

4. It is inter alia contended by the learned counsel for the appellant that the respondent at the time of his induction was not holding any valid certificate/result card as the intermediate certificate submitted by him was found bogus, that the second certificate submitted by him along with appeal to Managing Director was issued on 27.6.2012 and on the basis of it he could not have been inducted. He further submitted that the Managing Director had no authority to order “disregard termination letter” as the termination was ordered by the Board and no reinstatement order was given to the respondent. He further argued that the respondent submitted some documents on 6.10.2015, the date of impugned judgment, whereas after framing of issues the opportunity to produce documents was closed, therefore, the impugned judgment and decree

passed by learned single Judge are against the law and are not sustainable hence he prayed for remand of the suit.

5. As against above, the learned counsel for respondent contended that the respondent being eligible candidate applied for Cadet Pilot and supplied all required documents pertaining to his academic carrier and was selected. The appellant issued appointment letter to the respondent but later on he received a letter of Termination of his service on 4.2.2014 on account of his fake intermediate certificate without notice and hearing the respondent which is against the law. The learned counsel for respondent further contended that the respondent filed an appeal with the Managing Director who after hearing him passed order whereby he disregarded Termination letter. Thereafter the Management prepared Minute-1. The learned counsel also contended that the Managing Director is competent authority and is empowered to reinstate the respondent. He lastly submitted that the finding of learned single Judge is based on proper appraisal of material available on record hence impugned Judgment and decree passed by learned single Judge in Suit No. 1954/2014 do not suffer from any infirmity, therefore, he prayed that this appeal is liable to be dismissed. In support of his contention he relied upon case of NIGHAT YASMIN Vs. PAKISTAN INTERNATIONAL AIR LINES CORPPORATION KARACHI and another reported in **2004 SCMR 1820** and case of CHAIRMAN, SELECTION COMMITTEE/PRINCIPAL, KING EDWARD MEDICAL COLLEGE, LAHORE and two others Vs. WASIF ZAMIR AHMAD and another reported in **1997 SCMR 15**.

6. We have heard the learned counsel for the parties and have perused the record and proceedings. It appears that the appellant advertised some posts of Cadet Pilot on 11.7.2010. The respondent being eligible applied and submitted required documents and subsequently was selected by the management of appellant. Such appointment letter dated 10.1.2012, available at page 43 of the HCA, was issued to him but later on the management of the appellant issued a letter dated 4.2.2014 for termination of his service on account of fake Intermediate Certificate. The respondent filed appeal with Managing Director with request to grant him an opportunity to clarify position and to demonstrate the verification of Intermediate certificate. The Managing Director after hearing the respondent passed following order:

“I have done personal hearing, Please disregard Termination letter. He will submit documents accordingly, which may be put up to me.”

thereafter the management of the appellant prepared Minute-1 which is available at page No. 81. Perusal of above order passed by Managing Director and Minute-1 signed by Assistant Manager Special projects H.R, reflects that the termination order dated 4.2.2014 is no more in field. Further more the learned counsel for appellant has not denied the above order of Managing Director, Minute-1, letter dated 10.2.2014 and endorsement made thereon by the Managing Director. Record further reflects that the intermediate certificate of respondent was got verified from the concerned Board by Sr. Human Resources Officer and the said letter dated 6.3.2014 is available at page 439, therefore there is no question of bogus certificate.

7. In so far as the contention of learned counsel for the appellant that the Managing Director had no power to reinstate the respondent and only the PIAC Board was competent to do so. In this regard our intention was invited to the relevant clauses of personal policies manual available at page 363. The relevant clauses are reproduced as under :-

Clause No. 34.13. Re-instatement.

Clause No. 34.13.01. Reinstatement of an employee shall invariably be approved by the Managing Director/Chairman, consequent upon review petition against the orders of termination/dismissal/compulsory retirement/removal from service, under applicable rules.

This clearly shows that the Managing Director was empowered to reinstate any terminated/dismissed or compulsory retired employee. The learned counsel for the respondent has also drawn our attention to page 187, the Minutes of 256th Meeting of PIAC Board of Directors held on 17 the July 2001, which reads as under.

(e) All acts deeds and things lawfully done by the Managing Director shall be construed as acts, deeds or things done by PIAC Board.

This also shows that the order of Managing Director shall be construed to be done by of PIAC Board. On the strength of powers conferred under the personal policies manual and the order passed by Managing Director in pursuant thereof does not need any interference. So far the production of documents on the day of hearing and judgment is concerned it was for the learned counsel for the appellant to raise objection but record is silent in this regard.

8. In view of above discussion we are of the opinion that the Intermediate Certificate of respondent was verified from the

concerned Board and the Managing Director PIAC was competent to reinstate the respondent in service and the impugned judgment and decree passed by learned single Judge in Suit No. 1954/2014 do not require interference by this Court, therefore, HCA. No. 323/2015 is dismissed along with pending applications.

Karachi

Dated:

Judge.

Judge.