ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.822 of 2015

Date	**Order with signature of Judge**

Sadiq Amin Rahman .....Plaintiff

Vs.

Pakistan International Airlines Corporation & others .....Defendants

Date of hearing 08.10.2015.

Mr.Muhammad Haseeb Jamali, Advocate for the Plaintiff.

Mr.Salman Talibuddin and Ms.Sara Malkani, Advocates for the Defendants.

Muhammad Ali Mazhar, J: This order will dispose of CMA No.7875/2015 filed under Order 39 Rule 1 and 2 CPC and CMA No.13544/2015 filed under Section 94 read with Section 151 CPC by the plaintiff.

2. The plaintiff has filed this suit for declaration, permanent injunction, mandatory injunction and damages that he is entitled for the Transition Training B-777 in view of clause 5.3.11 of PALPA/PIAC Agreement. It is further alleged that the letter dated 17.04.2015 whereby the name of the plaintiff was withdrawn from the course is illegal and mala fide. He has also prayed for setting-aside the letter dated 4.5.2015 and sought direction against the defendants to send him for Transition Training B-777 immediately in line with seniority.

3. The learned counsel for the plaintiff argued that the plaintiff is performing duties as pilot since March, 1990. Presently he is flying A-310 as Captain and Instructor Pilot. The defendant No.1 is constituted under the PIAC Act, 1956. The plaintiff was issued a letter on 17.04.2015 from the defendant No.3 for Transition Training Course B-777 commencing from 04.05.2015 at PIAC Training Centre Karachi, scheduled for 13 working days, which was subsequently re-scheduled from 11.5.2015 and the name of the plaintiff was listed at the top seniority. Accordingly, he received his personal crew roster from 01.05.2015 to 31.05.2015 which included the Training Course. Despite fulfilling all requisite formalities for the transition course the defendant No.3 wrote a letter on 4.5.2015 to the DGM HR, Flight Operation and requested him to confirm whether the plaintiff has 24 productive months of the service before retirement excluding 120 days of Transition Training Course. The said letter was immediately responded that the plaintiff has only 22 months productive service and he will reach the age of superannuation on 14.3.2018. Consequently, the defendant No.3 informed the plaintiff that he has short fall of the required mandatory period of productive service as provided in Clause 5.3.11 of PALPA-PIAC Working agreement, therefore, he is not eligible for the Transition Training and his name was withdrawn from the said course.

4. Learned counsel further argued that through a preplanned conspiracy the name of the plaintiff was withdrawn which is an example of sheer discrimination and victimization as the plaintiff is currently serving as Vice President of PALPA for the term 2014-2016. The said act of the defendants was also in violation of Article 10-A, 18 and

25 of the Constitution of Pakistan, 1973. The plaintiff written a letter to the defendant No.3 on 13.5.2015 and also sought clarification about the procedure/formula to calculate the productive service and he also provided a list of other pilots to show that in their cases the criteria of productive service has been interpreted differently. He further argued that many other pilots who did not fulfill management own criteria described in Clause 5.3.11 of the PALPA-PIAC Working Agreement were promoted in violation of the working agreement and they were also allowed to undertake the Transition Training Course. In this regard he also referred to paragraph 29 of the written statement through which the defendants in fact responded paragraph 11 of the plaint. In the written statement, the defendant No.1 clearly admitted that some of the pilots were accommodated for Transition Training Course despite lacking 24 months productive service. It was further averred that the promotion board promoted the plaintiff from A-310 to A-777 on 15.12.2014 and after considerable period the letter was issued to the plaintiff for Transition Training Course in the month of May, 2015 which was subsequently withdrawn with mala fide intention.

5. Learned counsel also pointed out the cases of captain F.H.Ghori and M.Jawed and simultaneously referred to a list at page 375 of the case file to show that F.H.Ghori will retire on 27.12.2017 while M.Jawed will be retiring on 25.1.2018. He added that in the case of these two pilots no condition of any productive service of 24 months was observed or implemented. He also referred to page 67 which is PALPA-PIAC Working Agreement 2011-2013. Article 4 of the agreement is pertaining to Training. Under Article 4.2 it is clearly provided that the cost of all approved training will

be borne by the corporation while in Article 4.5 it is provided that the corporation will train pilots strictly in order of seniority subject to the promotion board clearance but in order to deprive the venue of promotion and progression the defendants deliberately and intentionally caused delay in the matter to oust the plaintiff from training course. Once the name of the plaintiff was cleared by the promotion board he has legitimate expectation rather a vested right created in his favour but due to discriminatory treatment and mala fide act of the defendants the name of plaintiff was unlawfully withdrawn from the course. It was further contended that if the plaintiff is sent for training, he will not avail leave preparatory to retirement to render maximum length of service to his credit.

6. In the first injunction application filed with the plaint, the plaintiff prayed for an interim relief to suspend the letter dated 4.5.2015 issued by defendant No.3 and restraining order against the defendants from promoting other junior officers for Transition Training B-777. With regard to another injunction application moved on 21.9.2015 the plaintiff pointed out transition training course letter dated 17.9.2015 in which the names of various captains are mentioned for the transition training course for B-777 subject to ex-post facto clearance by promotion board. The learned counsel robustly argued that there is no concept of post facto clearance of the promotion board. In fact the training is possible only after clearance of promotion board, but in order to accommodate favorites this letter was issued for the training first and their eligibility will be tested and examined by the promotion board subsequently for ex post facto promotion which is a

worst example of working agreement contravention. Learned counsel prayed that this letter may be declared unlawful and mandatory directions be given to the defendants to send the plaintiff for training course of B-777 in view of the clearance accorded by the promotion board. He further argued that before taking such a drastic and adverse action, no show cause notice or opportunity of hearing was provided to the plaintiff. In support of his contention he referred to **2015 YLR 550, "Naseem-ul-Haq v. Raees Aftab Ali Lashari & others".**

7. Mr.Salman Talibuddin, learned counsel for the defendants argued that the PALPA is representative of pilots permanently employed by the defendant No.1. The terms and conditions of the pilots are governed under the working agreement of PALPA-PIAC. Under clause 5.3.11 it is clearly provided that pilot having less than 24 months productive service prior to his retirement shall not be considered for promotion. Since the corporation bears entire cost of training to make them eligible for promotion and after training if any pilot is retired before completing 24 months of productive service, it would cause loss to the corporation and the corporation would be unable to recover the cost of training. The defendant No.3 sent a letter to the pilots who were selected for transition training course and this letter was sent to the plaintiff also but in error as he was not eligible to participate in the training course. The defendant No.3 sought confirmation from DGM H.R. whether the plaintiff has 24 months of productive service or not. On the same day the defendant No.3 was informed that the plaintiff would be on LPR since 10.07.2017 for a period of 248 days, hence he has only 22 months excluding 120 days of transition training. Leaned counsel further

argued that in past also many pilots were denied promotion on the ground that they had less than 24 months of productive service. Learned counsel also referred to paragraph 29 of the written statement in which the some pilots have been discussed by their names for instance captain Tasneem Muzaffar opted for promotion as captain on B-747. His training commenced on 2.4.2012 and he retired from service on 6.11.2012. So far as captain Irshad Khan is concerned he paid full cost of his training and his promotion was recommended by PALPA on self- finance basis. However, captain Tariq Rabbani, captain Liaquat Chauhdhry and captain Tariq Chaudhry were promoted not in conformity with the prescribed method of calculating productive months of service. Two senior pilots are responsible of this error, who were relieved of their managerial responsibilities and asked to resume their regular flying duties.

8. Learned counsel for the defendants further argued that relationship between the plaintiff and defendants is of master and servant and he cannot claim any declaratory or injunctive relief except damages. It is well settled that the PIAC has no statutory rules of service. There was no mala fide on the part of the defendants to oust the plaintiff from the training course which was done strictly in accordance with provision of working agreement in which 24 months productive service was mandatorily required. He further argued that the plaintiff was not made victim of any discrimination. So far as the second injunction application is concerned, the learned counsel argued that in the promotion board one member is nominated by PALPA and despite efforts the meeting of promotion board could not be convened, therefore, letter dated 17.9.2015 was issued for

transition training course of B-777 subject to ex-post facto clearance by the promotion board. In support of his contention, the learned counsel referred to the case of **Ghulam Nabi Shah v. PIAC & others** reported in **2013 PLC (C.S) 768.**

9. Heard the arguments. Let me first give a brief background of Pakistan International Airlines Corporation Act, 1956, which was promulgated for the establishment of a corporation to facilitate acquisition of the air-transport undertaking of the Orient Airways Limited and to make further and better provisions for the operation and development of air-transport services and purposes connected therewith. General direction and administration of the corporation and its affairs vested in the Board of Directors but the Federal Government may issue necessary directives to the corporation on matters of policy. Out of 11 Directors, 08 Directors were nominated by the Federal Government. Chairman was also appointed by the Federal Government while powers to appoint Managing Director of the corporation also vested in Federal Government. In the case of **PIAC & others v. Tanweer-ur-Rehman** reported in **(PLD 2010 SC 676)**. The hon'ble Supreme Court held in paragraph 19 of the judgment as under:

> "19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to

> the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the court of competent jurisdiction."

In the same judgment, the apex court further held in paragraph 25 as under:-

> "25. Thus, in view of discussion made hereinabove, we are persuaded to hold that although the appellant-corporation is performing functions in connection with the affairs of the Federation but since the services of the respondent-employees are governed by the contract executed between both the parties, as is evident from the facts narrated hereinabove, and not by the statutory rules framed under Section 30 of the Act, 1956 with the prior approval of the Federal Government, therefore, they will be governed by the principle of Master and Servant."

10. The dictum laid down by the Supreme Court in the case of **Tanweer-ur-Rehman** (supra) made it amply visible that due to non-statutory service rules, the petition under Article 199 does not lie against the PIAC (defendant No.1) but principle of master and servant will apply. Obviously when the petition is barred then the only remedy available to the plaintiff is to file the civil suit for the redress of his grievance. Recently in the case of **PIAC vs. Syed Suleman Alam Rizvi**, reported in **2015 SCMR 1545,** the hon'ble Supreme Court while referring to the case of Tanweer-ur-Rehman, Abdul Wahab & others v. HBL & others (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority & others v. Lt.Col. Syed Jawaid Ahmed (2013 SCMR 1707) and Syed Nazir Gilani v. Pakistan Red Crescent Society & another (2014 SCMR 982) reaffirmed that no petition lies in the matters pertaining to the terms and conditions of service of employees of a Corporation, where such terms

and condition are not governed by statutory rules. It was further held that the terms and conditions of the employees of the appellant corporation are not governed by any statutory Rules and is now well settled that the relationship between the appellant corporation and its employees is that of a "master and servant". The only course left to the employees is to file a suit for redress of their grievances.

11. In order to resolve the controversy involved in this case, Clause 5.2 and 5.3 of the "**PIAC & PALPA Working Agreement 2011-2013"** are quite relevant which are reproduced as under:.

"5.2 Promotions:

Promotion and Command Clearance will be made by a Promotion Board and will consist of the following:

i. Director Flight Operation – Chairman.
ii. Chief Pilot Crew Planning & Scheduling.
iii. Chief Pilot Training.
iv. One Representative of the Association, which will be President of Association or his nominee who shall be a Principal Office Bearer.

The Promotion Board will be held twice every year i.e. first week of March and September.

5.3 Vacancies

As and when the requirement of a certain number of Captains, Co-Pilots or First Officers on any equipment, as stipulated in clause 5.9 of this agreement, becomes necessary by the Corporation, requisite number of vacancies will be declared in the following manner:-

5.3.1. At least one month ahead of the Promotion Board meeting, Flight Operations Department will provide the Association equipment wise forecast of vacancies for six (6) months.

5.3.2. The forecast of vacancies can be changed if in the opinion of the Corporation (in consultation with the Association), such a change is justified. The Promotion Board will then be held within four weeks of such change of vacancies.

5.3.3. The Flight Operations Department in consultation with the Association will then prepare a

list of all Pilots who are eligible for command/promotion according to their seniority as on the date of the forecast of the vacancies in accordance with sub-paragraph 5.3.1., above.

5.3.4. The above list will include 25% to 50% extra names in addition to the forecast requirements on the equipment so as to cater for such Pilots who may not be cleared by the Promotion Board, or those who may not make the grade during training later.

5.3.5. All those Pilots, who according to the seniority list, fulfill the minimum specification on the date of declaration of vacancies, or are likely to fulfill the specifications upto two months in advance of the schedule for which vacancies are declared as per sub-clause 5.3.1 above, will be considered eligible for promotion subject to clearance of the Promotion Board.

5.3.6. If at the time of Promotion, as contained in Clause 5.3.4, a Pilot does not have the required specification for promotion, which cause him/her to be superseded, but if such super-cession takes place due to no fault of the Pilot being superseded, the Corporation shall make every effort to promote him/her at the earliest.

5.3.7. The Board will discuss each eligible Pilot in order of seniority to review his/her record for promotion to the forecasted vacancies.

5.3.8. Any reason considered for debarring a Pilot from promotion will be sufficiently established and noted in the minutes of the meeting and the concerned Pilot will be informed in writing accordingly.

5.3.9. All those Pilots who are cleared by the Promotion Board will be eligible for training. Promotion will take place strictly in order of seniority of the Pilots, on the respective equipment, and will be made subject to vacancy successful completion of training and satisfactory assessment checks.

5.3.10. Pilots who are cleared by the Promotion Board and are on the list of 25% to 50% extra names but are not taken up for training will be considered for promotion in future forecast vacancies in order of seniority.

5.3.11. Pilots having less than 24 productive months of service, prior to retirement shall not be considered for promotion.

5.3.12. Such Pilots as in sub-clause 5.3.11, above shall be given a choice of posting to Karachi, Islamabad and Lahore, as settlement period prior to retirement, subject to availability of vacancy".

12. It is quite noteworthy to highlight that under Clause 5.2 of the aforesaid agreement, the composition of promotion board is encompassing Director Flight Operation, Chairman, Chief Pilot Crew Planning & Scheduling, Chief Pilot Training and one Representative of the Association, i.e. the President of Association or his nominee who shall be a Principal Office Bearer. It is worth mentioning that out of four members of the promotion board only one member or representative is opted from the Association, which shows that the chain of command is under the control of PIAC management to deal with the cases of promotion and command clearance. The purpose of highlighting this clause is to show that the promotion board cleared the plaintiff for training on 15.12.2014 but the next question which invites consideration is Clause 5.3.9 wherein it is provided that all pilots who are cleared by the promotion board will be eligible for training. However, under clause 5.3.11, it is further provided that pilots having less than 24 productive months of service prior to retirement shall not be considered for promotion. The defendants have not pleaded their case that at the time of clearing the plaintiff by the promotion board, the board failed to examine the credentials and antecedents which includes the plaintiff's date of retirement. On the other hand vide letter dated 4.5.2015 the plaintiff was informed that he was detailed for B-777 Transition Course on 11.5.2015 but according to flight operations H.R. Department record, the plaintiff's productive service period is only 22 months after the transition training. At this juncture, a vital question crop up in my mind that in the promotion board not only the Director Flight Operations was the Chairman but Chief Pilot Crew Planning &

Scheduling and Chief Pilot Training were also members and at that point in time when the plaintiff was cleared it is beyond any intellectual capacity and judiciousness that the promotion board cleared the plaintiff without checking the record predominantly the question of his productive service as may be rendered by him after completion of transition course and the record reflects that nothing was brought with regard to short of productive months of service. In fact it was the responsibility of the defendant No.1 to initiate the transition course process as soon as the recommendations of the promotion board were received but they started the process in the month of April 2015 and circulated the schedule of transition course as of 11.5.2015 and personal crew roster made effective from 1.5.2015 to 31.5.2015 was also issued to the plaintiff including the training course but subsequently his name was withdrawn.

13. Under Article 4 of the agreement the cost of all approved training is agreed to be borne by PIAC and under clause 4.5 it is further provided that the PIAC will train pilots strictly in order of seniority subject to the promotion board clearance. Under Article-1. PIAC recognized that the Association is the bargaining representative of all pilots who are members of the Association and it is also agreed that all training/evaluation/checks of regular pilots will be performed exclusively by the pilots who are members of the Association except on induction of aircraft. PIAC further recognized its obligation to uphold the sanctity of the agreement and assured that no part of this agreement is violated. Simultaneously, under Clause (1.1) of Article-1, it is provided that all arrangements and agreements made between the Corporation and the Association in respect of the terms and conditions of employment of Regular Pilots

and facilities, benefits and privileges available to them shall continue in full force and effect, unless otherwise modified, canceled or amended, expressly by this Agreement. So far as the binding effect of agreement on successor-in-interest, it is provided that this agreement shall be binding upon any successor (broadly defined) of the Corporation. Any successor will ensure that the sanctity of the Seniority List of the Pilots as agreed to by the Association, and maintained by the Corporation, will always be upheld.

14. The bone of contention between the parties is solitary confined to short of 22 months productive service from the date when the transition course scheduled to be started and or completed. There is a considerable delay between the period when the Promotion Board cleared the plaintiff and the date when the schedule issued for training. No justifiable reason or articulacy shown to me by the learned counsel for the defendants as to why such a significant delay elicited or caused and why the training course was not embarked immediately when the promotion board accorded to and concurred their clearance. So in all fairness and evenhandedness the plaintiff should not become the victim or target and he should not suffer on account of lack of interest or lethargic attitude of the defendants to comply with their obligations or not taking prompt and or instantaneous action. Since the case is mainly focused on the implementation of the agreement in which the association signed the agreement in the representative capacity therefore in my view any individual pilot including the plaintiff may approach the court for the implementation and protection of his rights secured and guaranteed under the terms and conditions of agreement entered into by PIAC with PALPA as bargaining

representative of all pilots. In the case of **Naseem-ul-Haq v. Raees Aftab Ali Lashari & others** reported in **2015 YLR 550,** I have discussed Section 42 of the Specific Relied Act and Order 39 Rule 1 and 2 CPC in the following words:-

> "Any man's legal character is generally taken as the same thing as a man's status. The words "right to as to any property" are to be understood in a wider sense than "right to property" and the words "interested to deny" denotes that the defendant is interested in denying the right of the plaintiff or his legal character. The denial of the right constitute a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. Relief of declaration is a discretionary relief can be granted in the case where substantial injury is established and in absence of denial of right no relief of declaration can be granted. Provision of Section 42 of Specific Relief Act, 1877, is not exhaustive of circumstances in which declaration is to be given. Declaration can be given in the circumstances not covered by Section 42 of Specific Relief Act, 1877, in which case general provision of law gives declaration sought. Court in substance has to see whether plaintiff, in facts and circumstances of the case should not grant declaration."

15. The plaintiff has drawn my attention to some instances that some other pilots were treated differently and despite short of productive months service they were accommodated and sent for training but the plaintiff has been discriminated and deprived of equal treatment. In response to paragraph 11 of the plaint the defendants in their written statement (Paragraph 29) discussed various pilots by name and admitted that some of them were treated differently which treatment was not meted out to the plaintiff. However, it was further submitted that the promotions of two captains were not in conformity with the prescribed criteria therefore, the action was taken against

the responsible officer and they were relieved of managerial duties.

16. The nucleus of confrontation and altercation is cost element entailed in the training. The learned counsel for defendants argued that since all the training cost is to be borne by the defendant No.1 therefore, the condition of twenty four months productive service has been incorporated in the agreement intentionally so that the pilots after training may serve the corporation to compensate in terms of service for 24 months and in case of short of service the defendant No.1 would not be able to recover the huge cost of training. On 21.5.2015 when the matter was fixed before another learned judge of this court, the learned counsel for the plaintiff offered that the plaintiff is ready to pay the fee of training course and learned counsel for the defendants with some reservations agreed that the plaintiff may deposit all such amount of fee as and when required. On 2.7.2015 when the matter was again fixed before the same bench, the parties were directed to file their estimated expenditure but the order dated 22.7.2015 shows that a huge difference was found in the estimated cost submitted by the parties therefore the matter was adjourned with the observation that the fee difference will be resolved subsequently. The reference of aforesaid proceedings is necessary to jot down for the reason that on 20.8.2015, a joint statement was filed by the both the learned counsel with the request that the injunction application may be decided by this court on merits without considering the earlier orders regarding the cost, therefore, the earlier orders regarding the payment of transition course fee by the plaintiff or exercise of calculating the cost/fee on training have become

immaterial and neither here nor there. It is not the case of the defendants that the plaintiff is not medically fit or incompetent or due to any disability he cannot move on to transition training course except the reason that the defendant No.1 will bear entire cost of training and due to short of productive service the plaintiff in return could not be able to render the services to augment and optimize the cost element.

17. So far as the letter dated 17.9.2015 circulated for another transition course of captains for B-777 that has been questioned through CMA No.13544/2015, I must hold that it is glaring example of violation and contravention of the agreement. Eight captains were chosen for training with two standby captains subject to ex-post facto clearance by promotion board. Let me revert back to the agreement in which it is clearly provided that the pilots who are cleared by promotion board will be eligible for training but in this case the training will be given first and thereafter the promotion board will decide whether the incumbent is eligible for promotion or not? which is quite illogical and irrational. On one hand the learned counsel for the defendants robustly argued the cost element viz-a-viz productive service but on the other hand PIAC agrees to sustain the huge cost of training for eight pilots feeling no risk or stake that in case promotion board refused to grant ex-post facto clearance then who will be responsible for this loss. In the case of plaintiff the burning issue is the cost element but in the case of eight other pilots the defendant No.1 has shown no uneasiness or anxiety may be for the reasons that the majority members in the board are nominated by the PIAC and they know the fate. The learned counsel for the defendants defended the letter dated

17.9.2015 with the plea that since in the promotion board one member belongs to PALPA therefore, despite efforts meeting could not be convened. On the contrary nothing was placed to show that before allowing transition course training subject to ex-post facto clearance any attempt was made for convening promotion board meeting for clearance. The management of PIAC is not supposed to act so recklessly or sabotage the professional norms and transparency in the affairs of their management but in the case in hand the defendant No.1 in utter disregard of the terms and conditions of the agreement decided to benefit the opportunity of transition course to some persons without clearance of promotion board. A statutory corporation or the corporation/company in which government has substantial shareholding lacks service rules, it does not mean that they are above the law and they can do anything on their own whims and pleasure but they should follow the principle of good governance and maintain transparency and fair-mindedness in their affairs.

18. The learned counsel for the defendants forcefully argued that in the relationship of master and servant, the plaintiff has no right to claim declaratory relief or injunction except damages. Every now and then statutory corporations or institutions those have no statutory rules of service come up with the same plea. In my view, there must be some distinction and differentiation between the relationship of master and servant and master and slave. We are living in Islamic Republic of Pakistan in 21st Century where a range of fundamental rights are guaranteed and secured in our Constitution. There is no doubt that in PIAC Government has majority shareholding and recently Pakistan International Airlines Corporation

(Conversion) Ordinance 2015 has been promulgated which repealed Pakistan International Airlines Corporation Act 1956. Despite repeal and conversion of Corporation into public limited company there is no substantial change in substratum and unless assets are transferred wholly and or shareholding is substantially reduced, the government cannot get rid of their obligations towards the employees. It is further provided in the Ordinance that all the guarantees given by Federal Government shall remain in full force and effect as though they were given on behalf of company and under Section 3 of the same Ordinance, the rights of employees and all agreements are also protected. Under Article 3 of our Constitution it is responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of fundamental principle from each according to the ability to each according to his work and under Article 11 there is no concept of slavery which is non-existent and forbidden and no law permits or facilitates its introduction into Pakistan and in any form while under Article 37 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country facilities of work and adequate livelihood with reasonable rest and leisure and now under Article 10-A of the Constitution, right to fair trial and due process is also a fundamental right of great magnitude.

19. An employee of industrial and commercial establishment, if he is workman, he may approach to the labour court and or NIRC under the labour laws as the case may but employees performing managerial or supervisory duties are excluded from the definition of

workman. Likewise in the statutory corporations having no statutory service rules/regulations or commercial and industrial establishments, if their employees are covered under the definition of workmen, they may approach to the labour court and or NIRC for redress of their grievance but in the case of any injustice, inequality or discrimination with the employee not covered under the definition of workman or workmen, the only remedy is to file the civil suit and when the suit is filed for declaration, injunction for protection of their rights, the defence is articulated that no declaration or injunction can be granted by the civil court as in this case also the learned counsel for the defendant adopted the same line of argument. If this argument is sustained then virtually the said set of employees cannot claim any relief of reinstatement or setting aside their unfair or wrongful dismissal or termination orders. In our judicial system especially in civil suits we all know the rigors and exactitudes of procedures where number of years are consumed and delay occasioned for various reasons and sometimes during pending adjudication, person who claimed the damages against his wrongful dismissal or termination dies before the judgment or decision and other side turns up with the famous maxim "Actio personalis moritur cum persona" (a personal right of action dies with the person) consequently the suit abates with the end of story. Sometimes in the suit filed for reinstatement of service, the matter delays to such an extent for various reasons that during pendency, the person reaches to the age of superannuation and nothing left to decide. So in my view, vibrant and dynamic approach is required to dissect and explore this archaic legal phrase that is used to describe the relationship between an employer and employee. My research reveals that the

Master and Servant Acts or Masters and Servants Acts were laws designed to regulate relations between employers and employees during the 18th and 19th centuries. The United Kingdom Act 1823 described its purpose as the better regulations of servants, labourers and work people. This particular Act greatly influenced industrial relations and employment law in the United States, Australia (1845 Act), Canada (1847 Act), New Zealand (1856 Act) and South Africa (1856 Act). These Acts were generally regarded as heavily biased towards employers, designed to discipline employees and repress the combination of workers in trade unions. The law required the obedience and loyalty from servants to their contracted employer with infringements of the contract punishable before a court of law often with a jail sentence of hard labour. It was used against workers organising for better conditions from its inception until well after the first United Kingdom Trade Union Act 1871 was implemented which secured the legal status of trade unions. Until then, a trade union could be regarded as illegal because of being in restraint of trade. **(https:en.wikipedia.org/wiki/Master_and_Servant_Act.)**

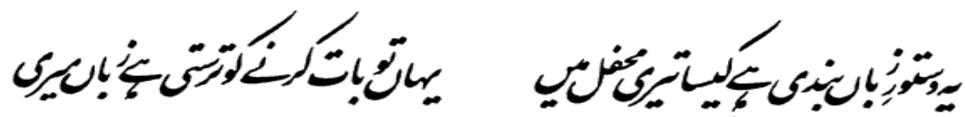
20. An unfair dismissal in the United Kingdom is the part of UK labour law that requires fair, just and reasonable treatment by employers in cases where a person's job could be terminated. The Employment Rights Act 1996 regulates this by saying that employees are entitled to a fair reason before being dismissed, based on their capability to do the job, their conduct, whether their position is economically redundant, on grounds of a statute, or some other substantial reason. It is automatically unfair for an employer to dismiss an employee, regardless of length of

service, for a reason related to discrimination protected by the Equality Act 2010. This means an employer only terminates an employee's job lawfully if the employer follows a fair procedure, acts reasonably and has a fair reason. The Employment Tribunal will judge the reasonableness of the employer's decision to dismiss on the standard of reasonable responses assessing whether the employer's decision was one which falls outside the range of reasonable responses of reasonable employers. In 1968, Lord Donovan led the Royal Commission on Trade Unions and Employers' Associations which recommended a statutory system of remedies for unfair dismissal. The recommendation was put into the Industrial Relations Act 1971. Exclusive jurisdiction to hear complaints and give remedies was conferred upon the newly created National Industrial Relations Court. The Trade Union and Labour Relations Act 1974 soon replaced the unfair dismissal provisions, as was the National Industrial Relations Court with a system of Industrial Tribunals, since renamed Employment Tribunals. Unfair dismissal rights were recast in the Employment Protection (Consolidation) Act 1978. The present law is found in the Employment Rights Act 1996. Claims of unfair dismissal can only be brought before an 'employment tribunal'. There are strict and very short time limits for claims of unfair dismissal. Normally a claim must be brought within three months of the last day of employment, counting the last day of employment as the first day of the three-month period. Employees may bring such claims themselves, either with or without representation. Solicitors and certain other representatives regulated by the Ministry of Justice may represent employees in Employment Tribunal proceedings. Trade unions may support employees' claims,

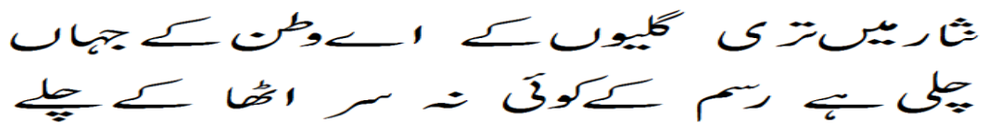
and independent arbitration and conciliation services may be called upon. If the tribunal finds unfair dismissal it can order re-instatement (old job back) or re-engagement (new job), and/or compensation. The compensation mainly consists of a basic award equivalent to statutory redundancy pay of, as at 2009, up to £10,500, plus a compensatory award for loss of earnings, statutory rights and benefits and for expenses, of up to £66,200, or unlimited where the dismissal was due to health and safety, whistleblowing or union work. So even in an accidental unfair dismissal, the employer could be ordered to pay up to £76,700. If the employee adds a claim for breach of contract, up to a further £25,000 could be awarded, taking the total potential compensation to £101,700. **(en.wikipedia.org/wiki/Unfair_dismissal_in_the_United_Kingdom).**

21. The exploration and analysis lead to the finale that even the creator and inventor of this phrase have changed the niceties and minutiae of this colonial tenet and precept and they brought amendments to ventilate the ordeals and miseries of their employees/servants and part with various harsh and punitive provisions. So in my view instead of espousing rigid and inflexible application of this phrase some expansion and development of law is required to redress and recompense the grievance and cause of distress. The relationship of master and servant cannot be construed in the sagaciousness that the master i.e. the management of a statutory corporation or the corporation and or company under the control of government having no statutory rules of service may exercise the powers at their own aspiration and discretion rather in contravention or infringement of fundamental rights envisioned under the Constitution. The statutory bodies and the corporation

under the control of Government are not above the law and Constitution. At the same time the principle of good governance are equally applicable and cannot be ignored. The object of good governance cannot be achieved by exercising discriminatory powers unreasonably or arbitrarily and without application of mind, but such objective can only be achieved by following rules of justness, fairness and openness in consonance with command of constitution enshrined in different Articles of the Constitution including Article 4 and 25 which is supreme law of this country. By misapplication of phrase master and servant, management feels that the employee cannot raise the voice for his rights even though an oppressive attitude or behavior of management which in my view not a correct exposition of law. Nobody is sacred cow in this country but growing tendency demonstrates that master feels as if it is above the law and servants have no right to raise the voice. At this juncture, I would like to quote famous poetry of Dr. Allama Muhammad Iqbal and Faiz Ahmed Faiz, perhaps they had not said it bearing in mind the relationship of master and servant but it is quite apt and befitting to them in the current era:


یہ دستورِ زباں بندی ہے کیسا تیری محفل میں
یہاں تو بات کرنے کو ترستی ہے زباں میری

(Dr. Allama Muhammad Iqbal)


نثار میں تری گلیوں کے اے وطن کے جہاں
چلی ہے رسم کے کوئی نہ سر اٹھا کے چلے

(Faiz Ahmed Faiz)

22. It is somewhat expedient and pragmatic that Government should make the special law with the

formation of special tribunal/court to deal the cases of the employees expeditiously who are either employed in statutory corporation but having no statutory service rules and the corporation/companies under the control of government or in which the government has substantial shareholding and even for the employees who are though employed in private industrial and commercial establishments including banks, educational institutions etc. but keeping in view their nature of job excluded from the definition of workman under the labour laws of this country by reason of that such employees cannot approach to the labour court or NIRC as the case may be. If any such tribunal or special court is constituted under some special law with the powers to allow interim relief, reinstatement and damages or compensation on account of unfair or wrongful dismissal, it will not only ensure checks and balances but ardently and fervently ease and alleviate the sufferings of aforesaid category of employees greater than a civil suit in which they have to wait for long time being the victim of rigors and rigidities of procedure so in my view a separate forum reminiscent of NIRC or Service Tribunal for settling and deciding the disputes of employer and employee having relationship of master and servant is essential rather indispensable.

23. The honorable Supreme Court in the case of **Ikram Bari,** reported in **2005 SCMR 100** held that Islamic welfare state is under obligation to establish a society, which is free from exploitation wherein social and economic justice is guaranteed to its citizens. Objectives Resolution by virtue of Art.2-A of the Constitution, has been made substantive part of the Constitution which unequivocally enjoined that in State of Pakistan the principles of equality, social and

economic justice as enunciated by Islam would be fully observed which would be guaranteed as fundamental rights. Principles of policy contained in Article 38 of the Constitution also provide that the State should secure the well-being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employer and employees and provide for all citizens, within the available resources of the Country, facilities for work and adequate livelihood and reduce disparity in income and earnings of individuals. State is obliged under Article 3 of the Constitution, to ensure the elimination of all forms of exploitation and gradual fulfillment of the fundamental principle from each according to his ability, to each according to his work.

24. The learned for the defendant referred to a judgment authored by me in the case of **Ghulam Nabi Shah v. PIAC & others** reported in **2013 PLC (C.S) 768.** The controversy in the above case was the change of date of birth. The plaintiff at the verge of his retirement filed a civil suit even without making party to the PIAC but only to the Board of Secondary/Intermediate Education and obtained a decree from civil court and on this basis applied for correction of record. I dismissed the injunction application and held that in absence of any statutory provision protecting the servant it is not possible in law to grant him a decree against an unwilling master. A servant cannot be forced upon his master and master is always entitled to say that he is prepared to pay damages for breach of contract, but will not accept the services of the servant. It was held that adjudication of civil court on change of birth of plaintiff, such decree being nullity in law was rightly ignored by concerned department, the authorities would have to make

their own determination about the date of birth of their employees and would be fully justified to ignore such adjudication by civil court. In my view the aforesaid case cited by the learned counsel is distinguishable and not attracting to the facts and circumstances of the present case. Time and again, the superior courts held that no change in the date of birth can be applied for correction at the verge of retirement. In the case in hand, no issue of date of birth or correction of record is involved, nor the plaintiff is dismissed employee but he is in active service who has approached this court against the discriminatory and tenacious treatment and protection of his right to avail training course in view of PALPA-PIAC agreement.

25. In the wake of above discussion, the letter dated 4.5.2015, communicating the renunciation of plaintiff from training course is set aside. In consequence, CMA No.7875/2015 is disposed of with the directions to the defendants to send the plaintiff for training in terms of clearance accorded to by the promotion board on 15.12.2014. So far as CMA No.13544/2015 is concerned, the defendants are restrained from sending pilots for training at the stratagem of "ex-post facto clearance" unless they are cleared by the promotion board for training/promotion in accordance with the provisions contained in PALPA-PIAC agreement. As a result, the letter dated 17.9.2015 issued for Transition Training-B-777 is set aside.

Karachi:-
Dated. 23.12.2015. **Judge**