

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit NO. 29 of 2016**

Plaintiff : Captain Suhail Baloch,  
through: M/s. Muhammad Najeeb Jamali, and Raja  
Ali Wahid Advocate.

Defendants : Pakistan Airlines Pilots Association  
through Mr. Muhammad Ali Lakhani,  
for defendant No.1.

For hearing of CMA NO. 137 of 2016 (Under section 94 CPC read with  
order 39 Rules 1 & 2 CPC).

Date of hearing: 26.01.2016.

Date of announcement: 03.02.2016

**ORDER**

**SALAHUDDIN PANHWAR, J.** Through instant suit, Plaintiff seeks declaration regarding his eligibility to contest election for the post of President of PALPA in respect of Elections 2016-2018.

2. Case of the plaintiff is that he is an active pilot; filed nomination for President of PALPA but same was dismissed by the Election Committee vide order dated 28.12.2015, plaintiff preferred appeal but same was declined, hence he filed review application, same was also not entertained.

3. At this juncture, reproduction of the order of this court date 07.01.2016, being relevant, is reproduced hereunder:-

“It appears that the matter involves election dispute of PALPA body consisting of office bearers and executive members. Mr. Lakhani submits that the election of the present is different from that of the executive members as a complete tenure ought to be available for member contesting the election of a president/office bearer. Such position is vehemently controverted by Mr. Jamali. His contention is that there is no

such embargo in the byelaws/constitution of the registered body, as available on record. Be that as it may, since there is urgency in the matter as the election schedule has been issued, counsel agree that the process of election shall be withheld until disposal of the injunction application. However, both the learned counsel agree that since short controversy/law point arising out of the constitution/byelaws is involved, a legal issue may be framed for final disposal of the suit. Mr. Jamali submits that he would not press any other relief including the malice against some of the officials including the Chairman. Accordingly, by consent the injunction application shall be disposed of along with main suit and following issues are framed:-

1. Whether the plaintiff is entitled to contest the election of president under the bylaws/constitution of PALPA as he is reaching the age of superannuation on 31.12.2017 and that non-availability of complete tenure of two years is not an impediment?

2. What should the decree be?

4. In order to decide the above *legal issue*, the matter is taken up today.

My findings on the above issues are:

ISSUE NO.1 *Affirmative*

ISSUE NO.2. *Suit is decreed.*

#### **ISSUE NO.1.**

5. Learned counsel for the plaintiff, *inter alia*, argued that order passed by Election Committee and subsequent orders are *ab initio void*; mandatory requirement to contest election is active Pilot, admittedly plaintiff is active pilot, thus he is not falling within the meaning of disqualification as contained in the Articles and Constitution of the Association. It is contended that election term is for two years and he is going to retire on 1<sup>st</sup> January 2018, although the term of election is continuing upto February 2018; as per bylaws of the Association, retired employee will continue as member, in case, his case falls within the disqualification for that period; in that eventuality procedure is given to fill the casual vacancy. He relied upon case

laws reported as ABDUL AZIZ VIRK v. SPECIAL SECRETARY, EDUCATION (SCHOOLS), GOVERNMENT OF THE PUNJAB, LAHORE [2001 PLC 661], 2015 SCMR 106 and 1998 CLC 204, while emphasizing the meaning of retirement and superannuation.

6. In contra, learned counsel for the defendant while referring case laws reported as **FARID SONS Ltd. v. The Karachi Cotton Association** [PLD 1956 Karachi 315] relevant at page 320, **D.M. MALIK .PLD v. (W.P.) Karachi** [PLD 1960 Karachi 325] relevant at page 327(a), **Dr. SAMRINA HASHMI v. PAKISTAN MEDICAL ASSOCIATION (CENTRE). [PLD 2014 Sindh 268]** relevant at page 281(a), contends that active and non-active pilots are members of defendants, however, President can be the only active pilot, thus his retirement on superannuation is on 31<sup>st</sup> December 2017, hence if he would be allowed to contest election, in case of returned candidate for the period of two months, association would not be effected as only active pilot can be the captain of the team; orders of the appellate committee are legal and maintainable, no bias or prejudice is caused, hence plaintiff's suit is not maintainable. He refers case law reported as MUHAMMAD YOUSUF QURESHI v. GOVERNMENT OF SINDH [1999 YLR 1224].

7. I have heard the respective parties on the issue and have also gone through the relevant record.

8. Before proceeding further, I feel it necessary to make it clear that to exercise right '*to contest election*' is a *fundamental right* which is subject to only one condition i.e '*qualification per prescribed relevant and applicable law*'. Needless to add that right of an authority to examine '*qualification*' is always subordinate to such *prescribed rules and law* hence he (*authority*) was never vested with *unbridled* power or jurisdiction but was always made subject to

law. Here, I would take advantage of the guidance from case of Fazli Hakeem & another v Secretary state and Frontier Regions Division Islamabad & others (2015 SCMR 795) wherein it is referred as:

*'... Lord Denning in his well known book the Discipline of Law, while commenting on orders of this nature at page 74, observed as under:-*

*'This brings me to the latest case. In it I ventured to suggest that whenever a tribunal goes wrong in law, it goes outside the jurisdiction conferred on it and its decision is void, because Parliament **only conferred jurisdiction** on the tribunal on condition that it decided **in accordance with the law.**'*

'6. In the case of Utility Stores Corporation of Pakistan Limited v Punjab Labour appellate Tribunal and others (PLD 1987 SC 447), the Hon'ble Supreme Court held as under:-

*'It is not right to say that the Tribunal , which is invested with the jurisdiction to decide a particular matter, has the jurisdiction to decide it 'rightly or wrongly' because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal **has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly.** Accordingly, when the tribunal makes an error of law in deciding the matter before it, it goes outside its jurisdiction and, therefore, a determination of the Tribunal which is shown to be erroneous on a point of law can be quashed under the writ jurisdiction on the ground that it is in excess of its jurisdiction.'*

Thus, it is pertinent to mention that defendants were legally obliged to examine the 'qualification or disqualification' within four corners of the relevant rules, describing the boundaries of terms 'qualification'. The issue, involves, qualification for president hence reference to Rule 6.1.3.1 of Article-1 Chapter VI, being relevant is referred hereunder:-

*'Any member pilot who wishes to contest election for a particular post of the Executive Committee shall be required to submit the duly completed relevant Proposal Form (Serving/retired or permanently grounded Pilot) to the Association within fifteen (15) days of the publication of the Proposal Form and obtain the receipt thereof.....**The Active Pilots shall vote only for the Active pilots** contesting for the Executive Committee;*

and Retired/permanently Medically Grounded Pilots shall vote only for the Retired/ Permanently Medically Grounded Pilots who are contesting for the post of two Retired/Permanently Medically Grounded Pilots as Executive Committee Members.

From above, it *prima facie* appears that the '*qualification*' is one i.e 'member must be '*active pilot*' at the time of filing of Nomination Paper which, *undisputedly*, the plaintiff is. Such status of the plaintiff is not denied even while declining the petitioner a right to contest election but rejection of nomination paper is *entirely* based with reference to date of retirement of the plaintiff, as it shall stand clear from the operative part of the order, *impugned*. Relevant para-3 of the Order dated 28.7.2015 passed by Election Committee is as under:

**“ORDER (BY VOTE OF MAJORITY)**

3. Without prejudice to all that has been stated above, we understand that a candidate must, whilst seeking benefits under the Constitution, be entitled to invoke the advantages as may be assumed by him / her in his/ her favour. All provisions contained in the Constitution relate to, and concern themselves with, persons holding office within PALP. Captain Suhail Baloch is, as has been stated above, seeking qualification to contest elections. He must, therefore, prior to seeking the benefits of the Constitution, be willing to submit to the impositions thereof. Captain Suhail Baloch's election to the office of President shall **compel a circumstance** whereby the distinction inter se "Active Pilots" and "Retired Pilots: shall be devastated; the term of the "Governing Body" shall be prejudiced; and the workings of PALPA adversely impacted. We cannot, through an act of supervision, alter and /or vary the terms of the AOA, which is binding upon us. This is most certainly a case of first impression, and we are mindful of the fact that PALPA's responsibility towards the continued supply of welfare to its membership is of fundamental importance. The "Executive Committee" which may be elected by a majority vote of the member is entitled to amend the Constitution through means as supplied therein, whilst ensuring conformity with the terms of the AOA. At the present moment, and in view of the regulations that are available before us, we do not find reason(s) and /or justification(s) to act in a manner that we consider contrary to the intent, scheme and purpose of the AOA and, wherever deemed contextually appropriate, the Constitution."

The perusal of the above would leave nothing ambiguous that rejection of the nomination paper of the petitioner is not the result of his 'disqualification' but is with reference to *future* complications, *likely* to arise in the event of *success* only. At this juncture, I must not ignore to refer settled principle of law that things are to be decided within four corners of law and procedure, existed and applicable, at the time when cause of action accrues. Further, I would take advantage by referring the following extract from the judgment in *Jamshaid Gulzar's case* (which is referred in the case of *Badhshah Gul Wazir v Govt. of Khyber Pakhtunkhwa* (2015 SCMR 43)

*'a) Rules of **interpretation and cannons of construction** do not create **any new law** rather they provide the meaning to understand the law and give correct meaning to it:*

*b) Vested right cannot be taken away except by **express word and necessary intendment**. Vested right, if conferred through a statue can be taken away only by legislative enactment and not by executive authority through notification in exercise of either rule making power or powers conferred under Section 21 of the General Clauses Act, 1989;*

*c) Purpose of intention of statutory provision is to ascertain the true intention of the legislature, which is to be gathered from the words used by the legislature itself. If these words are so clear and unmistakable they cannot be given any meaning other than that which they carry in their ordinary grammatical sense. The Courts are not concerned with the consequences of the interpretation, however, drastic or unconventional the result, for the function of the Court is interpretation, not legislation.*

Thus, it is quite safe to conclude that an authority, *competent for interpretation*, can do so but can neither give new meaning to intention and object of provision nor can take away vested right, created by applicable law at time of cause of action accrue.

9. It is a matter of record that the present plaintiff submitted his nomination paper before the Election Commission, so constituted by the

*Executive Committee* for purpose of conduct of election. The Election Commission while conducting *scrutiny* is to accept and reject the *Nomination Paper* only by gauging the *eligibility* so it appears from 6.1.3.2 of Article 1 of Chapter-VI and is left with no other discretion but either to ***accept or reject*** the nomination paper.

10. In the instant matter, the Election Commission referred the matter to Executive Committee which course was not provided before the Election Committee under title of '***RULES & PROCEDURE FOR HOLDING ELECTIONS***' (6.1.3 Article-1 Chapter-VI) though such course i.e *seeking guidance* was available but prior to ***publishing of procedure & proposal forms*** (6.1.2 Article-1 Chapter-VI) hence such course was also not proper. Be as it may, the Executive Committee can provide *guidelines* which, *however*, shall be subject to specific procedure/rules, *as guided* in the case of *Bashah Gul Wazir (supra)*. The Executive Committee was legally required *rather* bound to keep in view only those rules, *applicable* at time of submission of Nomination Form hence were *never* competent to introduce a complete new interpretation. The counsel for the defendants failed in pointing out a single article or rule of PALPA which debars a qualified member from contesting election merely on ground of '*remaining less period than two years in retirement at time of nomination paper*' however, the Constitution does provide a mechanism to meet such a situation i.e *falling of vacancy of President before completion of tenure*. This shall stand clear from Article 3.1.1.6 which reads as:-

'The Executive Committee shall have the powers ***to fill casual vacancies*** in the Committee by Co-opting members. Such members shall hold office till the next Annual General Body Meeting. ***If the position of President or General Secretary falls vacant*** the Executive Committee will ***call for election for the vacant post***. The election will ***be held within eighty (80) days from the date the position has fallen vacant, provided the next scheduled elections are to be held within 120 days from the date the position fell vacant***. In which case the existing Principal Office Bearers and the Executive Members shall elect

from within themselves a person to serve on the vacant position for the remaining of the tenure.

The above article specifically deals with a situation where *position of President or General Secretary* falls vacant and does provide a mechanism where the *Executive Committee* can *legally & competently* fill such *fallen vacant position*. Thus, falling of vacancy during *tenure* of two years was never likely to cause any prejudice or harm '*to continuity of welfare to PALPA*' because by induction of the said Article, the welfare of PALPA has not been confined to person or any *casualty* which may happen with any person *at any time*. Thus, *prima facie* the base of decision of the Executive Committee is not sustainable being not in line with object of said rule because the principle of interpretation also insists so, as held in *District Bar Association Rawalpindi V Federation of Pakistan* (PLD 2015 SC 401) that:

*'It is an accepted principle of construction of statutory and Constitutional law that in case the language is clear, no outside or extrinsic aid can be brought to determine their meaning.'*

Per said principle, it was not permissible for the defendant no.1 to interpret things which *otherwise* is clear with reference to Article 3.1.1.6 which defines the term *Executive Committee* as:

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

Even otherwise, in existence of said Article any other interpretation shall cause prejudice to two maxims '*Expressum Facit Cessare Tacitum*' meaning thereby that '*what is expressed makes what is implied*' and '*expressio unis est exclusion alterius*' meaning thereby that '*the express mention of one thing implies the exclusion of another*'. (PLD 2015 SC 829 Rel.P-970 R).



11. Examining the issue, *in hand*, from another angle, I shall say *first* that it must also be kept in mind that '*disqualification*' for a candidate and that of returned candidate is always dealt separately in all the laws. The procedure to have an *office bearer* removed cannot be *similar* to that of *eligibility* of one to contest election because former shall be gauged with reference to acts and omission of *officer bearer* while later comes to an end the moment one is declared as *qualified*. The picture shall stand crystal clear from a reference to Rules 3.1.1.6-A of Article I of chapter III while following the principle of *reading down* which reads as:-

**'3.1.1.6.A:** If the office of any office bearer of the Executive Committee (except the President or General Secretary as covered in Rule 3.1.1.6) falls vacant on his /her death, resignation, retirement or disability, insolvency or expulsion for misconduct or conviction of offence, shall be filled by majority vote of the Executive Committee for the remaining tenure of such office bearer. Provided that the office bearer charged with violation of constitution rules, regulations decisions and directives of the Association or misconduct, shall have the right of appeal to be filed within one month of intimation of such expulsion on that count to the Executive Committee. The subject appeal shall be brought before the next Annual General Meeting, the decision of which shall be binding and final.

The above does include retirement as one of the *future events* which may cause *falling* post of *Executive Committee* (which per 3.1.1. of Article-1 Chapter defines composition of *Executive Committee*). Thus, the likely retirement before tenure of elected body was never a disqualification for one to *contest* election. Therefore, the concerned authority, *conducting scrutiny*, was never *legally* justified to reject the nomination form/paper of the plaintiff on this *count*.

12. Let me add here that a *body* or an *authority* may cause changes in law, *if law permits*, but the application thereof shall not have retrospective effect if not insisted. The body may bring any changes/amendments towards

*qualification* for contesting election but which shall have no application or bearing if the same are attempted to bring after declaration of schedule for filing nomination paper. Since, *prima facie* the remaining tenure of service of a member is not recognized by LAW (*relevant rules*) as an *embargo* hence the reason for rejection of the nomination form of the plaintiff was never legally justified, thus cannot be stamped because while rejecting the nomination paper of the plaintiff the concerned *authority* went beyond the prescribed procedure, therefore, case of *Fazli Hakeem (supra)* is applicable to instant situation. In result of such conclusion, I am *firmly* inclined to answer the issue no.1 in '*affirmation*'

13. While parting, I would also examine case laws, referred by the learned counsel for the defendant. First case is of *D.M. MALIK .PLD v. (W.P.) Karachi PLD 1960 (W.P. Karachi 325)* wherein at relevant page 327(a) it is held as:-

“Before considering the points raised before me it will be observed that it is well settled law that Courts generally refuse to interfere in the decision of a club on disciplinary matters if given without any irregularity in procedure unless it is proved either that the rules were opposed to natural justice or that they were not properly followed or that there was malice or mala fides in arriving at the decision or that principles of natural justice were not being followed Thus, the jurisdiction of the Court in such cases is limited within a very narrow compass and if the Managing Committee of a Club or an association has acted bona fide and honestly, followed the principles of natural justice and has reasonably construed its rules in their application to the aggrieved party, the Civil Courts have no jurisdiction to interfere in a matter where disciplinary action is taken against its members.”

In above referred case the Civil Court has not been debarred from examining the acts of *Club or an association* but such *Club or Association* before denying jurisdiction of this Court must establish that act was *bona fide, honest, within natural justice, and result of following procedure* but since from so far

discussion it is clear that order was not result of *following procedure* hence , *in my view*, above referred case law rather favours to jurisdiction of this Court.

The *second* case, referred by counsel for the defendant, is Dr. SAMRINA HASHMI v. PAKISTAN MEDICAL ASSOCIATION (CENTRE).

PLD 2014 Sindh 268 wherein at relevant page 281(a) it is held as:-

“.....The case of Association is prime than the individual. The right of an individual is subservient to the mandate and command of Association and right of an individual has to yield to the demands and dictates of an institution. The mechanism and functioning of a body corporate or an association, such as the one I am dealing with, cannot be made subservient to -the alleged rights of individuals, which rights are yet to be determined. Hence, keeping this principle in mind, I would observe that the grant of mandatory injunction at this stage and allowing the plaintiff to continue would not be in favour A of-the association which aims higher. It may also be pertinent to mention here that the decision on this application certainly would not determine the fate of entire case as the finding and observation here are only tentative hence I am of the view that the application under consideration has no merits and is accordingly dismissed.”

I have no hesitation in acknowledging to conclusion that *right of an individual* is subservient to the mandate and command of Association and right of an individual has to yield to the demands and dictates of an institution but it has no relevancy in the instant matter where one (plaintiff) appears to have been denied a right to contest election not by following procedure but by departing thereof. In the above said case law, it was also concluded that:

*‘A perusal of these documents and Article 10 and 11, it appears that substantial mechanism provided in the Memorandum, Articles and Bye-law of Pakistan Medical Association Central, have been **followed**.*

Thus, said case law *even* is not helpful for the defendant.

## ISSUE NO.2.

14. In result of what has been discussed above, the suit of the plaintiff is hereby decreed, as prayed. The defendant no.1 is directed to allow the

plaintiff to contest the election and his name be published in list of *eligible contestants*, as per rule 6.1.3.3. Article-1 Chapter-VI. Let such decree be drawn.

JUDGE

SAJID