IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1244 of 2006

Mustafa F. Ansari ---------- Plaintiff

Versus

Pakistan & another ---------- Defendants

Suit No. 1346 of 2006

Sikandar Ellahi ---------- Plaintiff

Versus

PIA through its Chairman ---------- Defendants

Suit No. 1349 of 2006

Mumtaz Ahmed ---------- Plaintiff

Versus

PIAC ---------- Defendants

Suit No. 1351 of 2006

Shahid M. Islam ---------- Plaintiff

Versus

PIAC ---------- Defendants

Date of hearing(s): **9.2.2016, 25.2.2016, 10.3.2016, 14.7.2016, 21.12.2016, 2.3.2017 & 13.5.2017.**

Date of order: **04.08.2017.**

Plaintiffs:	**Through Mr. Farogh Naseem Advocate in Suit No. 1244/2006.**
	Through Mr. Abdul Rehman Advocate in Suit No. 1346/2006.
	Through Mr. Mehmood Alam Advocate in Suit No. 1349/2006.
	Through Mr. Muhammad Ali Lakhani Advocate in Suit No. 1351/2006.
Defendant:	**Through Mr. Javed Asghar Awan Advocate.**

J U D G M E N T

Muhammad Junaid Ghaffar, J. All these four Suits have one thing in common and i.e. the Plaintiffs compulsory retirement in terms of Admin Order(s) Nos. 40/2001 and 41/2001 both dated 01.11.2001, whereby, Defendant ("**PIA**") initiated and implemented a Mandatory Retirement Scheme. All Plaintiffs before this Court stood retired pursuant to such scheme which has been impugned in these Suits.

2. The precise facts in Suit No. 1244/2006 ("leading Suit") are that the Plaintiff was appointed in PIA as Marketing Officer in Pay Group VI in April, 1970. On 14.10.1999 the Plaintiff was promoted as Director Marketing and Special Assistant whereas, on 04.08.2000 Plaintiff was appointed as Director Special Projects. It is further stated that the Board of Directors of PIA in its 258th meeting held on 22.10.2001 approved certain amendments / addition in PIAC Employees Service Discipline Regulations, 1985 ("**Regulations 1985**") and in view of the said meeting vide Admin Order No. 40/2001 dated 01.11.2001 the Regulations of 1985 were amended and pursuant to such amendment Admin Order No. 41/2001 dated 01.11.2001 was issued and thereafter, on 05.11.2001 ("**impugned order**") the mandatory retirement order of the Plaintiff was issued. The Plaintiff being aggrieved filed a departmental Appeal on 04.12.2001 which was turned down vide order dated 26.02.2002, against which an Appeal bearing No. K-330/2002 was filed before the Federal Service Tribunal ("**FST**"). Thereafter, the Appeal of the Plaintiff was allowed by FST vide judgment dated 12.05.2003 whereby, the Plaintiff

was reinstated with all back benefits. PIA being aggrieved with this judgment preferred Civil Petition for Leave to Appeal No. 263/2003 before the Hon'ble Supreme Court of Pakistan wherein, leave was granted on 15.03.2004 and the order of FST was suspended. After grant of leave, the Appeal was numbered as C.A No. 476/2004 and during pendency of this Appeal in another matter a judgment was announced in the case of ***Muhammad Mubin-us-Salam and others V. Federation of Pakistan and others*** **(PLD 2006 SC 602)**, whereby, Section 2-A of the Service Tribunal Act of 1973 was declared ultra vires and certain directions were issued. In terms of the said judgment the Appeal pending before the Hon'ble Supreme Court was abated and as per directions contained in Para 109 the Plaintiff filed instant Suit within 90 days of the said judgment on 23.09.2006.

3. The Plaintiff in Suit No. 1346/2006 was appointed in PIA as Traffic Assistant in 1962 and till passing of the Mandatory Retirement Order on 05.11.2001 had reached to Pay Group X and the last assignment held by him was that of Director Customer Service. The Plaintiff challenged the Retirement Order dated 05.11.2001 through a Departmental Appeal on 28.11.2001 which was dismissed vide order dated 26.02.2002 which was further challenged before the FST on 28.03.2002 bearing Appeal No. 332(K)CE/2002 and vide judgment dated 12.05.2003 the Appeal of the Plaintiff was allowed and he was reinstated with all back benefits. The other facts are identical to Suit No. 1244/2006 and this Suit was also filed on 23.09.2006.

4. The Plaintiff in Suit No. 1349/2006 was appointed in PIA on 31.07.1975 as an Officer in the Administration Department and till passing of the Mandatory Retirement Order on 05.11.2001 had reached in Pay Group VII. The Plaintiff in this Suit impugned the Mandatory Retirement Order dated 05.11.2001 by filing an Appeal before the Service Tribunal on 28.03.2002 which was decided through the same order dated 12.05.2003. The remaining facts are identical and this Suit was also filed on 23.9.2006. Similarly plaintiff in Suit No.1351 of 2006 was appointed on 5.3.1978 as a Manager in Pay Group IX. His retirement order was passed on 5.11.2001 which was challenged through a departmental appeal dated 28.11.2001 which was dismissed vide order dated

27.2.2002 against which an appeal was preferred before FST which was also decided through the same order dated 12.5.2003.

5. Written statements were filed in all these Suits and on 24.03.2008 in Suit No 1244/2006 following issues are settled, whereas, vide order dated 17.03.2008 common issues were settled in Suit No. 1346, 1349 and 1351/2006. The issues read as under:-

Suit No.1244 of 2006

"1) Whether the Suit is maintainable?

2) Whether the Suit is barred by time quo relief of damages?

3) Whether any damage of sought claimed in the plaint can be allowed where the law governed by under the law of master and servant?

4) Whether the 258th meeting dated 22.10.2001 of the Board of Directors of the Defendant No. 2 and Admins Order No. 40 and 41/2001 dated 01.11.2001 upon which the termination letter dated 05.11.2001 was issued to the Plaintiff are unlawful and without jurisdiction?

5) Whether the Plaintiff is entitled for damages?

6) What should the decree be?"

Suit Nos. 1346-1349 & 1351 of 2006

"1) Whether employment of the Plaintiff was governed by law of master and servant?

2) Whether the Suit qua relief of damages is barred by limitation?

3) Whether the mandatory retirement of the Plaintiff on 5th Novemebr, 2001 was legal and the same is tantamount to compulsory retirement without lawful authority?

4) Whether the mandatory retirement scheme notified vide Admin order No. 41/2001 dated 1st Novemeber, 2001 was in accordance with applicable law and principles of natural justice?

5) Whether the out of Court settlement by the Defendant in a similar case of mandatory retirement of squash player Jahangir Khan and grant of different terms and conditions and benefits to other officers removed under mandatory scheme has resulted in discrimination, victimization and financial loss to the Plaintiff?

6) Whether any damages for future employment benefits, mental torture, loss of reputation etc. can be claimed where the employment is governed by the law of master and servant?

7) Whether the Plaintiff is entitled to benefits, compensation and damages?

8) Whether the Plaintiff is entitled to prayed for and if so, what should relief and decree be?"

6. Dr. Muhammad Farogh Naseem learned Counsel for the Plaintiff in Suit No. 1244/2006 has led the arguments and has contended that insofar as the objection of maintainability regarding limitation is concerned, per learned Counsel the Hon'ble Supreme Court in the case of ***Mubin-us Salam*** *supra* vide Para 109 had given a period of 90 days after abatement of the Appeal to seek appropriate remedy and instant Suit has been filed within 90 days and therefore this objection is not sustainable; that even otherwise, the order of FST was in favour of the Plaintiff and therefore, there could be no question of any limitation against the Plaintiff after abatement of the proceedings, whereas, no act of the Court shall prejudice a litigant; that it is an admitted position that the relationship between the Plaintiff and Defendant is of a master and servant and therefore, the mandatory retirement can be challenged by the Plaintiff though a Civil Suit for claiming compensation and damages notwithstanding the fact that FST had already restored the Plaintiff with all back benefits; that the impugned order of mandatory retirement was passed without affording any opportunity of a show cause and or hearing, whereas, it is settled law that the principles of natural justice cannot be dispensed with hence, the impugned order is a void order; that the Defendants have failed to lead any evidence to the effect that such an Admin Order was warranted in law and further that such an order has served its purpose as intended inasmuch as nothing has been brought through evidence that the alleged losses were wiped out and a proportionate profit was earned; that Chief Executive Order No. 06/2001 dated 05.07.2001 provides a mandatory notice before any adverse action is taken which in the instant matter has been dispensed with without any lawful authority and justification therefore, the principle of natural justice has been violated; that the act of PIA through the impugned order is not only malafide and arbitrary but violates Article 25 of the Constitution by discriminating the Plaintiff vis-à-vis. the other employees and is in fact a case of pick and choose by exercising discretion arbitrarily; that even in Golden Hand Shake Scheme all benefits up to the retirement age were granted by PIA and other Government Departments,

whereas, in this matter the Plaintiff has been retired compulsorily with only three months' salary; that in the case of *Jahangir Khan* (a similarly placed employee) after his success before FST an agreement / compromise was reached by PIA so as to accommodate him and compensate fully, whereas, no such exercise was done in the case of the Plaintiff; that the Plaintiff is entitled for judgment and decree for full compensation of benefits including the retirement benefits, if any. In support of his contention he has relied upon *Riazuddin V. Chairman, Pakistan International Airlines Corporation and 2 others (PLD 1992 SC 531), Anwar Hussain V. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194), Aurangzeb V. Messrs Gool Bano Dr. Burjor Ankalseria and others (2001 SCMR 909), Karachi Development Authority & another V. Wali Ahmed Khan and others (1991 SCMR 2434), Pakistan International Airlines Corporation and others V. Tanweer ur Rehman and others (PLD 2010 SC 676), Muhammad Hanif V. Mst. Munawar Bi @ Munawar Noor (1999 SCMR 2230), Pakistan Red Crescent Society and another V. Syed Nazir Gillani (PLD 2005 SC 806), State Life Insurance Corporation of Pakistan through Chairman V. Raz Muhammad Shanwari and others (2007 SCMR 1400), Muhammad Idrees V. Agricultural Development Bank of Pakistan and others (PLD 2007 SC 681), Pakistan and others V. Public at Large and others (PLD 1987 SC 304), Chairman, Pakistan Broadcasting Corporation, Islamabad V. Nasir Ahmed and 3 others (1995 SCMR 1593), Pakistan International Airlines Corporation (PIAC) through Chairman and others V. Nasir Jamal Malik and others (2001 SCMR 934), Abdul Hafeez Abbasi and others V. Managing Director, Pakistan International Airlines Corporation, Karachi and others (2002 SCMR 1034), Pakistan International Airlines Corporation through Chairman and others V. Shahzad Farooq Malik and another (2004 SCMR 158), Collector, Sahiwal and 2 others V. Mohammad Akhtar (1971 SCMR 681), Sardar Farooq Ahmed Khan Leghari and others V. Federation of Pakistan and others (PLD 1999 SC 57), Managing Director, Sui Southern Gas Company Ltd. Karachi V. Ghulam Abbas and others (PLD 2003 SC 724), Cannon Products Ltd. V. Income Tax Officer, Companies Circle, Karachi and 2 others (PLD 1985 Karachi 572), Director Food, NWFP and another V. Messrs Madina Flour & General Mills (Pvt.) Ltd and 18 others (PLD 2001 SC 1), Government of NWFP V. I.A. Sherwani and another (PLD 1994 SC 72), and Walayat Ali Mir V. Pakistan International Airlines Corporation through its Chairman and another (1995 SCMR 650).*

7. Mr. Mehmood Alam learned Counsel for the Plaintiff in Suit No. 1349/2006 in addition to adopting the arguments of Dr. Farogh Naseem has contended that the impugned order is violative of the 258th meeting

of the Board of Directors; that before removal appropriate notice ought to have been given; that it is a case of pick and choose, whereas, the discretion has been exercised malafidely; that the same is against the corporate mannerism; that at the relevant time Removal from Service Ordinance, 2000, ("**RSO**") was in existence and applicable therefore, without prejudice even if such action was to be taken the same should have been done under RSO, and the procedure provided therein should have been followed; that the impugned Admin Order cannot take away the plaintiffs right whereas Section 10 of RSO has an overriding effect; that after mandatory retirement the plaintiff remained jobless, hence, entitled for damages and losses, whereas, the sigma is still there; that there is no adverse record of the plaintiff insofar as his services are concerned; that even after abatement the order of FST whereby reinstatement with full benefits was allowed remains in field; that the plaintiff is entitled for the relief prayed for.

8. Mr. Muhammad Ali Lakhani Learned Counsel for the plaintiff in Suit No. 1351/2006 has also adopted the arguments of Dr. Farogh Naseem and has additionally contended that the case of ***Mubin-us Salam*** in fact does not apply at least to the extent of any benefit to PIA, inasmuch as their appeal bearing No. 475 to 479 of 2004 against the order of FST were in fact withdrawn by PIA vide order dated 12.10.2010 and were accordingly dismissed by the Hon'ble Supreme Court as not pressed. Therefore, the defendant can neither raise any objection as to limitation nor to the extent of the validity of the order of FST which still remains in field as Appeal against such order was dismissed as withdrawn; that once it is contended that a petition does not lie against PIA for having no statutory rules then the only remedy is a Civil Suit hence, the same is competent; that other similarly placed employees were given all such benefits as are admissible in such situations, therefore, the plaintiff has been discriminated with a meager compensation of three months' salary. In support of his contention he has relied upon *Muhammad Dawood & others V. Federation of Pakistan and others (SBLR 2007 Sindh 495), Imran Ahmed Khan V. Pakistan through Secretary, Ministry of Defence and another (2008 CLC 697), Masood Ahmed Bhati and others V. Federation of Pakistan and others (2012 SCMR 152), Muhammad Ashraf V. Director General, Multan Development Authority, Multan and another (2000 PLC (CS) 796, a judgment dated 8.10.2015 in Suit No. 822/2015, PIA Corporation V.*

Syed Suleman Alam Rizvi and others (2015 SCMR 1545), *Nighat Yasmin V. Pakistan International Airlines Corporation, Karachi and another (2004 SCMR 1820), Arif Majeed Malik V. Board of Governors Karachi, Grammer School (2004 CLC 1029), Khuda Bakhsh and others V. Cholistan Development Authority and others (1998 SCMR 2231), and Gohar Ali V. Messrs Hoechst Pakistan Limited (2009 SCMR 109).*

Mr. Abdur Rahman, has submitted that the case of plaintiff in Suit No.1346/2006 is identical to other plaintiffs, and therefore in order to avoid burdening the Court any further, he would adopt the arguments of all the learned Counsel appearing for the plaintiffs.

9. On the other hand, Learned Counsel for PIA has contended that all these Suits are time barred inasmuch as after abatement of the proceedings, though they were required to seek remedy within 90 days which has been done; however, the prayer in these Suits vis-à-vis. the Appeals before FST are materially different and distinguishable; therefore, the limitation for cause of action if any, regarding damages accrued to them will have got be calculated from 5.11.2001 i.e. the date of their mandatory retirement; hence all the Suits are time barred; that Article 22 of the Limitation Act provides a period of one year, whereas, even otherwise, for recovery of any amount it is three years, hence the Suits are time barred; that the judgment in the ***Mubin-us Salam*** case does not support the question of limitation, whereas, in terms of Order 2 Rule 2 CPC the claim of damages is barred as no such damages were claimed before the Tribunal; that Section 14 of the Limitation Act is not attracted; that the Hon'ble Supreme Court in ***Mubin-us Salam*** case has not given any clear and specific protection vis-à-vis. Limitation, therefore, all these Suits are time barred; that Admin Order No. 41/2001 is supported by the decision of the Board of Directors taken in the 258th meeting held on 22.10.2001 and such decision was taken with lawful authority by the Managing Director on the basis of such meeting, whereby, such powers were delegated and accorded; that as per Annual Report 2001 there were accumulative losses; hence compulsory retirement was inevitable; that no show cause notice was required, whereas, the provisions of RSO are not applicable in this case; that the case of *Anisa Rehman* is distinguishable inasmuch as the same was rendered in Constitutional Jurisdiction which has a rather wider scope than the powers of a Civil Court; that since no punitive action was taken

i.e. any penalty etc. therefore, no show cause notice was required in terms of the Admin Order in dispute; that there is no stigma and no punishment was awarded; that neither it is a case of any malafides nor discrimination; that as much as 91 persons were retired, therefore, discrimination cannot be pleaded; that the principle of last in first out is not applicable as it applies only on workers class covered under Standing Order 1968. In support of his contention he has relied upon *Syed Rashid Hussain Shah V. Azad Government of the State of Jammu and Kashmir and 6 others (2011 PLC (CS) 344), Abdul Hafeez Abbasi and others V. Managing Director, Pakistan International Airlines Corporation, Karachi and others (2002 SCMR 1034) and United Bank Limited V. Shahmin Ahmed Khan and 41 others (1999 PLC (CS) 1032).*

10. I have heard all the learned Counsel and perused the record. Though separate issues have been settled in Suit No. 1244/2006 and other Suits however, the controversy in all these Suits are identical in nature therefore, the issues framed and settled in Suit No. 1244/2006 are being taken up and decided and the findings arrived at will also be applicable in Suits No. 1346,1349 & 1351/2006 as mutatis mutandis.

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11. These issues have been settled on the basis of objection so raised on behalf of PIA. The first objection is in respect of maintainability of the Suits as according to PIA no Suit is maintainable even if the relationship between the Plaintiff and Defendant is governed by the rule of master and servant, whereas, the second objection is in respect of limitation vis-à-vis. claiming of damages as according to PIA all these Suits are time barred as limitation started running from the date of their mandatory retirement from service and not from the date of the judgment passed by the Hon'ble Supreme Court in ***Mubin-us Salam*** case supra. To clearly understand the controversy it would be appropriate and expedient to refer to the operative part of the judgment in ***Mubin-us Salam*** supra which at Para 109 reads as under:-

> "109 Now the question is as to what would be the effect of this judgment on the case pending before the Court and Federal Service Tribunal. In this behalf it may be noted that following the rule of past and closed

transactions, laid down in the case of Mehram Ali V. Federation of Pakistan (OLD 1998 SC 1445), it is directed as follows:-

(a) The cases which have been decided finally by this Court in exercise of jurisdiction under Article 212(3) of the Constitution shall not be opened and if any Review Petition, Misc. Application or Contempt Application, filed against the judgment is pending, it shall be heard independent and shall not be affected by the ratio of this judgment.

(b) The proceedings instituted either by ***an employee or by the an employer, pending before this Court, against the judgment of the Service Tribunal, not covered by category (a) before this Court or the Service Tribunal shall stand abated, leaving the parties to avail remedy prevailing prior to promulgation of section 2-A of the STA, 1973***.

(c) The cases or proceedings which are not protected or covered by this judgment shall be deemed to have abated and the aggrieved person may approach the competent forums for redressal of their grievances ***within a period of 90 days and the bar of limitation provided by the respective laws, shall not operate against them till the expiry of stipulated period***.

(d) The case in which the order of Service Tribunal has been implemented shall remain intact for a period of 90 days or till the filing of appropriate proceedings, whichever is earlier.

(e) The Service Tribunal shall decide pending cases under section 2-A of the STA, 1973 in view of the above observations. However, if any of the cases is covered by clause "c" (ibid), a period of 90 days shall be allowed to aggrieved party to approach the competent forum for the redressal of its grievance." (Emphasis supplied)

12. The judgment in ***Mubin-us Salam*** case has held that Section 2A of the STA 1973 is partially ultra-vires, whereas, the cases of employees falling under Section 2A of STA 1973 who do not fall within the definition of Civil Savants as defined in Section 2(1)(b) of the Civil Servants Act, 1973, shall have no remedy before the Service Tribunal functioning under Article 212 of the Constitution and they would be free to avail appropriate remedy. After having arrived at such conclusion, the Hon'ble Supreme Court has recorded the observations in Para 109 of the judgment as above regarding pending cases. It is an admitted position that when the plaintiffs were mandatorily retired from service they had preferred Appeals before the Tribunal and such Appeals were entertained and allowed in their favour by reinstating them in service with all back benefits, though not implemented by PIA. It was never under dispute till passing of the judgment in the ***Mubin-us Salam*** case that Plaintiffs were being treated as Civil Servants at least to the extent of availing the remedy as provided before the Service Tribunal. Even PIA did not raise

any objection to that effect; nor had the Tribunal given any such findings. Subsequently, PIA preferred Leave to Appeal before the Hon'ble Supreme Court by impugning judgment of the Service Tribunal. In such circumstances, when judgment in the case of ***Mubin-us Salam*** was passed, the Appeals filed by PIA were pending before the Hon'ble Supreme Court and therefore, instant cases would be covered under Sub-Para (b) of Para 109 of the said judgment. The appeal of PIA (Employer) was pending before the Hon'ble Supreme Court against the judgment of FST, whereas, PIA's case was not covered by Sub-Para (a) of the said judgment; consequently it stood abated, leaving the parties (Plaintiff) to avail legal remedy prevailing prior to promulgation of Section 2A in the STA, 1973, i.e. a Civil Suit under Section 9 CPC, as a Constitutional Petition was otherwise barred as there are no statutory rules of employment in PIA.

Therefore, for all practical and legal purposes the Appeal pending before the Hon'ble Supreme Court stood abated and so also the proceedings before the Tribunal, whereby, the order passed in favour of the Plaintiffs also stood abated in view of the dicta subsequently laid down in the case of ***Muhammad Idrees*** supra. Accordingly, the Plaintiffs were left with only one remedy which was provided under Para 109 (c) of ***Mubin-us Salam*** case and admittedly they have availed such remedy by filing instant Suits under Section 9 CPC within the period of 90 days from the date of judgment in the ***Mubin-us Salam*** case. In the circumstances, I do not see any justification to uphold the feeble objections so raised on behalf of the PIA regarding limitation in this matter. Even otherwise, it appears to be an admitted position that the Plaintiffs all along were diligent in availing the appropriate remedy as was available to them at the time of passing of the impugned order of mandatory retirement. They had availed the remedy before FST and an order was passed in their favour, and the said order was challenged in Appeal by PIA which was pending before the Hon'ble Supreme Court when judgment in ***Mubin-us Salam*** case was announced. Therefore, per settled law, it may be observed that none shall be non-suited due to an act of the Court. The Hon'ble Supreme Court was mindful of this fact and situation, and therefore, provided appropriate remedy to the person(s) who may have been affected or prejudiced with the implementation of judgment in ***Mubin-us Salam*** case and accordingly provided a

reasonable time of 90 days for such affected person(s). The Plaintiffs accordingly availed the same and therefore, I am of the view that all these Suits are within the limitation period and are not barred by any law qua the claim of damages as contended on behalf of PIA.

There is another interesting aspect of the matter and reference in this regard may be made to the case of ***Abdul Hafeez Abbasi & others v Managing Director Pakistan International Airlines Corporation & Others*** **(2002 SCMR 1034)**. In that case (relevant for this issue only as there were numerous other issues as well) the employees of PIA were terminated on the ground that there appointments were not in accordance with law and procedure. The employees challenged such termination orders by filing Civil Suits before the High Court of Sindh as at that point of time Section 2A was not on the statute i.e. Service Tribunal Act, 1973. However, during pendency of the Suits Section 2A was inserted and the Suits of the employees stood abated and they were required to seek their remedy before the Service Tribunal on the basis of insertion of Section 2A in the Service Tribunal Act, 1973. In fact the situation was vice versa as against the present cases. PIA on the basis of order of abatement of the Suits passed an order whereby the employees stood terminated. Thereafter the employees filed appeals before the Service Tribunal within 30 days of passing of such order and their appeals were allowed by reinstating them against which PIA went to the Hon'ble Supreme Court, whereas, the employees also approached the Hon'ble Supreme Court for claiming back benefits. Though PIA never raised any objection regarding limitation, but before the Hon'ble Supreme Court an objection was raised, that the appeals were time barred and not maintainable as well, as the employees never filed any departmental appeal, which is a must for approaching the Service Tribunal, however, such objection was not entertained by the Hob'ble Supreme Court by observing that all along PIA had knowledge that the employees had filed Civil Suits challenging their termination, therefore, the plaints filed in the Suit could be treated as a departmental appeals and the objection of limitation was repelled. In the instant matter the plaintiffs had approached FST within time and there is no dispute to that effect. Therefore, even from another angle the objection of limitation cannot be sustained against them. They are well entitled for the benefit of Section 14 of the Limitation Act, 1908, as all along they had been vigilant and delay, if any, has not been caused by them.

13. Insofar as the objection with regard to non-availability of any remedy against PIA is concerned, again I am of the view that this objection is also not justified inasmuch as it has now been now consistently held by the Hon'ble Supreme Court that an employee has no remedy against PIA insofar as a Constitutional Petition is concerned as there are no statutory rules governing the relationship between an employee and PIA. Therefore, the only remedy which is now available is by way of a Civil Suit. Such observation has been given by the Hon'ble Supreme Court in the case of ***PIA Corporation V. Syed Suleman Alam Rizvi and others*** **(2015 SCMR 1545)** wherein, it has been held that:-

> "8. There is a plethora of judgments to the effect that no petition lies in the matters pertaining to the terms and conditions of service of employees of a Corporation, where such terms and conditions are not governed by statutory rules. It is an admitted position 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 case of Hameed Akhtar Niazi (supra) is of no avail to the private respondents, as the same, as discussed above, pertains to the matters relating to the civil servants, whereby the relationship and terms and conditions of service are governed by Civil Servants Act and such relationship is not that of master and servant. The private respondents remained indolent in the matter and approached the Federal Service Tribunal only after the Tribunal's judgment dated 28-2-2004, being relied upon by them for seeking benefits, was passed by the Federal Service Tribunal. ***There proceedings before the Tribunal abated as noted above, and thus the only course left to the said respondents was to file a suit for redressal of their grievance. Since as noted above, the petition was clearly not maintainable, the impugned judgment is thus liable to be set aside.***
>
> 9. We, therefore, allowed this appeal and set aside the impugned judgment. The private respondents may however, if so advised, ***file suit for redressal of their grievance before the appropriate forum, which may, keeping in view that the matter has already been delayed inordinately and also that the private respondents are of advance ages, be disposed of, as expeditiously, as possible."*** **(Emphasis supplied)**

The case of the present plaintiffs is identical on all fours qua the aforesaid judgment as in that case also the proceedings pending before the Service Tribunal abated and employees had filed Constitutional Petitions which were allowed by the High Court of Sindh, against which PIA had approached the Hon'ble Supreme Court and the impugned judgment was set aside on the ground that no writ was maintainable

against PIA; however, employees were permitted to seek remedy by way of a Civil Suit. In the circumstances I am of the view that objection of PIA in this regard is wholly misconceived and in fact appears to be contradictory in nature inasmuch as if a petition is filed against them it is objected that no writ is maintainable, and if a Civil Suit is filed, again an objection is raised on its maintainability. I am unable to conceive and comprehend as to what is the intention behind this. Does the management want to leave its employees remediless? This is impermissible as an employee, though cannot seek reinstatement but under no circumstances can be prevented from seeking damages against his alleged removal or compulsory and or mandatory retirement. Consequently Issue Nos.1 is answered in affirmative, whereas, Issue No.2 is answered in negative.

Issue No.3

14. Coming to the claim of damages it may be observed that remedy of damages is always available to an employee of a private organization even if remedy of reinstatement cannot be granted; however, subject to the condition that the employee is otherwise in a position to make out a case. Notwithstanding the fact that PIA is though having no statutory rules but admittedly is an organization being controlled by the Government of Pakistan having a majority stake with majority Directors on its Board. The Managing Director and other members of the Board are appointed by the Government on its own choice; therefore, in all fairness the management of PIA ought to govern the relationship with an employee in a transparent and lawful manner. The exercise of discretion vested in a private organization vis-à-vis. PIA has to be looked into differently. The employees of PIA cannot be left at the mercy, whims and desires of individuals i.e. its Directors without any clog on their managerial decisions empowering them to pick and choose which may permit them to discriminate without a check and balance mechanism. The organization has to be run in a proper and legal manner on the basis of rules, regulations and directions, but under no circumstances the management can act without fulfilling the mandate of law. The question as to claiming damages in the relationship of master and servant was considered by a five member bench of the Hon'ble Supreme Court in the case of ***Raziuddin v Chairman Pakistan International Airlines Corporation*** **(PLD 1992 SC 531)**. In this case the issue before the Hon'ble

Supreme Court in addition to others, was also regarding remedy available to an employee of PIA in case of termination or compulsory retirement that as to whether an employee can also seek reinstatement or can only claim damages. It was held by the Hon'ble Supreme Court that insofar as PIA is concerned, there are no statutory rules and an employee cannot seek reinstatement but can only have a claim of damages by way of a Civil Suit. The relevant observation is as under;

> "6. The legal position obtaining in Pakistan as to the status of employees of the Corporations seems to be that the relationship between a Corporation and ***its employees is that of Master and Servant and that in case of wrongful dismissal of an employee of the Corporation, the remedy, is to claim damages and not the remedy of reinstatement***. However, this rule is subject to a qualification, namely, if the relationship between a Corporation and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee of such a Corporation may maintain an action for reinstatement.
>
> In the present case, the P.I.A.C. has the Regulations which have been framed by the Board of Directors of the P.I.A.C., pursuant to the power contained in section 30 of the Act. However, there is nothing on record to indicate that the above regulations have been framed with the previous sanction of the Central Government or that they were gazette and laid before the National Assembly in terms of section 31 of the Act. In this view of the matter, the Regulations cannot be treated as statutory rules of the nature which would bring the case of the P.I.A.C. within the above qualification as to entitle the employees of the P.I.A.C. to claim relief of reinstatement on the ground of breach of the statutory provisions. In the case in hand as stated hereinabove the action has been taken against the Appellants under the provision of section 10(2) of the Act which reads as follows….." **(Emphasis supplied)**

In view of hereinabove discussion Issue No.3 is answered in affirmative.

ISSUE No.4

15. The entire case of the Plaintiffs is a challenge to the two Admin Orders bearing No. 40 and 41 of 2001 both dated 01.11.2001 and their respective Mandatory Retirement Orders dated 5.11.2001 passed pursuant to these two Admin Orders. It would be advantageous as well as convenient to refer to these two Admin Orders and one of the

Mandatory Retirement Order(s) of Plaintiffs as they are identical in nature:-

"PIA
Pakistan International Airlines
Human Resources Division

14th Shaba'an 1422 H
1st November, 2001

ADMIN ORDER
NO. 40/2001

ADDITION / AMENDMENT IN PIAC EMPLOYEES
(SERVICE & DISCIPLINE) REGULATIONS, 1985

1. In exercise of powers conferred under Rule 22(1) of PIAC Rules & Regulations, 1958, PIAC Board of Directors in its 258th Meeting, held on 22nd October, 2001, has approved the following amendments / additions in the PIAC Employees (Service & Discipline) Regulations, 1985 :

"24(a) Termination from Service : The services of an employee of the Corporation may be terminated simplicitor by the appointing authority, by three months' notice or payment of there months wages / salary in lieu of thereof."

"25(5) Notwithstanding anything provided hereinabove, the Board or the Managing Director, if so authorized by the Board in this behalf, may where necessary in view of the financial and commercial interest of the Corporation, retire or releaser any employee under a Mandatory Scheme in terms provided therein."

"25(6) Encashment of Privilege Leave: Upon retirement under Mandatory Retirement Scheme(s), introduced in view of the financial and commercial interests of the Corporation, or where such early retirement is considered prudent in Corporation's interest by the competent authority, and / or upon acceptance of the option exercised by such employee for retirement as a result of Voluntary Retirement Scheme(s), the competent authority may authorize the immediate release by encashment of the due privilege leave and such encashment of Privilege leave may be considered as part of service for the purpose of calculation of Pension benefits only."

"26 Option for early Retirement: An employee, who has completed 20 years of continuous service in the Corporation or attained the age of 55 years, may exercise an option for retirement from the Corporation's service with normal terminal benefits based on the actual years of service rendered by him, provided such option is not being exercised to avoid dismissal if disciplinary action is outstanding against him."

2. All Rules, Admin Orders stand superseded to the above extent only.

Authority: BM1258/22nd October, 2001.

Sd/-
Sohail Mustafa
General Manager
Human Resources (P&P)"

"PIA
Pakistan International Airlines
Human Resources Division

14th Shaba'an 1422 H
1st Novemebr, 2001

ADMIN ORDER
NO. 41/2001

MANDATORY RETIREMENT SCHEME

1. Due to financial losses, cash flow constraints and the present circumstances affecting the operations & business of Aviation / Airline Industry, it has become expedient to affect economy in different spheres inclusive of but not limited to rationalization of manpower at different tiers either by closure of station(s) or right sizing / downsizing the present manpower levels to bare minimum without affecting the Corporation's operations and commercial viability. In order to implement these objectives the Board of Directors in its 258th Meeting, held on 22nd October, 2001, authorized the managing Director, PIA to introduce **Mandatory Retirement Scheme(s)** at any time or from time to time in a phased manner or otherwise dependent upon the financial position of the Corporation to implement these Scheme(s) to retire or release such employees, who fall within the criteria approved by the Board on such terms and conditions as may be considered satisfactory to PIA.

2. In exercise of the powers conferred to the Managing Director, under Regulation 22(5) of PIAC Employees (Service & Discipline) Regulation, 1985, and the decision taken by the PIAC Board of Directors in its 258th Meeting, held on 22nd October 2001, the Managing Director in the First Phase has approved a Mandatory Retirement Scheme to retire or release employees in the cadre of General Manager or equivalent and above (except personnel possessing such specialized / professional skills, as may be determined to be critical for the Corporation), and / or due to the organizational changes are without an assignment and / or due to proposed rationalization of manpower at different tiers are not likely to be utilized against a proper job / vacancy commensurate with their education / professional experience and / or their retention without an appropriate assignment, or without an approved position in the hierarchy is causing financial drain by payment of emoluments and facilities and / or due to such education / experience / varied reasons have reached the ceiling of their existing position / cadre and are not likely to shoulder higher / responsibility in future based on the concept of merit and / or fall within the aforesaid criteria notwithstanding the completion of 20 years & above service or 55 years of age, but in the opinion of the Managing Director, their further retention in the Corporation is detrimental to its financial, operational or administrative interests.

3. Upon retirement with normal terminal benefits, as per laid down Corporation's regulations / rules, in addition to three months basic pay / allowances / perquisites, the un-availed privilege leave at the credit of such employee on the date of retirement, will be encashed. Provided further that the period of un-availed privilege leave for which the encashment has been approved will be counted for the purpose of calculation of pension and transfer of car / adjustment of furnishing advance (provided entitled as per applicable policy), only.

4. The provision of this Admin Order shall apply and prevail notwithstanding anything contrary in any Admin Order, Office Order, Circular or Policy.

Authority: Managing Director - PIAC

Sd/-
Sohail Mustafa
General Manager
Human Resources (P&P)"

Pakistan International Airlines
Administrative Department

Through TCS

MPS/P-25070/2001
5th November, 2001

Mr. M. F. Ansari
P-28070,
Director Special Projects
F-62, Block B, North Nazimabad,
Karachi.

Dear Mr. Ansari,

MANDATORY RETIREMENT FROM PIA SERVICE

1. Due to financial losses, cash flow constraints and the present circumstances affecting the operations & business of Aviation / Airline Industry, it has become expedient to affect economy in different spheres inclusive of but not limited to rationalization of manpower at different tiers either by closure of station(s) or right sizing / downsizing the present manpower levels to bare minimum without affecting the Corporation's operations and commercial viability.

2. In pursuance of a Mandatory Retirement Scheme, notified vide Admin Order No. 41/2001, dated 1st November, 2001, the competent authority after careful evaluation of the cases of General Managers, equivalent and above, has concluded that you fall within the criteria approved by the PIAC Board of Directors in its 258th Meeting, held on 22nd October 2001 and notified vide Admin Order No. 41/2001 dated 1st November, 2001 and decided by the competent authority to retire and release you from the Corporation's service with effect from 5th November 200, with normal terminal benefits as per Corporation's rules.

3. Upon retirement with normal terminal benefits, as per laid down Corporation's regulations / rules, in addition to three months basic pay / allowances / perquisites, the un-availed privilege leave at your credit as at today, will be encashed. Provided further that the period of un-availed privilege leave for which the encashment has been approved will be counted for the purpose of calculation of pension and transfer of car / adjustment of furnishing advance (provided entitled as per applicable policy), only.

4. We appreciate your long association and contribution to PIA and wish you well in your future.

5. Attached proforma may be completed by you and provided to us to expedite settlement of your accounts.

Yours sincerely,

Sd/-
Mrs. Nasreen Zaman
Manager Personnel Services"

Perusal of Admin Order No. 40/2001 reflects that the Board of Directors of PIA in their 258th Meeting held on 22nd October 2001 had approved certain amendments / additions in the Regulations, 1985 by exercising their powers conferred under Rule 22(1) of PIAC Rules and Regulations, 1958. The relevant amendment / addition is *Regulation*

25(5) which provides that *the Board or the Managing Director, if so authorized by the Board in this behalf, may where necessary, in view of the financial and commercial interest of the Corporation, retire or releaser any employee under a Mandatory Scheme in terms provided therein*. Since the case of the Plaintiffs is of Mandatory Retirement only, Regulation 24(a) does not apply to their case and it is only *Regulation 25(5)* which needs to be considered and examined. Coming to Admin Order No. 41/2001 it is noticed that it has been issued by the Managing Director of PIA and the same is done on the basis of decision of the Board of Directors taken in the 258th Meeting. It is further noted that Admin Order No. 41/2001 has been issued in exercise of the powers conferred on the Managing Director under Regulation 25(5) of Regulations, 1985 read with the decision taken by the PIAC Board of Directors in the said meeting. The learned Counsel for the Plaintiffs has vehemently argued that the Managing Director under Admin Order No. 40/2001 was only authorized to introduce a Mandatory Retirement Scheme and such Scheme if introduced was always subject to the subsequent approval of the Board of Directors which has not been done and therefore, the entire exercise carried out pursuant to the Admin Order No. 41/2001 is without any lawful authority and sanction of the Board of Directors. Apparently this seems to be a forceful contention; however, PIA while leading its evidence has brought on record the extract of the minutes of the 258th Meeting (**Exhibit-D**) through its witness Tahir Naveed and perusal thereof reflects that in addition to necessary amendments / additions in the Regulations 1985, a further decision was also taken and approved by the Board of Directors which reads as under:-

> "(ii) Managing Director, PIA be and is hereby authorized to *introduce and implement* the **Voluntary / Mandatory Retirement Scheme(s),** at any time or from time to time, to review the cases and retire or release any employee in pay group V or equivalent and above including Cockpit Crew (except personnel possessing such specialized / professional skills, as may be determined to be critical for the Corporation), who has completed 20 years and / or above service in the Corporation and / or attained the age of 55 years, on a date preceding introduction of such Scheme(s), and / or due to the organizational changes are without an assignment and / or due to proposed rationalization of manpower at different tiers are not likely to be utilized against a proper job / vacancy commensurate with his education / professional experience and / or his retention without an appropriate assignment, or without an approved position in the hierarchy is causing financial drain by payment of emoluments and facilities and / or due to such education / experience / varied reasons has reached the ceiling of his existing position / cadre and is not likely to shoulder higher

> / responsibility in future based on the concept of merit and / or fall within the aforesaid criteria notwithstanding the completion of 20 years & above service or 55 years of age, but in the opinion of the Managing Director, his further retention in the Corporation is detrimental to its financial, operational or administrative interests."

Perusal of the aforesaid authorization clearly reflects that the Managing Director was not only authorized to introduce the Mandatory Retirement Scheme but also its *implementation*, therefore, I am of the view that the objection to this extent raised on behalf of the Plaintiff is misconceived and is hereby repelled.

However, this is only one of the grounds taken on behalf of the Plaintiffs while challenging the impugned orders. The next ground which has been urged upon is to the extent that the Managing Director had no justification to pick and choose the Plaintiffs who were rendering their services to PIA since long, whereas, there was also no justifiable reason(s) to select them under the Mandatory Retirement Scheme. Their further challenge is premised on the fact that this scheme was only introduced in view of the alleged financial losses and cash flow constraints, whereas, in the period immediately before passing of the impugned orders as well as subsequently, there were no losses as such accrued to PIA. In fact it is their case that PIA was in profit at the relevant stage. It may be of relevance to observe that the powers so driven and exercised by the Board of Directors of PIA as well as its delegation to the Managing Director, if any, has to be within the ambit of Regulation 25(5) of the Regulations 1985 and not beyond that. The Regulation provides that in view of the ***financial and commercial interest*** of the Corporation, any employee may be retired or released under a Mandatory Scheme in terms provided therein. Therefore, it is only the ***financial and commercial interest*** which empowered the Board of Directors and or the Managing Director to take such an extreme step and not otherwise. The Defendant / PIA was therefore, obligated to justify their actions by leading evidence regarding the ***financial and commercial interest*** driven by such Mandatory Retirement of the Plaintiffs. The burden rests upon PIA in this regard as the Plaintiffs have challenged the impugned orders on various grounds including the ground that PIA did not gain anything out of such Mandatory Retirement of the Plaintiffs in so far as its ***financial and commercial interest*** is concerned. In the entire evidence it is only paragraph 17 of the affidavit in evidence

of **DW (Tahir Naveed)** in which an attempt has been made by PIA to justify the impugned orders vis-à-vis. losses being suffered by it. Paragraph 17 reads as under:-

> "17. That it is for the Managing Director and Management to assess requirements of the Corporation and to affect necessary adjustments in the best interest of the Corporation. In view of accumulated losses amounting to Rs. 11.2 billion, certain drastic exercises was required and that is why the decision was made in the 258th Meeting of the Board of Directors. That the decision[s] are made by the Managing Director in exercise of his power of managerial judgment. Copies of Annual Accounts Report for the year 2001 and 2002 are enclosed as Exhibits. D/"

The witness of PIA has though relied upon the Annual Accounts of 2001-2002 but there is no specific and or relevant mention of the losses which were being suffered by PIA in 2001 which may justify the impugned action. In both the Annual Reports the Chairman and Chief Executive have not addressed a single word of having achieved any ***financial and commercial interest*** through this Mandatory Retirement Scheme and so also the quantum of loss and or profit earned by PIA pursuant to introduction of this scheme. It is not stated that what losses would have accrued to PIA if all these Plaintiffs were retained in employment and thereafter the benefits so earned by PIA after their retirement. Though the learned Counsel for the Defendant has made an effort to rely on the financial figures in both the Reports and has contended that there was a turnaround in the year 2002 and PIA in that period was in profit. However, when the Annual Report is reviewed in its entirety; firstly their appears to be no discussion on the benefits earned by PIA by carrying out the Mandatory Retirement Scheme as discussed hereinabove, and secondly, it further appears that the profits, if any, earned in 2002 was in fact attributed to various other measures taken by the Management of PIA and not due to the introduction of the Mandatory Retirement Scheme. In fact it is surprisingly noted that in the Annual Report at page 10 of the Report it has been observed that Airline reported a profit of Rs. 403 million for six months ending December 31, 2001 as against the target of break-even level. This six months period starts from 1.7.2001 to 31.12.2001 whereas, the impugned decision was taken in November, 2001. This itself hardly leaves any ground for issuance of these Admin Orders as well as the Mandatory Retirement Orders of the Plaintiffs. At page 11 of the Annual Report 2001 it is observed by the Chairman that,

the financial results for 2001 give an indication that as a result of various measures initiated after June 2001, the decline has been controlled; (however, it is not stated that in these various measures, the Mandatory Retirement Scheme was also included and exactly what was the financial impact of this scheme). As against a pre-tax loss of Rs. 5.1 billion in 2000 the pre-tax loss of 2001 has been brought down to Rs. 1.8 billion. The Corporation has been able to generate a pre-tax profit of Rs. 403 million during the second half of the year in comparison with a pre-tax loss of Rs. 2,285 million in the first half of the year. Therefore, in the circumstances, it cannot be conceived and or presumed that PIA on the basis of its own reports of 2001-2002 had any justification to pass the Mandatory Retirement Scheme notwithstanding the fact that enough evidence has been led by the Plaintiffs to justify that the administration and management of PIA acted with a pick and choose policy, whereas, even after Mandatory Retirement of the Plaintiffs various personnel were engaged and employed on contract basis whereas, the defendants' witness while confronted has not been able to justify such employment on contractual basis.

16. It has been constantly argued on behalf of PIA that the impugned action was taken by PIA, who was faced with financial losses, cash constrains and circumstances affecting the operation and business of airline industry as a remedial measure, which included rationalization of manpower. It was further contended that the decision of mandatory retirement was not in consequence of any accusations or as a result of punishment and was not in any manner a punitive action. In the circumstances, I am of the view that it was incumbent upon PIA to lead evidence for justification of the impugned action. I have not been assisted as to whether PIA ever carried out any exercise or research by itself or through a consultant before taking the impugned action of mandatory retirement; that as to what benefits would accrue to PIA through this impugned scheme as discussed hereinabove. Even through the financial statements, no justification has come on record to support the impugned action. Though it cannot be disputed that a commercial organization owing to its financial position can go for re-organization of its manpower, but then again it has to be kept in mind that PIA being a Government owned organization was at least required to fully compensate the

employees, who were being mandatorily retired. It has been a common practice in Government owned organizations that retrenchment and voluntarily retirement schemes are initiated to overcome continuous financial losses. However, such schemes have always taken care insofar as compensation to the retrenched or compulsorily retired employees are concerned. In this case, it is a matter of record that all the Plaintiffs had worked for more than 20 years with the PIA and were in senior grades (General Managers and above), therefore, in my view even if such scheme was inevitable, the same could only have been justified, if the Plaintiffs were adequately compensated and may be they could have accepted their mandatory retirement. However, it is not the case here. The Plaintiffs have only been offered three month's salary with usual terminal benefits, with which the Plaintiffs were never satisfied. Learned Counsel for PIA has relied upon the case of ***United Bank Ltd. through President v. Shamim Ahmed Khan and 41 others*** **(1991 PLC (C.S) 1032),** wherein, the Honourable Supreme Court was pleased to set-aside the order of Service Tribunal, whereby, the employees of United Bank Ltd. were reinstated and their retrenchment orders were held to be illegal. However, it is of utmost importance to note and observe that the retrenchment scheme offered by United Bank Limited in that case had fully compensated the retrenched employees and this was one of the reasons, which prevailed upon the Honourable Supreme Court to set-aside the order of Tribunal. Moreover, UBL before carrying out the exercise of retrenchment had carried out a study with a help of a consultant and in the light of the finding and recommendations of the study group, the Bank had decided to retrench ***5416*** employees of the Bank. This is not the case here as neither PIA offered any adequate compensation to the retiring employees nor any such study was carried out vis-à-vis the benefits, which may have accrued to PIA through the mandatory retirement scheme. The Honourable Supreme Court in the case of ***UBL (Supra)*** at Para-9 has observed that no exception could be taken to the retrenchment of the employees of the Appellant Bank, *if such an action of the Bank was motivated by commercial considerations and for reasons to run the Bank on profitable lines*. It was further observed that *such an action could only be brought under challenge by aggrieved employees; if it could be shown that the action was not based on commercial considerations on which the Bank was being run but was motivated by some extraneous consideration*. In this matter, PIA has not been able to justify and fulfill both these conditions.

Neither the impugned action has resulted in any profitable consideration insofar as the evidence led by PIA is concerned, rather, on the contrary, the Plaintiffs have brought sufficient evidence on record that the impugned action is not only based on malafides, but was discriminatory in nature and was based on extraneous considerations. The Plaintiffs have brought on record that various persons were reengaged / employed on contract basis by PIA after dismissing the Plaintiffs on hefty amount of salary and perks, whereas, Plaintiffs were mandatorily retired to overcome losses. This is contradictory insofar as the stance of PIA is concerned. Once it was alleged by the Plaintiffs that no financial benefit would accrue to PIA through the impugned scheme, the burden shifted on PIA to justify its action. Unfortunately nothing has been brought on record to substantiate and justify that in fact financial benefits were gained by PIA. Moreover, PIA has not been able to defend the employment offered to various persons on contract basis after retiring the Plaintiffs. The witness of PIA was specifically confronted on this, and he has conceded to such factual aspect of the matter. According to him "***It is correct to suggest that after release of the plaintiff many persons were inducted in the PIA with better salary package but the same was as per the corporation requirements/rules"***. He has further replied that ***"I do not know whether the employees who were inducted by PIA after release of the plaintiff have better qualification, experience than the plaintiff."***

17. Insofar as, the allegation of discrimination is concerned, it has come on record that along with the Plaintiffs another employee namely Jehangir Khan was also mandatorily retired on the basis of Admin Order Nos.40 & 41 of 2001. He also challenged his retirement before the Service Tribunal and was successful and the order of Tribunal was impugned before the Honourable Supreme Court. In fact the Plaintiffs' case was decided by the Tribunal on the basis of Order dated 10.2.2003 passed in the case of Jehangir Khan. However, insofar as the Plaintiffs are concerned their reinstatement was vehemently opposed but an agreement was reached with Jehangir Khan by offering him adequate compensation in the shape of a 25 years lease of PIA Squash Complex in Karachi and Appeal against his reinstatement was withdrawn by PIA from the Honourable Supreme Court even before announcement of judgment in the case of ***Mubin-us Salam***. Nothing has been brought on

record as to why such treatment was meted out to the Plaintiffs and nothing of that sort was offered to the Plaintiffs for adequately compensating them.

Time and again it was contended and pleaded on behalf of PIA that since no punitive action was taken against the Plaintiffs and their mandatory retirement was not a stigma on their career, therefore, the maxim of *"audi alteram partem"* is not applicable to their case. Though this argument appears to be attractive but it is also pertinent to note that the PIA Act of 1956 as well as the regulations dealing with the relations of PIA and employees all along provides issuance of a notice before any adverse action is taken. Even RSO 2000, which was issued for across the board removal of employees in Government Organizations, provided for issuance of a notice before taking any adverse action. Now the question would be that when a person is being removed from service for his alleged misconduct, he is entitled for issuance of a Show Cause Notice and being confronted with allegations before his removal, whereas, an employee, who is being mandatorily retired is denied any audience before his retirement on the ground that no adverse or punitive action is being taken against him. In fact in both these situations the employee loses his job but for his misconduct he is entitled for a Show Cause Notice and in case of his mandatory retirement he is not. This does not seem to be attractive and convincing. Moreover, in this case of mandatory retirement, the entire discretion is to be exercised by one single person i.e. the Managing Director. It may be appreciated that the Board of Directors in its 258th meeting had though authorized the Managing Director to introduce and implement the mandatory retirement scheme; however, such authorization was generic in nature and so also was vague empowering the Managing Director to take action against any employee by mandatorily retiring him. Such vesting of authority appears to be arbitrary in nature permitting the Managing Director to exercise such authority on his own wish and desire without recording any reasons of whatsoever nature and further permitting him to pick and choose the employees for mandatory retirement. This could not have in any manner provided a reason for achieving operational efficiency and/or commercial viability so as to benefit PIA. Though it cannot be disputed that the authority i.e. a Corporation like PIA has the authority and mandate to review the number of employees for obtaining optimum efficiency but this

could not be allowed to exercise unfettered discretion and authority by applying the pick and choose formula. It is a settled proposition of law that the discretion wherever exercised has to be done in an objective manner so as to meet the ends of justice. The criteria for exercising such discretion should have been fair and transparent and evolved in a manner which should have served the best interest of PIA. The authority exercising discretion should not act arbitrarily, unreasonably and in disregard to the relevant Rules and Regulations and not on its whims, desire and must not be capricious in nature as exercise of discretion is always circumscribed by principles of natural justice, equity and fair play. It must be kept in mind by the authority that the discretion so vested is to be exercised for attaining the objects and aims for which such delegation has been given. If any authority is needed one may refer to the case of ***Walayat Ali Mir v. Pakistan International Airlines Corporation*** **(1995 SCMR 650)**.

However, this is not the case here. On the one hand, the Plaintiffs were mandatorily retired for achieving better financial and commercial results; but at the same time other employees, though similarly placed, were not retired. Again even during this period fresh appointments were made. Both these points were raised by the Plaintiffs in their evidence, however, the Defendant PIA failed to bring anything on record so as to justify these actions. A very specific question was asked from the witness of PIA; however, his reply in the evidence was evasive and does not appear to be satisfactory. The relevant portion of his cross-examination reads as under:-

> **"It is correct to suggest that under the mandatory scheme, all persons who were GM and above and who completed 20 years of service and were of 55 years age in above fell within the scheme. It is correct that Mr. Wasim Bari, Mr. Rashidul Hassan, Mr. Azam Zafar and Mr. Farooq Shahd and many others who fell within this criterion were not removed but this was due to the Corporation requirement.**
>
> **It is correct that only few persons were picked and chosen under the scheme as per the corporation requirements/rules.**
>
> **It is correct to suggest that after release of the plaintiff many persons were inducted in the PIA with better salary package but the same was as per the corporation requirements/rules.**
>
> **I do not know whether the employees who were inducted by PIA after release of the plaintiff have better qualification, experience than the plaintiff.**

18. Coming to the question that a mandatory or compulsory retirement is not a stigma and or a punitive action and therefore does not require

issuance of any show cause notice nor any reason is to be assigned for such retirement of an employee as raised on behalf of PIA, it would suffice to observe that answer to this has already been given in two judgments of the Hon'ble Supreme Court. In the case of ***Pakistan & Others v. Public at Large*** (**PLD 1987 SC 304**) a Shariat Appellate Bench of the Hon'ble Supreme Court had the occasion to examine the provisions of section 13, clauses (1) and (2) of Civil Servants Act, 1973 and similar provisions in other Provincial Civil Servants Actsproviding for compulsory retirement on completion of 25 years of service and it was held that these provisions are repugnant to the Injunctions of Islam insofar as they do not provide for due notice for action proposed to be taken and opportunity of showing cause against such action. The question of compulsory retirement with reference to the Injunctions of Islam was considered by the Court and following observations are relevant as authored by the learned members of the Bench individually;

Pg:326

The retirement is admittedly premature. Thus, it is deprivation of right to continue up to age of sixty which the other civil servants even placed in the same categories, not to talk of the civil servant in general, do not suffer. Right to work in this context is very valuable, which is denied. This denial is more significant when it is visualised that in both categories, nature, experience and those placed in higher strata are normally hit by these provisions. It becomes more harsh when looked at from the angle that at the relevant stage of one's life and service, he needs the job to show his ultimate worth on the one hand and settle his affairs including family and children on the other. ***The application of this law also involves element of compulsion. The civil servant is forced to retire. Although no fault need be attributed and none is in fact attributed; however, the rules and practice relating thereto assume that it is not without fault or deficiency. Thus, it carries the stigma and disgrace in the pubic eye. This inference gets confirmed from the fact that the law itself is explicit in informing the enquirer, whosoever may be, that the retirement is in public interest. In other words, the continuance any further in the service of the aforesaid officer is not in the public interest. This cannot be without a fault, deficiency etc. Thus, this type of retirement adversely affects his reputation also. And as the curtailment of service is summary and sudden, the injury to reputation is also pronounced and acts as severe blow to the self-respect and dignity of man. Further, it is known in the community of the civil servants that the normal procedure for premature retirement is through an inquiry and opportunity of showing cause. When an officer is retired under the summary procedure and window of only pronouncement of "public interest" without a visible finding on facts in that behalf, it definitely operates as a penalty and thus is a penal action and the provision is penal. Otherwise too, if action is not taken under the***

impugned law the compulsory retirement under the normal law is a major penalty. Thus, looked at from whatever angle, the retirement under the impugned laws is a punishment in a way denial of right to work as also right to earn and right to reputation. If that is so, it has to be seen when so construed, whether they are repugnant to the Injunctions of the Qur'an and Sunnah. As has already been observed there are some injunctions which are directly violated by these laws when they are applied without the safeguards of notice and opportunity of hearing. In addition there are mass of Injunctions, the spirit and underlying principles whereof are also violated. They are stated in the Schedule to this judgment. (Emphasis supplied)

Pg:354

A close analysis of the judgment of the Federal Shariat Court shows that the impugned provisions have ultimately been declared to be repugnant to the Injunctions of Islam mainly because they did not provide for a prior opportunity of showing cause against the action of premature retirement.

Pg:358-358

Thus, although it is not possible to contend that the Holy Qur'an ordains that it is necessary to issue show-cause notice to a person before condemning him and, therefore, the competent authority, acting in good faith, can take the action of prematurely retiring a civil servant as provided for in subsections (i) and (ii) of section 13 of Civil Servants Act and the corresponding provisions of the Provincial Service Laws, but I feel that on the basis of the Verses of the Holy Qur'an cited above it can fairly be submitted that the principle emanating from the Verses, cited above, and the practice of the Almighty Allah which is evidenced therefrom entitles a civil servant to be informed of the reasons/grounds wherefor his retirement has been directed in "public interest". He should be told' why the action has been taken against him and in the words of God Almighty be asked to read his own record which has been responsible for the fate that has befallen him. Furthermore, since an appeal is competent before the Service Tribunals against. the action taken against him, the affected civil servant will be in a better position to challenge the order passed against him in case he feels that he has not been dealt with justly and fairly.

I further feel that no difference exists in this respect between the cases of civil servants who are in the employ of the Government and employees of the Statutory Corporation like WAPDA, Cantonment Boards, Universities etc. I would, therefore, agree with the submissions on this point made by Mr. Khalil Ramday, Additional Advocate-General (Punjab).Hence the employees of all such organization must also be intimated the reasons/grounds for their premature retirement which may be ordered

under provisions similar to those under which the civil servants are liable to be retired.

In this view of the matter an amendment will be necessary in the sense indicated above in the provisions impugned before us. Accordingly, a proviso may be added to the impugned provisions to the effect that in case where a direction is made to retire an employee from service under the aforesaid provisions the said person will be intimated the grounds/I reasons for the action taken against him which will be duly specified in the order of his retirement.

Pg:362-364

Retirement in this section amounts to termination of service with all the earned benefits, without stigma, not in any case as a measure of punishment. Does it not in its turn necessarily imply that if the other, conditions mentioned in the section are not satisfied, though public interest demands the retirement or termination .of service of such an employee, or his removal no action can be taken against him. This makes it clear that justification for the action is not grounded so much in public interest as in holding of the post of Additional Secretary and above or on completing 25 years of service which by itself is not a very relevant factor. If we had in the past law justifying such an action on completion of twenty five years qualifying service, when tenure was at pleasure, it does not justify its continuance when tenure is held not to be at pleasure.

There is no rational basis for carrying over a residual plenary power to retire or terminate employment any time after 25 years' service or of those who by their efficient and long service have come to hold the post of Additional Secretary and above. On the contrary, such a reservation of power cuts across the entire scheme of classification and control, protection and punishment. It has the appearance of being arbitrary and subjective and this is what is repugnant to the concept of a delegated power held in trust.(emphasis supplied)

Subsequently the aforesaid judgment has been considered and followed by the Hon'ble Supreme Court in the case of ***Chairman Pakistan Broadcasting Corporation Islamabad v. Nasir Ahmed and 3 others*** (**1995 SCMR 1593**), wherein order of compulsory retirement of an employee was set aside by the Service Tribunal. In this case an objection was also raised by the appellant that since the terms and conditions of service of respondent are not governed by the Civil Servants Act, 1973, but by the Rules and Regulations of the Broadcasting Corporation, and therefore the ratio of the judgment of the Shariat Appellate Bench is not applicable.

However, this objection was repelled as being misconceived. The relevant observations are as under;

> This colonial heritage which had cast dark shadow on our jurisprudence has now vanished and a new concept has developed which has introduced not only the principles of natural justice but also such principles of justice and equity which are enshrined in the Injunctions of Islam. As observed in Kaneez Fatima, the orders, acts and actions of Government functionaries, corporate authorities and statutory bodies can be examined on the basis of well recognized principles of Islamic common law and Injunctions of Islam. This Court in PLD 1987 SC 304 while exercising jurisdiction of the Shariat Appellate Bench considered the provision relating to compulsory retirement of civil servants. As quoted above, time was granted to amend it so as to allow the civil servant an opportunity to know about the grounds on which he was compulsorily retired. ***Compulsory retirement without any reasonable ground, cause or excuse, which at one time was treated not to carry stigma does not hold the field, particularly as it involves dignity of man as contained in Fundamental Right No.14 and violates the principles of natural justice. The extent of tenure of a civil servant up to the age 60 years is the law of the land but it is curtailed by giving arbitrary power to a competent authority to retire a civil servant/employee on completion of 25 years of service without giving any reasonable ground or informing him the grounds which had persuaded the competent authority to do so. One may say that it is a subjective satisfaction and conducive to the discipline of the civil servants but this alone may not be sufficient enough to allow deviation from the recognized principle of justice***. More particularly in cases of civil servants who do not enjoy Constitutional protection as before. In these circumstances and developments which have happened in the last two decades, the exercise of such arbitrary power which is always considered to be against the norms of justice will not help in establishing a disciplined service. ***Therefore any order passed compulsorily retiring a civil servant without giving due notice of the action proposed to be taken and opportunity of showing cause against such action shall be deemed to be repugnant to the Injunctions of Islam and in view of the judgment referred above, it cannot be justified.*** Law relating to such provisions was allowed to be amended by 11-3-1987. The consequence of not complying with the judgment would be that such law would cease to have legal effect.
>
> ***The contention that the judgment relates to Civil Servants Act and, therefore, it cannot apply to the rules and regulations for the Corporation is misconceived. The regulations of a Corporation relating to compulsory retirement which are similar to section 13 of Civil Servants Act could also attract the same principle and will be governed by this judgment. In PLD 1987 SC 304 at page 358, Nasim Hasan Shah, J. (as he then was) observed that "there exists no difference in this respect between cases of civil servants who are in the employment of the Government and employees of the statutory Corporations like WAPDA, Cantonment Board and Universities etc." The Pakistan Broadcasting Corporation falls within this category and is covered by the observations referred above. It is an admitted position that Regulation No.3 of Pakistan Broadcasting Corporation Employees (Retirement from Service) Regulations, 1980***

> ***which provides for compulsory retirement is in identical terms with section 13 of the Civil Servants Act. We, therefore, hold that any action taken or- order passed in pursuance of Regulation No.3 without giving any notice to the employee or without giving any opportunity of show cause against the proposed order of retirement, the action shall be treated as illegal, having no legal effect, We are of the opinion that the impugned order of compulsory retirement of respondent No.1 is void and of no legal effect. We, therefore, dismiss the appeal with costs. Respondent No.1 would have retired on reaching superannuation in the year 1985. He shall be entitled to all the admissible monetary benefits he would have been entitled to had he not remained out of the job in consequence of the impugned order.***

It must also be kept in the mind that PIA is though a Corporation, but is admittedly owned and managed by the Government itself. In such circumstances it cannot be ruled out that to some extent, there may be some discrimination by the Hi-ups against their Sub-ordinates, as is a normal routine and practice in Government owned organizations (in fact discrimination has been specifically pleaded and responded to in this judgment). It is not a case *stricto sensu*, where we should apply the rule of Master and Servant, whereas PIA is being governed with rules and regulations being a Government owned Corporation. In fact the Plaintiffs and or similarly placed employees cannot be left at the mercy of one officer, who is empowered to exercise powers ordinarily in service matters and related issues. In the case of ***Sadiq Amin Rahman v Pakistan International Airlines Corporation*** [**2016 PLC (Labour) 335**] a learned Single Judge while explaining the concept of Master and Servant, its origin and the current state of affairs even in United Kingdom from where this concept was initiated, has explicitly dealt with a case of an employee working in a Government owned and managed Organization (PIA) and has been pleased to hold as under;

> 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 Articles 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……"**

I am fully in agreement with the aforesaid findings of the learned Single Judge as in these types of Organizations there is always a chance that the person at the helm of affairs may single out an unwanted and or unlikeable employee to settle some personal score, who then becomes a fall out of such discriminative attitude and behavior. In this matter PIA has not been able to justify such extreme action taken against the Plaintiffs on the basis of evidence led by them, whereas, on the face of it, discrimination has been meted out by penalizing the plaintiffs only, and others have gone scot free. Even otherwise, in cases of employees who do not have specific statutory protection in respect of their terms and conditions of employment it is not always permissible for employers of Statutory Corporations / Government Owned Organizations / Companies to claim an unfettered discretion or right for dispensing with the service of an employee on such grounds which are otherwise not justified. (See ***Shahid Mehmood v Karachi Electric Supply Corporation***-**1996 CLC 1936**) In view of such discussion Issue No.2 is answered in negative.

In view of hereinabove discussion and observations issue No.4 is answered in the *affirmative.*

ISSUE No.5

19. After having come to the conclusion that the Plaintiffs mandatory retirement orders were illegal and unlawful, the Plaintiffs definitely are to be compensated and are entitled for award of damages as presently they

cannot be re-instated for having attained the age of superannuation. Even otherwise, in applying the principle of Master or Servant, which for various reasons is still applicable in this case as there being no Statutory Rules of Service in PIA, the only remedy for the plaintiffs are damages and Courts are fully competent to award such damages. The Plaintiffs appear to have claimed various relief(s) and amount through their respective averment(s) and prayer(s) in the plaint, i.e. for loss for present and future economic damages, provident fund, compensation, gratuity, pensionary benefits, loss on investments, loss on entitlement of free tickets, loss on medical facilities, loss on leave encashment, loss on account of reputation, mental pain, anguish, defamation, humiliation and career setbacks and all service benefits as would have been available if they remained under employment, all with mark up. In this context the plaintiffs in their evidence have relied upon the benefits which would have been paid to them according to rules and subsequent increase from time to time as granted by PIA to all other employees.

In an action of this kind the damages are always divided into two categories. First is Special damages, which are to be specifically pleaded and proved. This is what the plaintiffs have claimed as discussed above regarding loss of earning and out of pocket expenses and it is generally capable of exact calculation. Second is general damages which in law is implied on happening of certain event and so also in case of a favorable decision for a party. This may not be specifically pleaded and may or may not be capable of exact proof strictly. It may be observed that insofar as claim and award of general damages is concerned, though it may not have been specifically pleaded and proved, but any shortcoming or deficiency in the plaint or in the evidence will not come in the way of the Court to grant such damages once the plaintiff is entitled for a relief in such matters. It cannot be said that an employee must not have sustained injury and suffered any economic loss (all sorts included), on account of his wrongful retirement from service. In the given facts I am of the view that the plaintiffs are found to be entitled to claim damages on account of agony, physical stress, and loss of reputation as well as social persecution. This cannot be corrected through monetary compensation but at least they are entitled for such compensation, and it cannot be said that since this is not going to restore their position as it should have been, if they had not been retired, they are not entitled at all for any

compensation in the form of damages. The Hon'ble Supreme Court (by a decision of 2 is to 1) in the case of ***Abdul Majeed Khan v. Tawseen Abdul Haleem and others*** [**2012 PLC (C.S.) 574**], after a thread bare examination of various local and international case law in the additional note of the then Chief Justice (Iftikhar Muhammad Chaudhry. J.) has been pleased to observe as follows, which is relevant for the present controversy;

> 3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term `special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved. In the case of British Transport Commission v. Gourley [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened…….

Similar view has been expressed in the case of ***Qazi Dost Muhammad v Malik Dost Muhammad (*****1997 CLC 546*****), Islamic Republic of Pakistan v. Sh. Nawab Din (*****2003 CLC 991*****), Azizullah Sheikh v. Standard Chartered Bank Ltd., (*****2009 SCMR 276*****), Mrs. Alia Tareen v. Amanullah Khan* **(PLD 2009 SC 99).**

The next question which arises is that though the plaintiff's retirement has been held to be illegal and unlawful; but at the same time they cannot be reinstated, then what is the quantum of damages which in the given facts would suffice. In this regard it may be observed that there appears to be no hard and fast rule for determination of such quantum of damages. A learned Division Bench of this Court in the case

of ***National Bank of Pakistan v. Ghulam Muhammad Sagarwala*** (**PLD 1988 Karachi 489**) has been pleased to hold that in case of wrongful dismissal of an employee on the ground of misconduct, the measure of damages may include an amount to compensate him for the injury caused to him by attributing misconduct. A learned Single Judge of this Court in the case of ***Mehboob Rabbani v. Habib Bank Limited*** [**2006 PLC (C.S.) 272**] while dealing with more or less similar situation was pleased to grant damages to the tune of Rs.5.0Million by observing as follows;

> Since I have held that the dismissal of the plaintiff from service was wrong, he is entitled to recover damages from the defendant. The plaintiff can claim special damages (pecuniary damages) and general damages non-pecuniary damages). However, the plaintiff has only demanded general damages (non-pecuniary damages). In an action of personal injury the damages are always divided into two main parts, First, there is what is referred to as special damage which, has to be specially pleaded and proved. This consists of loss of earning and out of pocket expenses and is generally capable of substantially exact calculation. Secondly there is general damage which in law implies and is not specially pleaded and cannot be capable of exact proof. This includes compensation for pain and suffering. What is claimed in the present case is the general damages which cannot be specifically proved and any shortcoming in the plaint or in the evidence would not come in the way of the Court awarding damages. There is no hard and fast rule to calculate the quantum of compensation, as well as there is also no yardstick to measure the sufferings. The plaintiff has claimed damages on account of huge present and future economic loss and on account of undergoing irreversible phase of perpetual mental agony, physical stress and strain, social persecution, pangs of miseries and no likelihood of getting suitable job. The plaintiff no doubt must have sustained pecuniary loss on account of wrongful dismissal in the shape of earnings but no evidence was led in this regard. The plaint is silent in this regard. The plaintiff has also not led any evidence to prove the huge present and future economic loss. The plaintiff's dismissal from service was wrongful as the same was in violation of principles of natural justice. The plaintiff in the circumstances was entitled to damages for mental agony, physical stress and social persecution. This type of damages fell in the category of general damages for assessment of which no definite method is available. For computing/assessing damages consideration should be given to education, status in life, age and the position enjoyed during employment and his earnings while in employment of a person to whom injury has been caused. The plaintiff underwent harassment of unlawful dismissal during prime time of his life. The plaintiff was an officer of bank posted at New York and has enjoyed good reputation and social status and all of a sudden due to wrongful dismissal he lost everything. It is not believable that the wrongful dismissal has not caused any harm to plaintiff. The plaintiff is entitled to the general damages. The contention of the defendant that the dismissal was right

> and the plaintiff is not entitled to any damages is misconceived. Now the question is that what will be the quantum of damages for which the plaintiff is entitled under the circumstances of the case. There is no hard and fast rule for grant of damages and there is also no yardstick to measure the damages caused to a person and then to determine the compensation. This is the crucial point in this case. The amount though assessed must not appear to be punitive in nature or exemplary
>
> Applying the principles of the above case that compensation can be granted where a wrong has been done to a party and the damages flow from that wrong the plaintiff is entitled to a fair compensation to be assessed by the Court. The criteria is that while granting the H compensation the conscience of the Court should be satisfied that the damages awarded would if not completely, satisfactorily compensate the aggrieved party. I therefore, hold that plaintiff is entitled to the damages in the sum of Rs.50,00,000,

The Honorable Supreme Court in the case of ***Sufi Muhammad Ishaque v. Metropolitan Corporation Lahore*** (**PLD 1996 SC 737**) while discussing the award of compensation on account of mental torture and injuries of like nature has been pleased to hold as under;

> 5. Previously jurists and Judges were reluctant to grant claim for damages for mental shock and torture, but now it is well-settled that a person, who suffers mental torture and nervous shock, is entitled to recover damages. In Hinz v. Berry (1970) 2 QB 40, Lord Denning observed: "It' has been settled that damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative. Damages are, however, recoverable for nervous shock, or to-put it in medical terms, for any recognizable psychiatric illness caused by -the breach of duty by the defendant". In awarding damages for nervous shock and mental torture, or "psychiatric illness" or "Psychosomatic illness", which are the terms currently used the Court should be vigilant to see that the claim is not fanciful or remote and in fact it fairly or naturally results from the wrongful act, of the defendant. Therefore, in order to claim damages for mental or nervous shock and suffering or psychiatric illness, a party must prove wrongful act done by the defendant and that due to such act he has suffered mental shock and torture, which may, at times also result in physical injuries, but not in all cases.....
>
> 8. 'Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent- and magnitude of such suffering, but even on

> that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on, facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages Awarded would, if not completely, satisfactorily compensate the aggrieved party.

Again in the case of ***Gohar Ali and another v. Hoechst Pakistan Limited*** [**2009 PLC (C.S.) 464**] while following the aforesaid case of ***Sufi Muhammad Ishaque (Supra)*** the Hon'ble Supreme Court has been pleased to observe as follows;

> 10. Adverting to the question of compensation it may be observed that the effect of the application of the master and servant rule is that an employee of a corporation in the absence of violation of law or any statutory rule cannot press into service constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages. It was held by this Court in Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore through Mayor PLD 1996 SC 737 that there can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party.

Therefore, I am of the view that it would be appropriate and in the interest of justice and equity that Plaintiffs are paid compensation by PIA. Accordingly, after having considered the quantum of salary which the plaintiffs were earning, their future economic loss which they suffered due to their wrongful and illegal retirement (including pension prospects, gratuity, medical and all other service benefits available to such employees), I am of the view that it would be fair if plaintiffs are paid an amount of Rs 15.0 Million (Fifteen Million) each in lieu thereof as damages / compensation with simple mark-up (note-not on compound basis) at the rate of 6% per anum from the date of decree till its realization. The issue is answered accordingly.

ISSUE No.6

20. In view of hereinabove discussion all the Suit(s) are decreed in the above terms.

Dated: 04.08.2017

J U D G E

ARSHAD/