

# IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-3482 of 2012

**Present:**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Sher Muhammad Zafar and others..... Petitioners

Versus

Federation of Pakistan and others ..... Respondents

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**Date of hearing 01.02.2018**

Sher Mohammad Zafar, Petitioner in person.  
Mr. Khalid Jawed Advocate for Respondents No. 1.  
Mr. Sahikh Liaquat Hussain, Assistant Attorney General.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The petitioners have sought the following relief(s):-

- a) *Declare that the Petitioners are entitled for same benefits of passage /tickets facility in accordance with Admin Order No. 07/2012, dated 09<sup>th</sup> February keeping in view the consolidated passage Policy vide Admin Order No. 38/2001 dated 08<sup>th</sup> October, 2001 and be ordered that the same fruits of the above Admin Order No. 07/2012, dated 09<sup>th</sup> February, 2012 be extended to the Petitioner's advantage from the date when that of specific group of the management got benefits.*
- b) *Declare that the very act done for the specific group of the management of PIAC, by the Respondent PIAC is discriminatory, not contended under the circumstances, and unwarranted, illegal, unlawful, discriminatory void abinitio and inconsistent with the consolidated passage policy under Admin Order No. 38/2001, dated 08<sup>th</sup> October, 2001 is not sustainable and permissible and if same wrong is continued then it would be tantamount to perpetuate the said wrong.*

2. Brief facts of the case as averred by the petitioners, who are retired employees of the Respondent-Corporation (PIAC), are that after retirement their entitlement to facilities is governed by the terms and conditions as set up in the PIA Employees (Service & Discipline) Regulations, 1956. The petitioners have submitted that PIAC retirement rules issued vide Admin. Order No. 14/2000 dated 1<sup>st</sup> September, 2000, Admin. Order No. 16/2000 dated 18<sup>th</sup> September 2000 contain different "Passage Policies" for serving, retired and widow/widower of deceased employees and requirements their entitlement to different packages/facilities. The petitioners have further submitted that after issue of the Admin. Order No. 14 of 2000 and Order No. 16 of 2000 discussed supra, PIAC framed and issued "Passage Policy" vide Admin. Order No. 08 of 2001 dated 20.04.2001; but, their application was restricted to Pilots/Flight Engineers only vide Admin. Order No. 10/2001 dated 1<sup>st</sup> June, 2001. As narrated by the petitioners, that PIAC has been issuing administrative orders in this regard from time to time. The petitioners are aggrieved by Admin. Order No. 07 of 2012 dated 09.2.2012 which they narrate that contains very specific and discriminatory "Passage Policy" for serving & retired General Managers/Equivalentents and above (Admin. Category), by enhancing quantum of tickets for Domestic and International routes at par with previous entitlements allowed through Admin Order No. 38/2001 dated 8<sup>th</sup> October, 2001, which facility has not been allowed to the petitioners. The petitioners aggrieved by and dissatisfied with Admin. Order No. 07 of 2012 dated 09<sup>th</sup> February, 2012 have filed the instant petition.

3. Upon notice, the Respondents/PIAC filed para-wise comments and denied the allegations.

4. The petitioner Sher Mohammad Zaffar, present in person, submitted that the Respondents/PIAC after issuing "Consolidated Passage Policy" vide Admin Order 38/2001 dated 8<sup>th</sup> October, 2001 for all categories negated and violated its own policy on extraneous pressure of higher management just to provide more quantum of passage/tickets facility to specific group of the Respondents/PIAC management; thus deprived the petitioners of the facilities which were available to them without any cogent reasons and without taking the petitioners into confidence before effecting changes in the "Passage Policy" to their disadvantage. The petitioner in support of his contention has relied upon the Chief Executive Order No. 06/2001 and argued that the service under the Respondent-Corporation is service of Pakistan, therefore, the Respondents/PIAC is a statutory entity and its service rules are statutory; hence, petition is maintainable. He relied upon the unreported order dated 18.09.2009 passed by this Court in C.P. No. D-948 of 2009 in the case of society of Aircraft Engineers of Pakistan and others Vs. Federation of Pakistan and others and argued that by virtue of Section 2 of the Act 2008, Chief Executive Order No. 06/2001 was repealed, but, all administrative orders issued, actions taken and modifications made in the settlements are protected under Article 270-AA of the Constitution and are in field until altered or rescinded. He placed reliance upon Admin. Orders Nos. 13, 14, 15, 18, 20, 40, 41 and 48 of 2001 issued on various dates. Having explained his case as above, he prayed for allowing the petition.

5. Mr. Khalid Jawed, learned counsel for Respondents/PIAC has contended that the Petitioners were retired from service of Respondent-Corporation on reaching the age of superannuation i.e. 60 years on different dates in the year 2010, and 2011; that on their retirement the petitioners were paid their service/retirement dues and pensionary benefits for which they were entitled and they have received the same without any objections and they are also receiving their pension as per their entitlement; that issuance of Admin Order No. 14/2000 dated 01<sup>st</sup> September, 2000 and Admin Order No. 16/2000 dated 18<sup>th</sup> September, 2000 pertaining to revised passage entitlement/rules of all categories of employees including retired and families of deceased employees prevailing at the relevant time and amended subsequently; that Admin Order No. 10/2001 dated 1<sup>st</sup> June, 2001 was issued but subsequently a consolidated revised passage policy was issued. He further submitted that it is a prerogative of the Management of Respondents/PIAC to revise not only the passage and medical facilities but also the terms and conditions of service of its employees, keeping in view its operational requirement and applicable law for various categories of employees; that in this connection a consolidated revised passage entitlement rules in respect of all categories of serving/retired employees and families of deceased employees was notified vide Admin Order No. 38/2001 dated 08<sup>th</sup> October 2001 but the same was cancelled/ withdrawn vide Circular No. 35/2001 dated 12<sup>th</sup> October, 2001; that Admin Order No. 07/2012 dated 09<sup>th</sup> February, 2012 has not been issued with any so-called malafide intentions and is not discriminatory, unwarranted and illegal as alleged; that passage entitlement is based on status and length of service and varies from one

category/cadre to another category/cadre as such no comparison can be made and tenable with regard to passage facilities; that Respondent-Corporation has not misused its powers as alleged; that the passage facility is not a right of an employee, it is a privilege to be extended at the discretion of the Management; that as per PIA Schedule of Powers, PIAC Board of Directors is competent to approve/revise the terms and conditions of service and benefits so also the facilities in respect of serving and retired employees; that the management of PIAC has not evolved the Passage Policy for its own unprofessional persons through Admin Order No. 07/2012 as alleged. The passage entitlement is based on status and length of service and varies from one cadre to another cadre; that Admin Order No. 07/2012 dated 09<sup>th</sup> February, 2012 has been approved by PIA Board of Directors in its 336<sup>th</sup> Meeting. He lastly prayed for dismissal of the instant Petition.

6. Mr. Shaikh Liaquat Hussain learned Assistant Attorney General has adopted the arguments of learned counsel for Respondents/PIAC.

7. We have considered the contention of petitioners present in person and the learned counsel for the Respondents/PIAC as well as Learned Assistant Attorney General and have minutely gone through the material available on record.

8. Upon perusal of the pleadings and arguments extended thereon by both the Parties, two basic primal questions require our determination, which are as follows:

**Whether or not a writ could be issued against the Respondent-PIAC under Article 199 of the Constitution?**

**Whether *Passage policy issued under Admin Order No. 07/2012 dated 09<sup>th</sup> February, 2012 is a policy decision of Respondents/PIAC?***

9. The Respondents/PIAC is statutory body established under the Pakistan International Airlines Corporation Act 1956, now converted into a company vide Pakistan International Airline Corporation (conversion) Act, 2016.

10. To address primary question, we seek guidance from the decision rendered by the learned five member bench of the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) has already settled the issue No.1 involved in the instant matter.

11. We have carefully gone through the aforesaid judgment of the Honorable Supreme Court, the ratio decidendi in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the constitutional petition will be maintainable. The relevant observation of the Honorable Supreme Court is as under: ---

***"It was not disputed before this Court by appellants learned counsel that the respondent-employees were "persons in corporation service" within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a 'statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, (in Mubeen us Salam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC***

681). *They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above."*

12. In the aforesaid Judgment, the Larger Bench of Hon'ble Supreme Court has deduced and summarized the following principles of law:---

- (i) ***Violation of Service Rules or Regulations framed by the statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.***
- (ii) ***Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof, cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.***
- (iii) ***In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.***
- (iv) ***Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.***
- (v) ***That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.***

13. In the matters of Respondents/PIAC, We seek further guidance from the judgment rendered by the Hon'ble supreme

Court of Pakistan in the case of PIA Corporation Vs. Syed Suleman Alam Rizvi (2015 SCMR 1545) regarding the issue of maintainability of Constitution Petition under Article 199 of the Constitution. Much emphasis has been laid on the point of law that when the matters pertaining to the terms and conditions of service of Employees of a Respondents-Corporation, Constitution jurisdiction of this court cannot be invoked, on the premise that the terms and conditions of employees of the Respondents/PIAC are not governed by any statutory rules and the relationship between the Respondent-Corporation and its employees is that of Master and servant. The same principle has been reiterated in the case of Pakistan International Airline Corporation vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14).

14. Applying the aforesaid principles of law to the case of the Petitioners, we feel no hesitation, in drawing inference that the Respondent-Corporation is a statutory entity and Petitioners passage benefits is not governed under statutory rules; hence are not enforceable through Constitutional Petition. The case of Petitioners is neither covered under enforcement of law nor is violation of rule of natural justice attracted, in absence of infringement or any vested rights of the Petitioners or any disciplinary proceedings undertaken against them. These passage rules are not statutory, therefore, for all intent and purpose, these terms are for internal use, hence, the law laid down by the Honorable Supreme Court in Pakistan Defence Housing Authority (supra), does not support the case of the Petitioners. Guidance could be taken from the Hon'ble Apex Court's judgment enunciating the test of Statutory Rules and non-Statutory Rules

[Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)] and Muhammad Zaman etc versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571) where in Paragraph-7 following was held:-

***“According to the Judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Amed Khan, etc Vs. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/ regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under Section 54(1) of the Act]. Out of all the matters listed in Section 54(2) of the Act, clause (j) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift”. A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition. Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed.” (Emphasis Added).***

15. For the aforesaid reasons, we are of the view that no Employee of Respondents/PIAC can be prejudiced, if Respondent-PIAC frames the Passage Policy in service matters to approve/revise the terms and conditions of service and benefits so also the facilities in respect of serving and retired employees. As per the settled principle, Passage Policy fully falls within domain and policy decision of the Respondents/PIAC. We, thus, are of the

view that it is for the Respondent-Corporation to frame its passage policy for its employees/ex-employees which is an internal matter of the Respondent-Corporation, thus devoid of any Constitutional interference, on this proposition, the decision rendered by the Hon'ble Apex Court in the case of Ghulam Rasool vs. Government of Pakistan & others (PLD 2015 SC 6) is guiding principle on the issue.

16. Petitioners have failed to show any violation of their legal or fundamental rights to invoke the Constitutional jurisdiction of this Court. Reference is given in the case of human rights case No. 14392/2013 and others reported in (2014 SCMR 220), Dr. Alyas Qadeer, Tahir Vs. Secretary M/O CADD, Education Islamabad reported in (2014 SCMR 97).

17. In the light of above discussion and case law referred, the instant petition merit no considerations and the same is accordingly dismissed along with pending application(s), with no order as to costs.

JUDGE

JUDGE