

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 2117 / 2017

Plaintiff: Naveed Aziz through Mr. Mujtaba Sohail
Raja Advocate.

Defendant: Pakistan International Airlines Corporation
Ltd. through Mr. Khalid Javed Advocate.

For hearing of CMA No. 13498/2017.

Date of hearing: 18.02.2019.

Date of order: 18.02.2019.

O R D E R

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction, whereas, through listed application the Plaintiff seeks injunction directing the Defendant to arrange the Plaintiff on an organized flying roster for active flying duties; and so also pay salary and all related allowances as per PIAC-PALPA Working Agreement.

2. Learned Counsel for the Plaintiff submits that as per Air Navigation Order of Civil Aviation Authority, in terms of Clause 19.6 and 19.7, a Commercial Pilot License holder can be employed up to the age of 65 years, provided he has passed the requisite test(s); that the license of the Plaintiff is admittedly valid for such period; that Defendant vide Circular dated 12.05.2014 has also approved a policy for appointment of pilots on contract basis after retirement; that through Admin Order No. 07/2016 dated 31.05.2016 in Clause (m) it has been provided that all pilots will be offered contracts who have retired on attaining the age of superannuation; that before Plaintiff's retirement date i.e. 30.07.2017, he was issued letter dated 24.05.2017 for hiring on contractual employment and seeking consent, which was

given through letter dated 25.05.2017 and therefore, after attaining the age of superannuation, Plaintiff was required to be given a flying roster as well as salaries; however, the same has not been done; that a binding contract was entered into and Plaintiff cannot be discriminated once an offer was made; that Plaintiff accepted the offer without any qualification, hence he has entitled to be put on roster immediately; that such procedure was also approved by the Cabinet Division through Prime Minister vide its letter dated 3.12.2015; that the Honorable Supreme in its order dated 28.12.2018 passed in Human Rights Case No.8645/2018 has also permitted employment of pilots on contract basis. In support he has relied upon ***Al-Jamiaul Arabia Ahasanul Uloom and Jamia Masjid and others V. Syed Sibte Hassan and others (1999 YLR 1634)***.

3. On the other hand learned Counsel for the Defendant submits that the entire relief being sought through listed application amounts to grant of prayer in the Suit which cannot be done, therefore, listed application is liable to be dismissed; that letter dated 24.05.2017 had only sought consent, which was though given, but this does not amount to a contract which could be enforced through the Court; that the competent authority finally refused to employ the Plaintiff; that even otherwise, the employment is to be given on case to case basis and does not create any vested right, whereas, it is also dependent on vacancies for contractual employees; that reference to the order of the Hon'ble Supreme Court is irrelevant as it also requires that such employment can only be given subject to approval and qualification; therefore, the application be dismissed.

4. I have heard both the learned Counsel and perused the record. The Plaintiff appears to have been in employment of Defendant as a

pilot and was due to retire on 30.07.2017 and during continuity of his employment, he was issued a letter which is titled as "*hiring on contractual employment*" dated 24.05.2017 and states that since Plaintiff is about to retire on 30.07.2017, the management wants his written consent for contractual employment, and if he is interested, the Defendant will process the contractual agreement for necessary approval. This letter was immediately responded to by accepting, and giving unconditional consent and after retirement on 30.07.2017 Plaintiff has filed this Suit contending that this was a contract between the parties and Plaintiff is entitled for its benefits including the benefit of Administrative Order bearing No. 07/2016. However, it needs to be appreciated that the letter in question had though sought his consent; but it was neither an offer nor a contract which could be accepted. It clearly provides that once he consents, it will be processed for contractual agreement with necessary approval. This resultantly infers that firstly, a contract / agreement will be entered into, and secondly, it will be with the approval of the competent authority. It is a matter of record that no contract was offered nor it was approved by the management; therefore, merely seeking consent through this letter could not result in a binding contract and that too of employment. Secondly, the directive of the Prime Minister's office vide letter dated 3.12.2015 in question also clearly provides that contractual employment could only be considered on case to case basis. Notwithstanding this, even otherwise, a contract for employment cannot be obtained by force or as a vested right. It is also noteworthy that the letter in question was even issued during subsistence and validity of the employment of the Plaintiff with PIA, as by that time he was still in service and had not attained the age of superannuation. How a person could be offered a contract even before

his retirement is also not understandable. Nonetheless, mere issuance of this letter does not make out a case so as to grant any injunction to the Plaintiff. Again notwithstanding, normally a service contract, barring exceptions, is even otherwise, hardly enforceable, forcing upon an unwilling master, a servant he does not want, and the appropriate remedy has always been compensation and damages. In that also, the Plaintiff has failed to make out a case for any indulgence so as to grant him an injunctive relief. A decision recorded in meetings between two parties, after an offer and its acceptance, has not been treated as a binding contract by this Court as it needed the approval of a higher authority (which is also the case here) in the case reported as ***Karachi Flour Mills Union v Province of Sindh*** (PLD 1976 Karachi 623).

5. In view of such position, by means of a short order in the earlier part of the day, listed application was dismissed and these are the reasons thereof.

ARSHAD/

J U D G E