

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

**Suit No. 215 of 2019**

**Plaintiff:** **Farnaz Chaudhry, Through  
Mr. Muhammad Ali Lakhani, Advocate**

**Defendant:** **PIACL through Mr. Abdul Haleem Siddiqui,  
Advocate.**

**Date of Hearing:** **22.02.2019 & 07.03.2019.**

**Date of Judgment:** **27.03.2019**

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

**Muhammad Junaid Ghaffar J.** This is a Suit for Declaration and Permanent Injunction; whereas, the Plaintiff is primarily aggrieved by Notice / Transfer Order dated 27.12.2018, issued by the Defendant, whereby, she has been directed to report to Lahore office from Toronto Canada. The Plaintiff seeks the following relief(s):-

- i. Declare that the Plaintiff is entitled to the benefits, effects and incidences of (a) Circular No.16/2013 dated 30.04.2013; and (b) Clause 40.02.09 of the Defendant's Personnel Policies Manual;
- ii. (Notwithstanding foregoing) Declare that the Defendant (and / or persons acting under it, through it and on its behalf) is bound to ensure absolute compliance of the rule of law settled in the case of **Syed Akhtar Hussain Naqvi (PLD 2013 Supreme Court 195)**.
- iii. (Consequently) Declare that Notice dated 27.12.2018 is illegal, unlawful and ultra vires Circular No.16/2013 dated 30.04.2013; and (b) Clause 40.02.09 of the Defendant's Policies Manual;
- iv. Grant a Permanent Injunction suspending (in perpetuity) Notice dated 27.12.2018;
- v. Grant a Permanent Injunction restraining the Defendant (and / or person acting under it, through it and on its behalf) from taking any action(s) adverse to the rights of the Plaintiff, including by way of suspension of salary (and related emoluments) as per her entitlement on posting, initiation of disciplinary proceedings, dismissal and / or termination from service, and / or any other action(s) which may impede upon the Plaintiff's rights in service;
- vi. Grant any other relief(s) as may be deemed appropriate, just and necessary in the given circumstances;

vii. Grant costs of the proceedings.”

2. Brief facts as stated are that Plaintiff is in employment of Defendant and was posted as Station Manager at Toronto Canada vide Order dated 04.04.2017 for a period of three years and it is the case of the Plaintiff that she cannot be transferred back until the said period is completed. Learned Counsel for the Plaintiff has contended that Defendant while issuing the impugned Circular / Notice has acted contrary to rule of law, the advice of the Federal Government, as well as the dicta laid down by the Hon’ble Supreme Court in the case reported as **Syed Akhtar Hussain Naqvi (PLD 2013 Supreme Court 195)** famously known as **Anita Turab case**, whereby, protection has been given to the tenure of posting. Per learned Counsel the Defendant was earlier established and working in terms of Pakistan International Airline Corporation Act 1956 (“**Act of 1956**”) and by virtue of Section 5(2) of the said Act, PIA was bound to follow the policy directives issued by the Federal Government; whereas, presently a new Act has been enacted namely Pakistan International Airline Corporation (Conversion) Act 2016, (“**2016 Act**”) reclassifying PIA as a Public Limited Company with the absolute shareholding thereof vesting in the Federal Government and now it is a Public Sector Company as defined in Public Sector Companies (Corporate Governance) Rules 2013. Learned Counsel has then referred to Circular No.16 /2013 dated 30.04.2013, whereby, all departments of the Defendant were informed and directed to comply with the judgment rendered by the Hon’ble Supreme Court in **Anita Turab’s** case. Learned Counsel has then referred to Chapter-40 of the Personnel Policies Manual of PIA and Clause 40.02.09 which deals with the transfer policy and has contended that even otherwise and notwithstanding the aforesaid judgment of the

Hon'ble Supreme Court, it is provided in the said policy that the tenure of foreign posting shall normally be for a period of three years extendable by one year due to operational considerations and performance. Per learned Counsel after a threadbare consideration as well as analysis, the Plaintiff was shortlisted and transferred / posted to Toronto, Canada, vide letter dated 04.04.2017 and after completing requisite formalities, the Plaintiff joined her duties on 26.02.2018, and therefore, for all practical and legal purposes, her tenure at Toronto was to conclude in February, 2021; however, due to grave injustice at the hands of the Country Manager of PIA, the Plaintiff has been prematurely transferred back to Pakistan through impugned notice. Per learned Counsel, the Plaintiff being an employee of a Public Sector Company is entitled to be dealt with in accordance with law and so also in terms of Articles 4, 5 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. Per learned Counsel very vague and unfounded allegations have been levelled against the Plaintiff while issuing the impugned notice, whereas, the Plaintiff has always performed her assignment up to the best of her ability and any shortcomings thereon cannot be attributed completely and solely to the Plaintiff as there are other factors, which are to be considered in such operations. In support learned Counsel has referred to various correspondence as well as emails, placed on record through his rejoinder; whereas, according to the learned Counsel at least a hearing notice ought to have been issued to the Plaintiff before passing any such order. Per learned Counsel, it is settled law that discretion, if any, is to be exercised fairly and justly; whereas, PIA, being a Public Sector Company is required to be governed and managed on the basis of law as well as the policies of the Federal Government and cannot be left to the discretion of an individual, who because of one reason or the

other, can subject an employee to discrimination and may penalize for his or her own satisfaction. In support of his contention, he has relied upon the cases reported as ***Syed Mahmood Akhtar Naqvi and others V. Federation of Pakistan and others*** (PLD 2013 SC 195), ***Karamat Ali and others V. Federation of Pakistan and others*** (PLD 2018 SC 8), ***Khawaja Muhammad Asif V. Federation of Pakistan and others*** (2013 SCMR 1205), ***Pakistan International Airlines Corporation (PIAC) and others V. Nasir Jamal Malik and others*** (2001 SCMR 934), ***Shama Khan Zafar V. District Coordination Officer, Lodhran and others*** (2014 PLC (C.S.) 948), ***Sarhad Development Authority V. Syed Muhammad Latif Shah and others*** (2015 SCMR 1060), ***Pakistan International Airlines Corporation and others V. Tanweer ur Rehman and others*** (PLD 2010 SC 676), ***Human Rights Case No. 11827-S of 2018, Sui Southern Gas Company Ltd. V. Engr. Naraindas and others*** (PLD 2001 SC 555), ***The Managing Director, Sui Southern Gas Co. Ltd. V. Saleem Mustafa Shaikh and others*** (PLD 2001 SC 176), ***Nighat Yasmin V. Pakistan International Airlines Corporation Karachi and another*** (2004 SCMR 1820), ***Khalil Mughal V. Pakistan International Airlines Corporation*** (2018 PLC (C.S.) Note 34), ***Engineer Majeed Ahmed Memon V. Liaquat University of Medical and Health Sciences Jamshoro and others*** (2014 SCMR 1263), ***Investment Corporation of Pakistan V. S. Ahmed Sarwana*** (1987 MLD 2442), ***Government of West Pakistan and another V. Begum Agha Abdul Karim Shorish Kashmiri*** (PLD 1969 SC 14), ***Sharaf Faridi and 3 others V. The Federation of Islamic Republic of Pakistan and another*** (PLD 1989 Karachi 404), ***Ghulam Muhammad V. Province of Sindh and another*** (2014 PLC (C.S.) 797)

and ***Azhar Ali Farooqui & others V. Shehri Citizen for Better Investment (CBE) Civil Appeal No. 148 to 150 of 2018***

3. On the other hand, learned Counsel for PIA has objected to the very maintainability of the Suit on the ground that the relief being sought is in respect of specific performance of a service contract; hence in terms of Section 21 of the Specific Relief Act, the same is barred in law. According to him a mere transfer within the framework of the policies of PIA is not an adverse order as PIA has not initiated any disciplinary action or otherwise; nor has withheld any salary; hence there appears to be no cause of action to file instant Suit. Per learned Counsel, instant Suit has been filed through an attorney, whereas, the facts pertain to a posting abroad; hence, cannot be considered by this Court, and it is a Suit by an unauthorized person. Learned Counsel has then referred to the correspondence and letters addressed to the Plaintiff by PIA on her failure to perform the assignment as Station Manager and causing of inconvenience to its customers as well as losses to PIA and has contended that in these compelling circumstances, the tenure posting is not protected; whereas, PIA is required to take a decision in the interest of its business. According to him the Plaintiff failed to perform satisfactorily and so also in responding to the specific allegations; whereas, her attitude has been found to be nonresponsive; therefore, no case is made out. Learned Counsel has referred to a warning letter dated 06.12.2018 and has contended that the Plaintiff failed to properly respond; whereas, she also had some language issues as in Toronto, a person needs to know French and it is the case of the PIA that she lacks such expertise. Per learned Counsel PIA has always followed rules and regulations as issued from time to time and has not violated any orders of the Supreme Courts; whereas, three years' period is always dependent

on performance. In support of his contention, he has relied upon the cases reported as ***Syed Mahmood Akhtar Naqvi and others V. Federation of Pakistan and others (PLD 2013 SC 195)***, ***Messrs Malik and Haq and another V. Muhammad Shamsul Islam Chowdhury and two others (PLD 1961 SC 531)***, ***Pakistan International Airlines Corporation and others V. Tanweer ur Rehman and others (PLD 2010 SC 676)***, ***Anwar Hussain V. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194)***, ***Karachi Shipyard and Engineering Works Limited and 5 others V. Muhammad Shakir Sheikh (1993 CLC 330)***, ***Giasuddin Ahmed V. Province of East Pakistan and others (PLD 1966 DACCA 163)***, ***Muhammad Matin V. Mrs. Dino Manekji Chinoy and others (PLD 1983 K 387)***, ***Syed Rahim Shah V. Kassim and another (1992 MLD 1751)***, ***Manzoor Hussain V. Federation Service Tribunal, Islamabad and 3 others (1974 SCMR 519)*** and ***Sultan Maqsood V. The State (PLD 1985 SC 305)***.

4. I have heard both the learned Counsel and perused the record. At the request of learned Counsel for the Plaintiff (not seriously opposed by the Defendants' Counsel) instant Suit, which only involves a legal controversy, as to the protection of tenure of posting, if any, is being decided along with the listed application as a short cause in terms of Order 14 Rule 2 CPC read with Rule 22 of the Sindh Chief Court Rules (Original Side) on the following legal Issues:-

- i. Whether the Plaintiff is entitled for its tenure positing at Toronto for a period of three years in terms of Chapter 40.02.09 read with the dicta laid down by the Hon'ble Supreme Court in the case reported as *Syed Akhtar Hussain Naqvi and others v. Federation of Pakistan and others (PLD 2013 SC 195)*, commonly known as ***Anita Turab case***.
- ii. What should the decree be? ^

5. The facts to the extent of the Plaintiff's shortlisting as well as posting as Station Manager at Toronto Canada vide Letter dated 04.04.2017 for a period of three years and her transfer from Toronto to Lahore vide impugned Notice dated 27.12.2018 are not disputed; hence for this reason, the Plaintiff's Counsel has requested for deciding the entire Suit. The facts as narrated and not disputed are that Plaintiff was posted in Canada pursuant to order dated 4.4.2017 for a period of three years; however, it would be advantageous to reproduce the relevant part of said Posting / Transfer Order, which reads as under:-

"Ms. Farnaz Chaudhary  
P-45467  
Station Manager YYZ

Through: Station Manager-LHE

#### TRANSFER ORDER

1. Management has approved your foreign posting as Station Manager PIA, Toronto (YYZ) with immediate effect. **Your posting will be for a period of three years, provided always that the Management shall have the right to call you back and/or transfer you at any other place at any time without assigning any reason or ground whatsoever notwithstanding the period of your posting mentioned hereinabove.**

2.....

3.....

4. After completion of the aforesaid assignment period, **earlier recall or otherwise**, you shall return to Pakistan or may be assigned a new post elsewhere at the sole discretion of the Management.

5. You are required to complete the foreign posting formalities within a period of 15 days from the date of receipt of this letter. In case it is not possible to do the same, reasons for delay should be communicated to the undersigned in writing.

RIZWAN AHMED AWAN  
Deputy General Manager HR

6. Perusal of the aforesaid posting order reflects that the management of the PIA had approved Plaintiff's foreign posting as Station Manager, at

Toronto with immediate effect for a period of three years, provided always that the *management shall have the right to call her back and or transfer her at any other place at any time without assigning any reason or ground whatsoever*, notwithstanding the period of her posting mentioned in the said order. Para-4 further provides that after completion of the aforesaid assignment period, *earlier call or otherwise*, the Plaintiff was required to return to Pakistan or be assigned a new posting elsewhere at the sole discretion of the management. It is also a matter of record that before her joining she has executed an undertaking to abide by the said condition and the decision of the management of PIA. The posting order is very clear in terms that the tenure of three years was qualified and not absolute. Now the entire crux of the learned Counsel's arguments is to the effect that in view of Chapter 40.02.09 of the Personnel Policies Manual, the tenure of a foreign posting is a minimum of three years and cannot be curtailed. More so in view of the dicta laid down by the Hon'ble Supreme Court in **Anita Turab case (supra)**; however, it is of utmost importance to note that the directions of the Hon'ble Supreme Court in the said case are not to be applied across the board in each and every case as the Hon'ble Supreme Court itself has laid down an exception in the said judgment. It would be advantageous to refer to Para-22(ii) and 23, which in fact is a final conclusion in the said judgment and is relevant, which reads as under:-

“22. The principles of law enunciated hereinabove can be summarized as under:--

(i) .....

(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, **except for compelling reasons**, which should be recorded in writing and are judicially reviewable.



23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion."

7. On a careful perusal of the above findings, it is clear that the contention of the Plaintiff's Counsel is completely misconceived and based on a wrong and fallacious perception and understanding of the said judgment. Enough room has been provided for the Employer/departments to act in accordance with law as well as in view of the prevailing situation and given facts. First of all it is of utmost relevance to note that this judgment was rendered in the facts that all along it was noticed that Civil Servants were being transferred on continuous basis too frequently at the whims and desire of successive political Governments, reflecting bias and selectivity as well as discrimination. And all this was done without any reason or justification. Hence, the Hon'ble Supreme Court was compelled to take notice of; and passed the said judgment as a guideline for all Government functionaries. However, such finding is not absolute in terms and in my considered view, at least in the present facts and circumstances, it has no applicability so as to claim shelter under the same for a tenure posting of 3 years as contended. It is a matter of fact that PIA, though is a Public Sector Company; but is a National Airline competing in the airline business with other countries and is running its business in losses. It is but foremost for a business enterprise, always to consider its

business interests first. If for one reason or the other, a foreign posing of an employee is causing inconvenience to its customers, and resultantly in losses, the management, who is otherwise competent to do so, can always curtail the tenure of posting. In this matter enough material has been placed on record by PIA with specific stances when flights have been delayed, complaints have been lodged and passenger's inconvenience / resentment has been recorded. Therefore, all these appear to be meeting the criterion of sufficient grounds for the management and in the interest of doing competitive business to take such a decision. Since the matter is being decided only on a legal plane, as prayed, therefore, the correctness and the veracity of allegations so attributed to the Plaintiff and the response thereof cannot be adjudicated; however, I am of the considered view that in the given facts of this case the dicta laid down by the Hon'ble Supreme Court in the **Anita Turab** case read with rules and policies of the PIA is not absolute and it is not mandatory for PIA to follow these directions, without exception and against its business interest. As to the other exception in the aforesaid judgment in respect of judicial review of the allegations / circumstances which have prevailed upon PIA to pass the impugned order is concerned, it may be observed that such exercise is not warranted while deciding the controversy in hand as it is only being dealt with as a legal question, and at most, could have been interfered with by the Court, if evidence to the contrary (to the allegations) was led by the Plaintiff and burden was discharged, which has not been done, nor requested or pleaded, rather has been waived. Therefore, on this ground also no exception can be drawn in favor of the Plaintiff.

8. In view of such position, Issue No.1 is answered in negative; against the Plaintiff and in favor of the Defendant. As a consequence Issue No.2 is answered by dismissing the Suit with pending applications.

Dated: 27.03.2019

Judge

Ayaz P.S.