

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3500 of 2013

Hijab Qazi Petitioner
Versus
Chairman/CEO
PIAC & 04 others Respondents

Date of hearing: 13.05.2019

Date of Judgment: 15.05.2019

Qazi Wali Muhammad, Advocate for the Petitioner.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The Petitioner has filled the captioned Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 by calling in question the Order dated 01.02.2012 passed by Pakistan International Airlines Corporation [**PIAC**], whereby she was Dismissed from Service. The Petitioner was asked to satisfy this court with respect to maintainability of this Petition, more particularly in the light of latest verdict of the Honourable Supreme Court Pakistan in the case of Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others [**2019 SCMR 278**], whereby the Honourable Supreme Court has held as under:-

“6. We may also state that where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant". As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and

Servant'', Article 199 of the Constitution of Pakistan 1973 cannot be invoked. Reliance is placed on PIA Corporation v. Syed Suleman Alam Rizvi (1996 SCMR 1185), Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). (Emphasis Added)

2. Qazi Wali Muhammad learned Counsel for the Petitioner in his abortive attempt briefed us that Petitioner joined Pakistan International Airlines Corporation [**PIAC**] as Air Hostess in the year 2001 on contract basis; thereafter she was re-employed as Flight Steward/Air Hostess on 11th August, 2008 and was confirmed on the aforesaid post. In the year 2011, she intended to visit United States of America (USA) and applied for leave without pay and same was granted by competent authority of PIAC vide letter dated 21st July 2011, for 29 days and no objection in this regard was also granted vide letter dated 11.7.2011; that after few days of her stay in USA, she sustained serious pain of Palpitation shortness of breath on excretion lower back pain and contacted doctor in USA, who advised her complete rest and surgery of uterine fibroid, thereafter she applied for extension of leave without pay on medical ground, but the same was declined without assigning any cogent reason and was served with a Show Cause Notice dated September 14, 2011 on the accusation that she had travelled to USA without NOC, which constituted 'Misconduct', followed by another Show Cause Notice dated 23.9.2011 with the allegations that she purportedly appeared in the office of Cashier-PIAC on 9.8.2011 with voucher-1, meal voucher of Rs.20,000-, and Management of PIAC appointed inquiry officer Mr. Aftab Ahmed Abro, who issued the notices to her for appearance to explain the allegations; that after receiving the notice from inquiry office, she replied to that notice, however could not appear in person before

the inquiry officer, being out of Pakistan and requested that the matter may be kept pending till she returned back to Pakistan, in the meanwhile the Respondent-PIAC passed ex-parte order for dismissal from service of the Petitioner. Petitioner being aggrieved by and dissatisfied with the impugned dismissal order preferred Departmental Appeal on 29.6.2012 to the Chairman PIAC to redress her grievances and restore her service, but no reply was received. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondent-PIAC has filed the instant Petition on 31.08.2013.

3. We again asked as to how the captioned Petition is maintainable before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, on the premise that where the terms and conditions of employment of the Petitioner were not governed by any statutory provision and her service grievance is amenable to the Rule of "Master and Servant", and Article 199 of the Constitution of Pakistan could not be invoked.

4. Qazi Wali Muhammad, the learned Counsel for the Petitioner, in reply to the query, has submitted that the Respondent-PIAC is a statutory body, established under the Pakistan International Airlines Corporation Act 1956, now converted into a `Company` vide Pakistan International Airline Corporation (Conversion) Act, 2016; that Respondent-PIAC is a "Person" performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, this Court can exercise powers to issue Writ against the Respondent-PIAC. In support of his contention, he

relied upon the cases of *Pakistan Defence Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed* [2013 SCMR 1707], *Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others* [2015 SCMR 1257]. He next submitted that this is a hardship case. In support of his contention, he further relied upon various documents available with the Memo of Petition and argued that this Petition is maintainable and can be heard and decided on merits; that the Impugned Order of Dismissal from Service is illegal, and violative of principles of natural justice whereby the Petitioner was condemned unheard; that the Petitioner has not given the justice in the matter and intentionally violated the rules of the Corporation by the Management and victimized knowing that the Petitioner was not in Pakistan taking this advantage succeeded to pass ex-parte order of Dismissal from Service. He lastly prayed for allowing the instant Petition.

5. This Court vide orders dated 30.3.2018, 02.5.2018 & 27.3.2019 noticed the absence of the learned Counsel, representing the Respondent-PIAC and in his absence, we have heard Mr. Muhammad Nishat Warsi, learned DAG, who has raised the question of maintainability of the instant Petition and referred to the Written Reply of Respondents and argued that the Petitioner has come to this Court with unclean hands and has filed above Petition by concealing the true facts with malafide intention; that the Petitioner since her initial induction in the service of Respondent-PIAC, remained almost inefficient and did not come up to the level of satisfaction of the Management of Respondent-PIAC; that on account of her poor performance her contract was not

extended beyond 30.09.2006 and she was re-employed for two years on 11.8.2008 on contract; that on account of certain allegations as contained in the statement of allegations, she was afforded an opportunity of personal hearing vide letters dated 13.1.2012 & 26.1.2012, however, she did not turn up to defend the allegations. Resultantly, she was dismissed from service under Clause 75(a) and (1) of PIA Employees (Service & Discipline) Regulations, 1985 which are/were non-statutory, thus cannot be enforced through Writ Petition; that the Petitioner in her Appeal has disclosed that after removing allegations reported against her, the dismissal order may be converted into resignation on her part and asked for release for her dues. He lastly prayed for dismissal of the instant petition.

6. Learned Counsel for the Petitioner, in rebuttal, has referred to the Counter Objections filed on behalf of the Petitioner and argued that the Petitioner was a regular employee, therefore, could not have been dismissed from service, without conducting an inquiry and personal hearing; that the allegations leveled in the Statement of Allegations were false and fabricated one; that the Respondent-PIAC failed to consider the genuine request of the Petitioner with respect to her medical treatment in USA; that before passing any adverse order, the petitioner was entitled for opportunity of hearing,' as it has been held in the case of Anisa Rehman v. PIAC (1994 SCMR 2232).

7. We have heard the learned Counsel for the Petitioner on the point of Maintainability of the instant Petition and perused the material available on record

8. The foremost questions which require our findings are as under:-

- (i) Whether PIAC has statutory rules of service and writ could be issued against the Respondent-PIAC under Article 199 of the Constitution?
- (ii) Whether the instant Petition is maintainable under Article 199 of the Constitution, once the Hon'ble Supreme Court of Pakistan has concluded in its judgment with regard to maintainability of writ petition against PIAC, in the case of Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278).

9. The issue of maintainability of the captioned Constitutional Petition is involved in the present proceedings in view of the decisions rendered by the Honorable Supreme Court of Pakistan in the cases of Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676), Abdul Wahab and others v. HBL and others (2013 SCMR 1383), PIA Corporation v. Syed Suleman Alam Rizvi (2015 SCMR 1545), Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14), Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), Pakistan International Airlines Corporation & another vs. Zaeem Aziz Qureshi & another [2019 PLC (C.S) 194] and Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278), as such we would confine to that issue only and refrain ourselves to dilate upon the merits of the case on the issue involved in this petition, if we find this Petition is not maintainable under the law.

10. To answer the aforesaid proposition of law, the latest judgment passed by the Honorable Supreme Court in the case of Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278), on

the issue of maintainability of the Writ Petition, against PIAC, before this Court, has provided guiding principle in the aforesaid matter. In our view, once the findings recorded by the Honorable Supreme Court on the aforesaid issue cannot be assailed by resorting to filing of Writ Petition before this court under Article 199 of the Constitution. On the issue involved in the present proceedings, the decision of the Honorable Supreme Court in the case of PIA Corporation Vs. Syed Suleman Alam Rizvi (2015 SCMR 1545), is very clear in its terms.

11. To elaborate on the issue of non-statutory rules of service, broadly the salient characteristics of statutory rules are threefold:-

- a) Rules or Regulations are framed by statutory or public body;
- b) They are framed under the authority or powers conferred in the statute; and
- c) They have statutory Governmental approval or statutory sanction.

12. The question as to which rules or regulations are statutory and how they affect the rights of the employees, in this respect we seek guidance from the Judgments rendered by the Hon'ble Supreme Court of Pakistan in the cases of 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). The Judgments passed by the Honorable Supreme Court as discussed supra provide complete mechanism on the aforesaid proposition of law, which requires no further discussion on our part.

13. It is an established fact that when the matters pertaining to the terms and conditions of service of Employees of

Respondent-PIAC, Constitutional jurisdiction of this Court cannot be invoked, on the premise that the terms and conditions of the employees of the Respondents/PIAC are not governed by any Statutory Rules and the relationship between the Respondent-PIAC 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)**. In our view, the case of the Petitioner is fully answered by the aforesaid judgments of the Honorable Supreme Court.

14. The Pakistan International Airline Corporation (Conversion) Act, 2016 also provides that it has no statutory rules of service. We may also state that where conditions of service of employees are not regulated by a statutory provision, then such employees are to be governed by the principle of "Master and Servant" as discussed supra. As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", therefore, if there is any violation of the breach of the terms and conditions of the service, the same is not enforceable under Article 199 of the Constitution of Islamic Republic of Pakistan 1973.

15. The learned Counsel for the Petitioner while arguing the case has heavily relied upon the case of Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed **(2013 SCMR 1707)** to stress that in view of the Judgment of the Hon'ble Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization

and there are violation of statute/ Ordinance, the same can be enforced through constitutional jurisdiction and rule of Master and Servant has been diluted. We have carefully gone through the aforesaid judgment of the august 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 shall be maintainable. The relevant observation of the august 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."

16. 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.

17. Applying the aforesaid principles of law to the case of the Petitioner, we feel no hesitation in drawing inference that the Respondent-PIAC is a statutory entity and Petitioner is not governed under statutory rules of service, hence her terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of law nor is violation of rule of natural justice attracted in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings undertaken against her under statutory rules of service. The Service Rules of the Respondent-PIAC are not statutory; therefore, for all intent and purposes, these are contractual terms for internal use.

18. For the aforesaid reasons, we are of the view that the relationship of `Master and Servant` exist between the Petitioner and the Respondent-PIAC, hence, her grievance pertains to the terms and conditions of service, which cannot be enforced through a Writ. As to the Service Rules, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-PIAC. Guidance in this behalf could be taken from the Hon'ble Supreme Court's judgments in the cases of

Shafique Ahmed and Muhammad Zaman supra, enunciating the test of Statutory Rules and non-Statutory Rules.

19. The case law cited by the learned counsel for the petitioner is distinguishable from the facts obtained in the petition in hand.

20. In the light of above discussion and the case law referred above, the instant Petition is not maintainable and the same is dismissed.

JUDGE

JUDGE

Nadir/-