

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.874 of 2016

Nadeem Ahmed Chowdry

Versus

Federation of Pakistan & others

Date	Order with signature of Judge
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1. For orders as to maintainability of the suit.
2. For hearing of CMA 5949/16.

Dated: 17.11.2016

Mr. Muhammad Haseeb Jamali along with Barrister Hidayatullah Mangrio for plaintiff.

Mr. Muhammad Zeeshan Khan Sherwani for defendants No.2 and 3

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Mohammad Shafi Siddiqui, J.- Plaintiff has filed this suit for his reinstatement on account of the fact that the Committee representing the terminated employees, i.e. JAC PIAE and the Government of Pakistan had reached to an agreement dated 11.02.2011 in terms whereof all the employees of PIA suspended/terminated in the recent past by the then PIA administration stood reinstated. Along with the suit plaintiff has also filed injunction application which is fixed today along with preliminary objection as to the maintainability of the suit on account of limitation.

It is claimed by counsel for the plaintiff that plaintiff was removed from service on 25.10.2010. Earlier he also filed a petition bearing No.D-2640 of 2009 seeking declaration to the effect that the petitioner's right to seek retirement upon completion of 20 years of service under Admin Order No.43/2001 and 31/2007 being the revised salary terms and condition of service of pilots continue to hold the field being subsequent i.e. 24th March, 2007 as against 3rd December 2001 and such revised salary terms and conditions does not embark upon any element of disciplinary action.

Counsel for plaintiff submits that the question of limitation would not run against the plaintiff on account of the fact that he is covered under Article 120 of the Limitation Act and additionally the time to file instant suit is to be counted from the date of acknowledgment of right of reinstatement of plaintiff i.e. the agreement dated 11.02.2011 in pursuance of Section 19 of the Limitation Act. Learned counsel submits that this acknowledgement is sufficient to consider the case of the plaintiff within the prescribed period of limitation of six years, as provided in Article 120 of the Limitation Act. He submits that since there is no other Article provided in the Limitation Act to cure the remedy insofar as reinstatement of the plaintiff is concerned, therefore, the residuary article would come to rescue plaintiff.

In support of his contention as to applicability of Article 120 of the Limitation, counsel has relied upon the case of Syed Shaukat Hussain Rizvi v. Islamic Republic of Pakistan reported in 1987 SCMR 1911 and the case of Mehmood Hussain v. Pakistan International Airlines reported in 1989 PLC (CS) 549. He submits that this agreement between representative of JAC PIAE and the Government of Pakistan does not distinguish between those who were terminated on account of the strike and those who were removed from service on account of some earlier disciplinary action.

Learned counsel for defendants No.2 and 3 on the other hand has taken me to the contents of the Removal from Service notice dated 25.10.2010 and submits that the plaintiff was terminated in pursuance of Removal from Service (Special Powers) Ordinance, 2000 and the disciplinary action was taken against him on account of certain specific allegations against him. He submits that plaintiff is not within the frame of those who are subject matter of the agreement executed between JAC PIAE and the Government of Pakistan as it is in relation to those who

went on strike on account of certain rights which they claimed to have been violated. This agreement does not encompass those who were earlier removed or to whom removal from service notices were issued including the one issued to the plaintiff. He further submits that before he could be removed from service on account of certain allegations, he had also filed a petition seeking his retirement on completion 20 years' service on account of certain circulars/office orders such as Admin. Order No.43 of 2001 which was declined and as soon as interim order was vacated in the above referred petition plaintiff was removed from service in pursuance of Ordinance 2000, referred in the impugned notice.

Learned counsel for defendant in support of his submissions has relied upon the case of Chairman, District Screening Committee, Lahore v. Sharif Ahmed Hashmi reported in PLD 1976 SC 258 and concludes that not only the injunction application is liable to be dismissed but the suit itself as being barred by limitation.

I have heard the learned counsel and perused the material available on record and so also the law.

The contention of the learned counsel for the plaintiff insofar as acknowledgement by virtue of an agreement is concerned is immaterial since the suit is filed within six years of termination. Plaintiff was removed from service on account of a disciplinary action being taken against him and he was terminated under Ordinance 2000. There were certain serious allegations leveled against the plaintiff which are other than those regarding which the contract or agreement was reached between JAC PIAE and Government of Pakistan. Clause (c) of the Agreement is sufficient to establish that this is in relation to those employees who were terminated on account of on going strike hence clause (c) in fact would come to decide the controversy involved in the

suit as plaintiff's removal from service is certainly not on account of any strike that he may have additionally undertaken; it was certainly a disciplinary action on account of unauthorized travel in the year 2009 which was considered against him and hence contention that period of limitation being contractual obligation shall be recounted is immaterial. However, the cumulative effect of the above discussion leads to conclusion that plaintiff does not have prima facie case for reinstatement at this interlocutory stage or keeping a vacancy vacant. This agreement is neither an admission of the reinstatement of the plaintiff nor it could be construed as such.

It is needless to mention that the plaintiff has already exhausted remedy of filing a representation with PIA that he may be retired from service instead of termination. Even that representation has not stopped him from availing remedies available to him in terms of Section 9 and 10 of the Ordinance 2000 which relates to review and appeal in relation to his termination. He approached the Court at the verge of his limitation i.e. six years.

Be that as it may, as far as maintainability of suit on the point of limitation is concerned, I am of the view that it is a mixed question of law and facts however date of cause would start from date of termination and since the plaintiff was terminated on 25.10.2010 and he filed this suit on 12.04.2016 the suit may proceed. However in view of the facts as narrated above, the plaintiff has not been able to make out a prima facie case for grant of injunction, which is sought to the effect of suspension of impugned termination letter and keeping one post of pilot vacant. Accordingly, the injunction application is dismissed. The observations above are tentative and would not affect the trial.

Judge