

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D-3804 of 2020

Dr. Abdul Karim Channa
petitioner through : Mr. Ali Asadullah Bullo, advocate

Federation of Pakistan,
Respondent No.1 through : Mr. Muhammad Nishat Warsi, DAG

Civil Aviation Authority/
respondents No.2 and 3
through : Dr. Shahnawaz Memon, advocate

Date of hearing
& order : **31.01.2022**

ORDER

Through the instant petition, the petitioner is seeking the addition of the period, served with Civil Aviation Authority (`CAA`) on the retainer-ship basis, against the substantive post of Medical officer, as a regular employee, for pensionary benefits. An excerpt of the appointment letter dated is reproduced:

"APPOINTMENT ON CONTRACT - RETAINERSHIP BASIS

*Competent Authority is pleased to appoint you as part-time Medical Officer at CAA Medical Centre, CATI, Hyderabad on retainership basis for a period of one year commencing from **16TH DECEMBER, 1992** for rendering medical assistance to CAA employees and their authorised family members residing in the vicinity of CATI, Hyderabad.*

2. *The terms and conditions of your retainership employment are as under:*

- a) *To work at CAA Medical Centre, CATI Hyderabad on all working days as determined by Director, CATI.*
- b) *To extend emergency medical cover in case of Airport Emergencies and on holidays as and when need arises.*

3. *Other terms and conditions of your retainership are as follows:*

- i) *Your retainership-fees will be Rs.5000/- per month with no other fringe benefits and seniority.*
- ii) *You will be provided CAA transport for pickup/drop from your residence to CAA Medical Centre, CATI if you desire to stay in the city.*
- iii) *Your appointment is purely on temporary basis and your services can be terminated by the DGCAA with one month's notice or on payment of one month's retainership-fees in lieu of notice.*
- iv) *In case you wish to terminate your retainership, you will similarly give one month's prior notice in writing or surrender equivalent to one month's retainership fees in lieu of notice.*
- v) *For discipline and conduct you shall be governed by CAA Regulations.*
- vi) *The above arrangements can be extended for a further period with mutual consent if there is requirement.*

4. *In case the above retainership is acceptable to you, please confirm your willingness in writing so as to reach the Chief Medical Officer on 10-12-1992, failing which it will be assumed that you are not interest in this offer.*

5. *In case the above terms and conditions are acceptable to you, you are advised to report to Director, CATI for duty."*

2. Mr. Ali Asadullah Bullo, learned counsel for the petitioner, has contended that the instant case pertains to pensionary benefits of the petitioner, which have not been paid by the respondent-CAA by not counting the period of contractual/retainer-ship service of the petitioner with effect from 30th November 1992 till his service was converted into full-time retainership vide letter dated 14.3.2018 and thereafter in compliance of the Cabinet Sub Committee letter dated 11.07.2012, whereby his service was taken up on regular basis as Medical Officer (PG-08) with effect from 19.4.2012. Per learned counsel, non-counting the previous service with effect from 1992 till his age of superannuation in 2020 is illegal, unlawful, and unconstitutional; that the respondents have taken the work from the petitioner firstly on retainership below the minimum wage and continued to victimize till 2012 when the Honourable Supreme Court and Cabinet sub-committee intervened rescued the highhandedness of respondent-CAA and they perpetuated the which hunting after his retirement from service by not paying his legitimate dues of pension by just saying that no pension is admissible to the petitioner vide impugned letters; that the petitioner's service ought to have been effected from the date of his first appointment on contract- retainership basis with effect from 30.11.1992. Per learned counsel, this is sheer malafide on the part of respondent-CAA to deprive the counting of the previous service of the petitioner for pensionary benefits, thereby compelling the petitioner to approach this Court; that the petitioner served with CAA for about twenty (28) years against the substantive post of Medical Officer and in the last days kicked him off from his legitimate service dues as he served as Medical Officer till superannuation on regular basis without any break in service; that the career of petitioner during the aforesaid period was unblemished; that after attaining the age of superannuation, the respondent-CAA is not ready and willing to include the period of retainer-ship employment of the petitioner in his regular service, just to disqualify him from meeting the criteria of qualifying service for pension. He lastly argued that the case of the petitioner relates to the pensionary benefits, but he has been deprived of the same, which is a violation of his fundamental right, as such the instant petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. In support of his contentions, he has relied upon the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of Defence Housing Authority versus Lt. Col Jawaid, 2013 SCMR 1707, Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477) and Muhammad Rafi and other versus Federation of Pakistan and others, 2016 SCMR 2146.

3. Dr. Shahnawaz Memon, learned counsel for respondents 2 to 4, has argued that the instant petition is not maintainable on the ground that CAA does not have statutory Regulations of service; the petitioner is not entitled to discretionary relief under Article 199 of the Constitution. Learned counsel briefed us on the case and submitted that the petitioner was initially appointed in the year 1992 as Medical Officer on a retainer-ship basis and due to his performance, his contract was renewed/extended up till 2012, thereafter he was appointed afresh vide letter dated 01.07.2012, after following the usual

formalities. Per learned counsel, he has wrongly impugned letters dated 16.9.2019 (page 165) and 19.11.2019 (page 169) wherein respondents 2 and 3 have stated that he is entitled to only gratuity and not to a pension because the length of service has been counted from 19.04.2012 i.e. the date of his fresh appointment. He also submitted that the impugned letters have been issued under law laid down by the Hon'ble Supreme Court of Pakistan and his previous period on retainership cannot be counted in service for pensionary benefits for the reason that he was appointed afresh and not regularized with retrospective effect. Learned counsel added that the petitioner has accepted the terms and conditions of appointment dated 11.07.2012, besides that he did not possess a minimum length of service viz. 20 years as a regular employee to be entitled to superannuation pension, thus, the petitioner is estopped to claim such pensionary benefits through the present constitutional petition. He next contended that the entire service dues have already been paid to the petitioner and there is nothing on the part of respondents to pay him. In support of his contentions, he relied upon the case of the Pakistan Airline Pilots Association and others V/S Pakistan International Airline Corporation and another, 2019 SCMR 278. He relied upon the CAA Service Regulations-2014 and referred to clause 44(3) of the Regulations and submitted that deficiency of full one year or more cannot be condoned. He also referred to clauses 57 and 58 of the Regulations and submitted a retirement pension could only be granted to an employee who opts for his retirement before the age of superannuation after completing 25 years of service or apply for retirement on completion of 20 years of service. Learned counsel further relied upon clause 54(1) of the Regulations and submitted that the amount of pension that could be granted to an employee shall be determined by the length of his qualifying service. He lastly relied upon clause 54 of the Regulations and submitted that an employee who is otherwise is not entitled to receive a pension, shall be eligible to receive gratuity upon completion of qualifying service of more than 5 years and less than 10 years, not exceeding one-month emoluments of each complete year and the said gratuity amount has been paid to the petitioner as per law and nothing has been left on their part to be paid more. He lastly prayed for the dismissal of the instant petition.

4. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General, representing respondent No.1 supported the contentions of respondents 2 to 4 without filing comments.

5. We have heard arguments of the parties and have carefully perused the record as well as case-law cited at the bar.

6. The question of the jurisdiction of this Court about the maintainability of the captioned petition under Article 199 of the Constitution. Undoubtedly, Service Regulations of Civil Aviation Authority are Non-Statutory Rules of Service and admittedly the same were framed by the Authority of CAA according to Section 27 of the Pakistan Civil Aviation Authority Ordinance, 1982. The issue of maintainability of constitutional petition on account of Non- Statutory Rules of Service of CAA has already been settled by the Hon'ble Supreme Court in the case of Muhammad Rafi and another vs. Federation of Pakistan and others, 2016 SCMR 2146, as such no further deliberation on our part is required. However, in the given circumstances, we are fully fortified by the view

enunciated by the Hon'ble Supreme Court in para 50 of the judgment delivered in the case of *Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed*, **2013 SCMR 1707**, "that an aggrieved person can invoke constitutional jurisdiction of this Court against a public authority". The issue of statutory and non-statutory rules of service of CAA, the same has been elaborately dealt with by the Hon'ble Supreme Court of Pakistan in the case of Muhammad Rafi (supra) wherein it has been held that an aggrieved person could invoke the constitutional jurisdiction of this Court against a public authority if he satisfies that the act of authority was violative of the service regulations even if they were non-statutory. Accordingly, we are of the view that this petition is maintainable.

7. The question involved in the present proceedings is whether Temporary and officiating service rendered by the petitioner on retainer-ship as Medical Officer with effect from 1992 till his purported regularization firstly in 2008 and secondly in 2012 shall count for pension.

8. There is no denial of the fact that the petitioner served the respondent-CAA as Medical Doctor against the permanent post till his superannuation in 2020, however, there is a dispute about granting the pensionary benefits of the period, petitioner worked on a contract/retainer-ship basis with respondent-CAA as discussed supra.

9. Firstly, on the subject, the general principle of law is that Government servants borne on temporary establishments who have rendered more than five years continuous temporary service shall count such service for pension or gratuity; and Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

10. In the case of the petitioner, he was appointed in the year 1992 as Medical Doctor on a contract/retainer-ship basis in CAA on all working days, against the budgetary post, while his service was regularized firstly in the year 2008 as a full-time retainer and on regular basis in the year 2012. Prima-facie, petitioner's temporary service which was followed by his confirmation/regularization is liable to be counted for pensionary benefits; as per Chapter-IV, Rule 4.4 of the CAA Rules.

11. A civil servant becomes entitled to a pension after qualifying service of not less than 10 years as per formula provided thereunder; as per record, the petitioner's total length of service is 28 years; and, thus petitioner was/is entitled to the pensionary benefits on the aforesaid analogy.

12. To elaborate further on the issue of the protection of the previous service in the respondent-CAA on a retainer-ship basis for fixation and counting of the previous service for pension.

13. First and foremost, to understand the term retainership, means services based on a retainer agreement is a kind of relationship where a service provider charges a client for a certain amount of hours each month laying out the terms of the work to be conducted every month. Primarily, retainership falls between a one-off contract and permanent employment. From the above definition, this could be an agreement or a contract by and between the parties, whereas the petitioner was initially appointed on retainership and

thereafter permanent retainership and subsequently his service was regularized by the directives of the Cabinet sub Committee, this is a service provided by the petitioner to the respondent-CAA with effect from 1992 to 2020 when he reached the age of superannuation. Therefore in our considered view, the previous service of the petitioner ought to have been regularized. On the aforesaid proposition, we are guided by the decision of the Hon'ble Supreme Court of Pakistan in the case of Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others, **2015 SCMR 1257**.

14. In principle, when an employee was regularized, his total length of service, was to be computed from the day he joined the service that could be temporary or otherwise. Even the period of an employee's daily wages would be counted for computing pensionary benefits. On the aforesaid proposition, we are guided by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ikram Bari and others v. National Bank of Pakistan, **2005 SCMR 100**, wherein it has been held that even the service period of an employee of daily wager shall be counted for computing pensioner/benefits.

15. To elaborate further on the proposition in hand, we have noticed that Regulation No.34 of Civil Aviation Authority Employees Pay and Pension Regulations – 2014 spells out that qualifying service of an employee shall commence from the date he takes the charge of the post to which he is first appointed either substantively or in a temporary capacity. Provided that temporary service is followed without interruption by substantive appointment in the same or other service cadre or post.

16. Primarily, the right to claim pension is a right connected with the tenure of service which under the applicable pension rules has to be served by an employee to make him eligible for pension. So to claim pension, minimum qualifying service is the threshold that has to be crossed first which would then entitle an employee to claim the pension. The Hon'ble Supreme Court of Pakistan in its various pronouncements has held that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to the aging process and therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

17. The provisions of the CAA Service Regulations-2014 provide seven categories or classes of pension. These have been described as under:

- (i) Superannuation Pension which becomes payable on attaining 60 years of age ;
- (ii) Retiring Pension where an employee opts to retire after putting in 25 years qualifying service or such less time as has been prescribed for any special class of employees or is compulsorily retired by the authority competent to remove him from service ;
- (iii) Invalid Pension where an employee on account of bodily or mental infirmity has been permanently incapacitated from rendering further service. The death of an employee before his retirement can be equated with this last category i.e. Invalid Pension ;
- (iv) Compensation Pension which is granted to an employee on account of abolition of his permanent post or account of change like duties of his post and who has not opted to accept another post;
- (v) The compulsory retirement pension is admissible to an employee who is compulsorily retired from service only on a condition of imposition of major penalty under the disciplinary regulations and ;
- (vi) Compassionate allowance where the Authority shall forfeit the pension and gratuity of an employee who is dismissed or removed from service.
- (vii) Family Pension any claim for family pension shall be regulated by the provisions of these Regulations in force at the time when an employee retires or is discharged or is allowed to resign from service or dies, as the case may be.

18. For all these seven categories of pension, the condition precedent is the rendition of the minimum length of service. Therefore, rendering of qualifying service is a prerequisite for claiming the pension. Unless an employee of CAA renders minimum qualifying service he cannot become entitled to claim superannuation pension or any other privilege that is attached with pensionary rights as discussed supra. On the aforesaid proposition, we are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Sakina Riaz V/S University of Karachi and others, **2018 SCMR 1272**.

19. Prima facie, it appears from the record that the petitioner has twenty-eight (28) years' service to his credit which is a qualifying length of service for pension. However, the retainer-ship period of the petitioner had already been brought on normal budget by regularizing his previous service by the order of the Hon'ble Supreme Court of Pakistan as discussed supra which entitled him to entire twenty-eight (28) years' service benefits.

20. It is the well-settled proposition of law that if an employee who, during the period of probationary/ad-hoc service, was eligible to be confirmed against any post, retires from service before being confirmed, shall not, merely because of such retirement be refused confirmation to such post or any benefit accrued therefrom.

21. To add further, that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for pension or gratuity excluding the broken period of service, if any, rendered previously. Continuous temporary and officiating service of fewer than five years of services immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

22. The Honourable Supreme Court in the case of Ministry of Finance Vs. Syed Feroz Akhter Rizvi, **2021 SCMR 1546** has held that the following general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for grant and calculation of pension:

1. an employee who was employed on a contractual basis and is subsequently regularized may be entitled to pensionary benefits provided;
 - i) he is eligible for pension having served for the qualifying period (10 years) as a regular employee;
 - ii) for the purpose of calculating pensionary benefits his service as a contractual employee can be factored in to provide him any financial benefit that may be due to him;
 - iii) the period spent in employment as a contractual employee and as a regular employee cannot be aggregated to determine his eligibility for entitlement to pension.
 - iv) eligibility to receive pension is directly related to rendering qualifying service as a regular employee. Unless an employee has performed services in a regular appointment for the duration of the qualifying period (10 years), he is not entitled to receive the pension.

23. The Honourable Supreme Court has clarified that in case, an employee has served a Government Department for the duration of the period qualifying him to receive a pension, the period spent as a contractual employee may be added to his regular qualifying service only and only to calculate his pension and for no other purpose.

24. The Honourable Supreme Court further held that the provisions of Article 371-A of CSR start with a non-obstante clause which means that the said Article does not relate to the question of entitlement or eligibility to receive the pension. It is clearly and restricted to counting the period of a minimum of five years which has been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non-obstante clause in Article 371-A of CSR does not allow those who do not fulfill the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment to meet the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of CSR redundant, unnecessary, and surplus. We are therefore in no manner of doubt that Article 371 of CSR does not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled to grant of pension rather such period can be counted towards the calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.

25. It is not disputed that the petitioner rendered continuous service from 1992 to as Medical Doctor against a regular post on full working days. It is also not disputed that his re-tenership was taken up on a full-time basis in 2008 and subsequently regularized in 2012 by the intervention of the Cabinet Sub Committee, as we deem it appropriate to give effect the letter dated 14.3.2008 (page 109 of the file) issued by the Director-General CAA as the effect of regularization of service of the petitioner because of clause (a) to (e) of the contract; and finally, the petitioner was allowed to retire from the service of respondent-CAA in 2020, thus prima-facie, petitioner met the criteria of qualifying service for pension in terms of Article 371-A of CSR, which qualification is a necessary pre-requisite for grant of pension.

26. The Honourable Supreme Court has dealt with the issue that in a situation where the services of a contractual employee are converted into regular employment is that although the period spent in contractual employment subject to a minimum of

five years can be included in calculating pensionary benefits but only and only in a situation where the employee is otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment. Unless he meets the criteria of having served for the duration of the qualifying period, the period spent in contractual employment cannot be added to make up for any deficiency in qualifying service for eligibility to receive the pension.

27. We have noticed that the petitioner moved an application dated 13.02.2007 for conversion of retainership service into regular service (absorption in CAA) which application was forwarded to the Chief Medical Officer AERO Medical Centre HQ CAA Karachi vide letter dated 23.02.2007 and the competent authority i.e. Director General, CAA, revised terms and conditions of the service of the petitioner from retainership to full-time retainership basis on contract. An excerpt of the letter dated 14.3.2008 is reproduced as under:

"HIRING OF AUTHORIZED MEDICAL OFFICER ON FULL-TIME RETAINERSHIP BASIS

1. *As per decision of competent authority i.e. DG CAA, it has been decided to extend your retainership contract, with revised terms and conditions as under:*
2. *You will perform the following duties:*
 - a) *Work at M.I. Room JIAP Karachi from 08:00 am to 03:00 p.m. except official / gazetted holidays and or as determined by G.M. Medical Management with mutual consent.*
 - b) *Extend medical facilities to CAA employees and their authorized family members on daily basis as per CAA Medical Regulations/CAAO.*
 - c) *Utilize available facilities at the CAA Medical Centre JIAP, Karachi for all treatments. You shall refer employees or their eligible dependents to external hospitals or specialist doctors on need basis if facilities are not available in-house. You shall provide services to highest professional standards following medical practitioner's code of conduct, and under no circumstances shall you compromise on health of CAA's patients.*
3. *Other terms and conditions of your retainership will be as under:*
 - a) **Your retainership fee shall be Rs. 25,000.00 (Rupees twenty five thousand only) lump-sum per month all-inclusive for the period of this contract.**
 - b) **You shall utilize to the maximum extent facilities available at CAA Medical Centre JIAP Karachi on the basis of patient(s) condition so that the expenditure on medical service remains within the approved medical budget without compromising on standard of health or quality of service.**
 - c) **You shall plan and execute regular monitoring/surveillance of CAA panel laboratories and hospitals through inspectors and ensure physical verification of CAA patient(s) as assigned by the undersigned.**
 - d) **You will remain on call after office hours to attend to emergencies and shall attend office / the emergency immediately without claiming any financial compensation in lieu thereof.**
 - e) **You shall ensure that proper duties are assigned to subordinate paramedics and ancillary staff in accordance with their job requirements and workload.**
 - f) *If you intend to avail CAA pick and drop facility, 10% of the retainership fee will be deducted from your monthly retainership fee as specified above.*
 - g) *These arrangements can be extended for a further period with mutual consent on the basis of your performance appraisal report.*
 - h) *Your services can be terminated with one month's notice or on payment of one month's retainership fee in lieu of notice, in case your services are not required.*
 - i) *In case you wish to discontinue your retainership services, you will similarly give one month's prior notice in writing or surrender equivalent to one month's retainership fee in lieu of notice.*
 - j) *You will provide suitable replacement if you intend to proceed on long leave exceeding 05 days so that service to CAA employees and their authorized family members are not affected.*
4. *You shall be governed by CAA regulations in respect of discipline and conduct in particular you shall not derive any benefit directly or indirectly from any referrals of CAA patients to external service providers.*

5. The above mentioned terms and condition will be effective w.e.f. 1st December, 2007. The acceptance report may please be submitted to undersigned before 25th March 2008 failing which this officer shall be considered withdrawn.

6. Please sign and return duplicate of this letter to acknowledge acceptance of the above terms and conditions.”

28. We have also noticed that the Medical Officers of Jinnah International Airport Karachi moved an application to the Hon'ble Supreme Court and the same was converted into HRC No.14458-S/2009 and comments were called on the above application from the respondent-CAA and the same were furnished on 15.12.2009, thereafter the Cabinet Sub Committee took cognizance of the matter and directed the respondent-CAA to regularize the services of 1558 of contract employees of staff of respondent-CAA and other departments and the name of the petitioner appears at Sr. No.21 of the letter dated 19.4.2012 and at Sr. No.01 of the letter dated 25.05.2012 of Government of Pakistan Cabinet Secretariat Establishment Division (page 135 to 145). According to the decision taken by the Sub Committee by the Cabinet Secretariat Establishment Division Islamabad the competent authority i.e. DG CAA issued a letter dated 11.07.2012, unfortunately with effect from 19.04.2012 and not from the date of initial appointment in the year 1992. An excerpt of the letter dated 11.07.2012 is as under:

“Ref: HQCAA/2414/hr (ER&RM)/947

Dated: 1st July, 2012

APPOINTMENT ON REGULAR BASIS
DR. A.KARIM CHANNA AS MEDICAL OFFICER (PG-08)

1. Pursuant to decision taken by the Cabinet Secretariat Establishment Division, Islamabad the Competent Authority i.e. DG CAA has been pleased to appoint you Dr. A. Karim Channa S/o Ali Muhammad on regular basis in Pakistan Civil Aviation Authority as Medical Officer (PG-08) with effect from 19th April, 2012 on following terms and conditions:-

Terms and Conditions

(Emphasis added)”

29. Because of the foregoing legal position of the case, the petitioner is entitled to claim the entire twenty-eight (28) years' service/pensionary dues by counting his previous service to retire / superannuation benefits. Even otherwise under Section 474 (b) of CSR petitioner's case is fully covered under the aforesaid regulation. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of Nafees Ahmad V/S Government of Pakistan and others, 2000 §CMR 1864, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, 1991 §CMR 255, Chairman, Central Board of Revenue and others V/S Nawab Khan and others, 2010 § C M R 1399 and Chairman, Pakistan Railway, Government of Pakistan v. Shah Johan Shah (PLD 2016 §C 534).

30. Adverting to the plea raised by learned counsel for the respondent-CAA that CAA is an autonomous body and thus Civil Service Regulations are not applicable in the service of CAA, we are not inclined to agree with the aforesaid proposition for the simple reason that under Regulation No. 3.38 of Civil Aviation Service Regulations – 2000 followed by CAA Service Regulations 2014 provide that the federal government rules relating to retirement from service and admissibility of terminal benefits including pension, gratuity, invalidation, etc. as applicable to federal government employees shall mutatis mutandis

apply to CAA employees. The next point is that the service of the petitioner had commenced from the date of regularization and not from the date of initial appointment on a retainer-ship basis. Be that as it may, the commencement of service under CAA shall commence from the working day on which an employee reports for duty in any appointment, even though on the temporary post. Even the qualifying service for the aforesaid purpose is provided under Regulation 34 of Civil Aviation Authority Employees Pay and Pension Regulations-2014. Regulation 35 also provides service on probation against a post if followed by confirmation in the same or another post shall be counted in the qualifying service. Since the petitioner served with the respondents in the year 1990 and his service was regularized by the Hon'ble Supreme Court of Pakistan, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of Messrs State Oil Company Limited V/S Bakht Sidique and others, 2018 SCMR 1181, is guiding the issue involved in the matter, excerpt whereof is as under:

“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long term benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”

31. The case law cited by learned counsel for the respondent-CAA is on the issue of Master and Servant relationship as well as non-statutory rules of service of PIAC, whereas in the present case the Hon'ble Supreme Court in the case of Muhammad Rafi supra has already held that writ petition is maintainable against CAA, thus the respondents cannot be benefited from the judgment of the Hon'ble Supreme Court rendered in the case of PIAC supra.

32. To conclude the case in hand, prima-facie, petitioner continuously served with respondent-CAA, as such his contract/retainership employment is converted into regular service with effect from the letter dated 14.3.2008 issued by the Director-General, CAA, therefore, according to Articles 358, 371-A, 423, and 474 (b) of Civil Service Regulations, his previous service is countable to his regular service for service/pensionary benefits and other fringe benefits. Resultantly, the impugned letters dated 16.9.2019 and 26.9.2019 will not come in the way of the petitioner so far as the calculation of the pensionary benefits of the petitioner is concerned of the entire period with effect from his initial appointment till his age of superannuation.

33. In view of the above discussion, this petition is allowed with no order as to costs, and the respondents are directed to include the contract/retainer-ship employment of petitioner as his substantive service on regular basis, in the light of findings given in the preceding paragraph, for service dues and other allied pensionary benefits after adjusting the amount of gratuity if any received by the petitioner. Respondents are further directed to complete the entire exercise and settle the service dues of the petitioner and pay to him within sixty (60) days from the date of receipt of this judgment.

JUDGE
JUDGE