

THE HIGH COURT OF SINDH, KARACHI

Suit No. 2041 of 2019

[Haroon Abdullah versus Pakistan Airline Pilots' Association & 02 others]

Plaintiff : Haroon Abdullah through M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocates.

Defendants 1 & 2 : Pakistan Airline Pilots' Association [PALPA] and Saeed Khan, Chairman Election Committee, through Mr. Imtiaz Ahmad Ansari, Advocate.

Defendant 3 : Nemo.

Date of hearing : 26-01-2022

Date of Decision : 16-02-2022

JUDGMENT

Adnan Iqbal Chaudhry J.- By order dated 26-01-2022, the suit had been reserved for judgment by allowing CMA No. 22254 of 2021 moved by the Plaintiff under Rule 22(7) of the Sindh Chief Court Rules (O.S) for treating the suit as a short-cause as the same could be finally determined on the interpretation of certain provisions of the Constitution of the Pakistan Airline Pilots' Association [the 'PALPA Constitution'].

2. The Plaintiff is a retired airline pilot and a member of the Pakistan Airline Pilots' Association (PALPA). The suit was filed on 12-12-2019 when elections to PALPA were due and when the Plaintiff was denied the opportunity to contest the election of President PALPA on the ground that a retired pilot member was not eligible to contest such election. Pending suit, the elections are again due. Though a nomination form was issued to the Plaintiff pursuant to an interim order passed in the suit with the order to PALPA to decide his eligibility, that proposal form has been rejected by the Election

Committee of PALPA again on the ground that under the PALPA Constitution a retired pilot member is not eligible to contest election for President PALPA. Therefore, learned counsel for the Plaintiff submits that the matter remains a live issue and he presses for a determination of the suit before the election.

2. The grievance of the Plaintiff is set-out in para-2 of the plaint as follows:

“The Plaintiff is aggrieved since the Defendant No.1 does not allow a retired member to participate in its biannual elections, other than against the 2 posts reserved for retired members. It is submitted that the Plaintiff desires to run for principal officers of the Defendant No.1’s Executive Committee, including office of President and Honorary General Secretary. The incumbent Executive Committee of the Defendant No.1 and the Defendant No.2 are misinterpreting the relevant byelaws and are refusing to issue a proposal form to the Plaintiff”.

The Plaintiff therefore prays as follows:

- a. Declare that the Plaintiff is entitled to participate in biannual elections against principal offices of the Defendant No.1;
- b. Declare that the provisions of the Defendant No.1’s Constitution limiting rights of retiree members must be read down;
- c. Declare that restrictions on the right of active participation by retired members in activities of the Defendant No.1 (including its electoral process) are illegal and unlawful;
- d. Grant a mandatory injunction directing the Defendants No. 1 and 2 and / or persons acting under them, through them and / or on their behalves to receive and process the Plaintiff’s nomination form against a principal office;
- e. Grant a permanent injunction restraining the Defendants No. 1 and 2 and / or persons acting under them, through them and / or on their behalves from taking any further steps towards the electoral process (including ordering balloting and announcement of results) pending present cause;”

3. The issues on which the Plaintiff seeks final determination of this suit are proposed by him in CMA No. 22254/2021 as follows:

- (i) Whether Defendant No.1’s Constitution (read its ‘bye-laws’) derogate upon its documents of incorporation viz. (registered) Memorandum and Articles of Association ? If not, what would be the effect thereof ?

- (ii) Whether Defendant No.1's Constitution expressly bars/prohibits retired members from contesting for/holding Principal Offices ? If not, what would be the effect thereof ?
- (iii) Whether a retired member can/should be disqualified from his/her right to franchise ? If not, what would be the effect thereof ?
- (iv) What should the decree be ?

4. Mr. Muhammad Ali Lakhani, learned counsel for the Plaintiff submitted that the Articles of Association of PALPA do not expressly prohibit a retired pilot member from contesting the election to a Principal Office such as that of the President PALPA; that the interpretation being placed by the Defendants on Article 6.1.3.1 of the PALPA Constitution to deny the Plaintiff the right to contest such election is erroneous; that in any case Article 6.1.3.1 of the PALPA Constitution cannot be given effect contrary to the Articles of Association of PALPA; that in *Jahangir Moghul v. Karachi Gymkhana* (2012 CLC 1829) it has been held that the interpretation of rules of a club is a question of law for the Courts to resolve, hence the suit is maintainable; and that by order dated 23-12-2021 this Court has already observed that Article 6.1.3.1 was not to say that a retired pilot member is ineligible to contest election to the office of President PALPA.

On the other hand, Mr. Imtiaz Ansari, learned counsel for the Defendant No.1 submitted that Article 5.1.4.3 of the PALPA Constitution clearly states that only 'active pilot members' are eligible to contest elections to the Principal Offices of PALPA including that of the President, which stipulation is again reiterated in Article 6.1.4.1.3; that the Plaintiff himself, as the erstwhile General Secretary PALPA, is a signatory to the PALPA Constitution and is fully aware that a retired pilot member cannot contest election to the office of President PALPA; that the wisdom behind having active pilot members as Principal Officers is because they are in contact with the management of the employer, and therefore are best suited to

represent the members of PALPA; that at the time of the case of *Captain Suhail Baloch v. Pakistan Airlines Pilots Association* (2017 CLC Note 234), the Plaintiff was Chairman, Election Committee PALPA, and he himself had taken the position that retired pilot members are ineligible to contest election for President PALPA, and therefore he is now estopped from taking a contrary position.

5. Heard the learned counsel and perused the record.

Issue No. (i): Whether Defendant No. 1's Constitution (read its 'bye-laws') derogate upon its documents of incorporation viz. (registered) Memorandum and Articles of Association ? If not, what would be the effect thereof ?

6. The submission of learned counsel for the Plaintiff was that the document titled 'Constitution of PALPA' at page 43 was contrary to the Articles of Association of PALPA at page 27, which Articles did not make retired pilot members ineligible for election as Principal Officers of PALPA. However, such submission appears to be on the misconception that the said two documents/rules operate separately. The document at page 27 is the Articles of Association of PALPA at the time it was registered as a Society, filed for the purposes of registration as a requirement of section 2 of the Societies Registration Act, 1860. The Interpretation clause of those Articles states that those are the 'Rules and Regulations' of the Society, such nomenclature also having been used in section 2 of the Societies Registration Act, 1860 to refer to Articles of Association. Interpretation clause (b) of those Articles then provided that:

“(b) These Rules and Regulations mean the Rules and regulations as originally framed or altered from time to time by special resolution.”

Those Articles (at page 27) were subsequently amended by a special resolution passed by the general body of PALPA on 31-10-2005 as evident from page 63, and the amended Articles together with the Memorandum of Association are referred to by PALPA as 'The

Constitution of PALPA'. In fact, as it appears from page 65, the Plaintiff himself was the General Secretary of PALPA at the time the original Articles were amended, and therefore reliance now placed by him on the un-amended Articles is frivolous.

7. In other words, and to answer Issue No.(i), there is no conflict between 'The Constitution of PALPA' and the Articles of Association of PALPA as those are one and the same.

Issue No. (ii): Whether Defendant No.1's Constitution expressly bars/ prohibits retired members from contesting for / holding Principal Offices ? If not, what would be the effect thereof ?

8. The governing body of PALPA is an 'Executive Committee' comprised of seven (7) 'Principal Officers' and nine (9) 'Executive Members', the composition of which is set-out in Article 3.1.1 of the PALPA Constitution as follows:

***"3.1. EXECUTIVE COMMITTEE OF THE ASSOCIATION
3.1.1 COMPOSITION***

The Executive Committee of the Association shall consist of the Principal Officers and the Executive Members. All posts of the Executive Committee are honorary and voluntary in nature subject to the prescribed rules.

The Principal Officers of the Association shall be:

*President
Vice President
General Secretary
Three Joint Secretaries
Treasurer*

The Executive Members shall be nine (9) in number.

Seven (7) Executive Committee Member shall be elected from serving pilots and two (2) from retired/permanently medically grounded pilots.

Out of the Executive Committee comprising of serving Pilots, one Executive Committee Member shall be selected as IFALPA Director and one as ITF representative, for a period of two years."

It is important not to confuse the 'Executive Committee' of PALPA with the 'Executive Members'. As set out in Article 3.1.1 of the PALPA Constitution, the 'Executive Committee' is the governing body of PALPA comprising of the 'Principal Officers' and the

'Executive Members'. In other words, the 'Executive Members' are only one constituent of the 'Executive Committee'.

9. The eligibility of members to contest elections to a Principal Office and for the seat of an Executive Member, is prescribed in the PALPA Constitution as follows:

*"5.1.4.3. To elect a President, Vice President, General Secretary, Three Joint Secretaries, Treasurer and 7 (seven) members from active pilot members and two (2) members from retired/medically grounded pilots' cadre as Executive Members of the Association.
....."*

Thus, the first part of Article 5.1.4.3 clearly stipulates that only an 'active pilot member' is eligible to be elected to the Principal Office of the President, Vice President, General Secretary, Joint Secretaries and the Treasurer.

As regards the election to the nine (9) seats of Executive Members, the second part of Article 5.1.4.3 also stipulates that seven (7) are to be elected from 'active pilot members', and two (2) from 'retired/medically grounded pilots'. However, since the issue raised by the Plaintiff is only to the election of Principal Officers and not the Executive Members, a further discussion with regards to the latter is not necessitated.

The manner of voting-in the Principal Officers and the Executive Members (collectively the Executive Committee) as set-out in Article 6.1.3.1, again distinguishes 'active pilots' from 'retired pilots', and clearly stipulates that retired pilots can vote only for the retired pilots who are contesting for the two seats reserved in the Executive Committee for retired pilots (i.e. the two seats of Executive Members) as follows:

"6.1.3.1. The Active Pilots shall vote only for the Active Pilots contesting for the Executive Committee; and Retired/Permanently Medically Grounded Pilots shall vote only for the Retired/Permanently Medically Grounded Pilots who are contesting for the post of two Retired/Permanently Medically Grounded Pilots as Executive Committee Members."

Thus, there is no ambiguity in the PALPA Constitution that a retired pilot is not eligible to contest the election of President, Vice President, General Secretary, Joint Secretary or Treasurer of PALPA.

10. It appears that earlier an issue had arisen as to whether one Captain Suhail Baloch was eligible to contest election for President PALPA in circumstances where he would attain superannuation before the expiry of his term as President if elected. The Plaintiff, who was then acting as Chairman, Election Committee PALPA, had rejected Captain Suhail's nomination form, and in doing so he had endorsed the following reasons on 28-12-2015, a copy of which has been filed by PALPA with its written statement (page 279):

*“..... Since only an ‘Active Pilot’ can be elected as President, we understand that a period of at least Two (02) years in service is a mandatory commission insofar as seeking eligibility towards contesting elections for the office of President is concerned.
..... Captain Suhail Baloch's election to the office of President shall compel a circumstance whereby the distinction inter se ‘Active Pilots’ and ‘Retired Pilots’ shall be devastated; the term of the ‘Governing Body’ shall be prejudiced; and the workings of PALPA adversely impacted. We cannot, through an act of supervision, alter and/or vary the terms of the AOA (Articles of Association), which is binding on us.”*

The matter came into litigation before this Court. The judgment of the learned single Judge is reported as *Captain Suhail Baloch v. Pakistan Airlines Pilots Association* (2017 CLC Note 234), and that of the Division Bench as *Pakistan Airlines Pilots Association v. Captain Suhail Baloch* (2017 MLD 1835). The finding of the Court was that since Captain Suhail Baloch was still an active pilot at the time of the election, the fact that he would subsequently retire and would not be able to complete his term if elected, does not make him ineligible to contest the election; that since such an eventuality was not expressly dealt with by the PALPA Constitution, the Executive Committee would be free to hold an election to the seat of President for the remaining term if and when it becomes vacant on the retirement of the incumbent.

11. Thus, as manifest in the case *Captain Suhail Baloch*, it has always been the accepted interpretation of the PALPA Constitution, that a retired pilot member is not eligible to contest election for a Principal Office of PALPA such as the President PALPA. The Plaintiff, who was previously Chairman, Election Committee PALPA, was himself a proponent of that interpretation. The issue now raised by him to contend otherwise is frivolous.

12. Mr. Mohammad Ali Lakhani, learned counsel for the Plaintiff pointed to the order 23-12-2021 passed in this suit to argue that this Court has already observed that the PALPA Constitution does not make a retired pilot member ineligible for contesting the election of President PALPA. I have gone through the order dated 23-12-2021. Reliance placed by learned counsel on that order is completely misplaced; firstly, because Article 5.1.4.3 of the PALPA Constitution was not brought to the notice of the Court; and secondly, it was, in any case, only an interim order while issuing notice on a contempt application.

13. In view of the foregoing Issue No. (ii) is answered in the affirmative, viz. that the PALPA Constitution expressly bars a retired pilot member from contesting election to a Principal Office of PALPA. The said Constitution being the contract between PALPA and its members, it is binding on the Plaintiff.

Issue No. (iii): Whether a retired member can/should be disqualified from his/her right to franchise ? If not, what would be the effect thereof ?

14. Firstly, under the PALPA Constitution, a retired pilot member is not deprived of the right to franchise. Under Article 3.1.1 of the PALPA Constitution, retired pilots are given representation in the Executive Committee of PALPA by reserving two (2) seats for them as Executive Members. Secondly, as submitted by Mr. Imtiaz Ansari Advocate, the wisdom of having active pilot members as Principal Officers of PALPA is to further the primary objective of PALPA viz.

to negotiate better terms for its pilot members with their employer airline, which undertaking can best be achieved by active pilots in service. As pointed out above, during the case of *Captain Suhail Baloch*, the Plaintiff himself had advanced the argument that a retired pilot member cannot represent PALPA. That being the intent of the PALPA Constitution, a document arrived at with the consensus of the majority members of PALPA and accepted by them throughout, it is not for this Court to question its wisdom. Issue No. (iii) is answered accordingly.

Issue No. (iv): What should the decree be ?

15. Having answered all of the above issues against the Plaintiff, and having seen that the suit is frivolous, it is dismissed along with pending applications with a cost of Rs. 25,000/- payable by the Plaintiff to the Defendant No.1, PALPA.

JUDGE