

IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No. D – 3803 of 2020**

Date	Order with Signature of Judge(s)
------	----------------------------------

Before:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Suhaila Hussain,  
Petitioner, through : Mr. Fayyaz Ali Metlo, advocate.

Federation of Pakistan  
& 03 others, respondents  
through : Mr. Ghulam Rasool Korai, advocate  
for Pakistan International Airlines  
Corporation Limited (PIAC).

Date of hearing : 26.05.2021

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

**ADNAN-UL-KARIM MEMON, J.** – Petitioner, through the instant petition, seeks her pensionary benefits from the respondent-Pakistan International Airlines (PIA) in terms of her initial appointment order dated 01.1.1971, with markup on the delayed payments on the premise that the respondent-PIA has unnecessarily delayed and withheld her retirement benefits with effect from 08.6.1999.

2. The facts in the small scope giving rise to this petition are that the petitioner joined PIA, Karachi as a Language Instructor for Flight Information Services Closed Circuit Television in 1971. Her services were dispensed with by the respondent-PIA in the year 1981, without any formal order of termination, by invoking Martial Law Regulation No.52. Later the Government of Pakistan declared to review the cases of Government servants who were removed or dismissed under Martial Law Regulations No-52. The petitioner has averred that she also approached the said Board for Review of her reinstatement in service and the Review Board after scrutinizing her case, allowed her to continue with her service, vide appointment order dated 21.03.1990, with the condition that on her reemployment, she would not be allowed the benefits of her previous employment. Later on in the year 1999, she was allowed to retire from her service vide office order dated 08.06.1999 (Page-13). The grievance of the petitioner started aggravating when she was not allowed all her perks and privileges, inclusive of her retirement dues as admissible to a regular employee of the respondent-PIA. Petitioner has averred that she has not

been paid her pensionary dues, with effect from the date of her initial appointment i.e. 01.1.1971 till her retirement on 08.6.1999. Petitioner further averred that due to inaction on the part of the respondent-PIA she moved an application for payment of pension vide letter dated 27.11.2008, which was duly received but no action was taken, however, she was compelled to move another application dated 02<sup>nd</sup> October 2009 and followed by another application dated 07.01.2020 but to no avail, which compelled her to approach this Court for grant of her pensionary benefits by counting her previous service rendered in PIA in the year 1971 till 1990, whereby she was purportedly reemployed, hence this petition.

3. The learned counsel for the respondent-PIA has contended that in pursuance of the recommendations made by the Review Board, the petitioner was offered re-employment vide letter dated 21.3.1990 based on the terms and conditions contained therein and the petitioner had accepted the same and joined the service as a fresh appointee, therefore, she would not be entitled to the benefit of service rendered by her in the Corporation before her re-employment. Learned counsel vehemently argued that re-employment is nothing but a fresh appointment and the grant of benefit of the previous service to the petitioner are not called for. In support of his contention, he relied upon the preliminary legal objections filed on behalf of respondent-PIA and argued that the petitioner has received full benefits in a lump sum up to the date of her superannuation i.e. 05.06.1999, as she served for less than 10 years after her reemployment, as such she is not entitled to any retirement benefits. He relied upon the cases of Pakistan Airline Pilot Association and others v. Pakistan International Airline and another (2019 SCMR 278), Pakistan International Airlines Corporation v. Aziz-ur-Rehman Choudhry and another (2016 SCMR 14), PIA Corporation v. Syed Suleman Alam Rizvi and others (2015 SCMR 1545), Pakistan International Airlines Corporation and others v. Tanveer-ur-Rehman and others (PLD 2010 SC 676), Civil Review Petitions No.7-K to 13-K of 2001 (PIACL v Malik Khalid Hussain and others) order dated 13.05.2002 and Judgment dated 23.08.2019 passed in Suit No. 1396 of 2010 (Aurangzaib Qureshi and others v. The Chairman, Pakistan International Airlines & another). He lastly prayed for the dismissal of the instant petition.

4. Learned counsel for the petitioner has refuted the stance of the respondent-PIA by arguing that the order of rejoining of service was passed which was based on the recommendations made by the Review Board, according to which her previous service was to be counted for the

pensionary benefit and seniority and therefore, the same was to be necessarily counted for all practical purposes, as she would be deemed to be in continuous service without any break. Learned counsel further argued that the injustice being done by depriving her of the legitimate right of reinstatement in service, with the benefit of the previous service as recommended by the Review Board was undone and the terms and conditions of service contained in the letter dated 21.3.1990 would be deemed to be revised. Learned counsel added that under similar circumstances, the Hon'ble Supreme Court in the case of Pakistan International Airlines Corporation through Chairman v. Inayat Rasool has dealt with the issue as involved in the present proceedings elaborately by dismissing the petition filed by PIA, by extending the benefits of the previous service to the colleague of the petitioner namely Inayat Rasool. Per learned counsel, the case of the petitioner is akin to the case of Inayat Rasool Supra and the same benefit is required to be given to the petitioner. Learned counsel further relied upon the case of National Insurance Company Ltd. V. Ahmed Ali Bhambhro and others (2018 SCMR 2116) and argued that her earlier service in PIA, as discussed supra, could be counted towards pensionary benefits, which come to approximately 29 years. Learned counsel also relied upon Article 423, Civil Service Regulations, which provides that the service rendered previously shall be counted towards pension. He further argued that interruption in service due to removal on account of retrenchment of a post could be deemed to have been condoned as the service of the petitioner rendered by her in PIA w.e.f. 1971 till her reinstatement in the year 1990 could be counted towards pensionary benefits as per Article 371-A CSR. He prayed for allowing the instant petition.

5. The pivotal question for our determination would be as to whether the petitioner was entitled to the benefit of her previous service rendered with effect from 1971 till her reinstatement/re-employment in the year 1990 or not?

6. The Hon'ble Supreme Court in the case of Inayat Rasool supra has already settled the aforesaid proposition. Thus, there is no need to further deliberate on the subject issue. Plea taken by the learned counsel for the respondent-PIA that the petitioner was reemployed and not reinstated; and, there is a difference between re-employment and reinstatement is not found to be tenable. The proposition noted above is obvious as re-employment in plain words is a fresh appointment whereas reinstatement is to place a person in his previous position. However, in the

present case, we have been informed that the Review Board recommended the petitioner to continue with her service and the respondent-PIA reemployed her vide Office Order dated 21.3.1990 without any benefit of her previous service. The issue is about the protection of the previous service in the respondent-PIA with effect from 01.01.1971 till her retirement in the year 1999 for fixation and counting of the previous service for pension. This protection is provided under Fundamental Rule 22-A, which is fully applicable in the case of the petitioner, in the light of Service Regulations, as discussed supra.

7. To add further on the aforesaid proposition, Article 371-A of Civil Service Regulations is clear in its terms that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service would be counted for such service for the purposes of pension or gratuity excluding the broken period of service, if any, rendered previously. Continuous temporary and officiating service of less than five years' service immediately followed by confirmation shall also be counted for gratuity or pension, as the case may be.

8. Record reflects that petitioner was appointed in the year 1971 as a language teacher on a permanent basis against a substantive post and she continuously served as such and then her services were dispensed with, in the year 1981 and the same was restored in the year 1990 with purported order of re-employment, and therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, her previous service is countable to her substantive/regular service for service benefits and other fringe benefits.

9. In view of the foregoing legal position of the case, the petitioner is entitled to claim the entire twenty-nine (29) years' service dues by counting her previous service for the purpose of retiring benefits. Even otherwise under Regulation 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 Pakistan International Airlines Corporation through Chairman v. Inayat Rasool (2003 SCMR 1128) Nafees Ahmad V/S Government of Pakistan and others, 2000 SCMR 1864, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, 1991 SCMR 255, and Chairman, Central Board of Revenue and others V/S Nawab Khan and others, 2010 S C M R 1399.

10. The case law cited by the learned counsel for the respondent-PIA is on the issue of master and servant relationship as well as non-statutory rules of service of PIAC, whereas the Hon'ble Supreme Court in the case of Inayat Rasool supra has already granted similar relief to the colleague of the petitioner. In our view, once the Honourable Supreme Court has settled the issue of counting the previous service in the case of Inayat Rasool supra, in such a case the dictates of justice demand that the benefit of the aforesaid decision be extended to the petitioner as her case seems to be akin to the aforesaid case, therefore, the question of maintainability of this constitutional petition could not be stretched furthermore, thus the respondent-PIA cannot be benefited from the judgment of the Hon'ble Supreme Court rendered in the case of Pakistan Airline Pilots Association and others v. Pakistan International Airline and another (2019 SCMR 278).

11. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the various orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, which act on the part of the respondents-PIA cannot be appreciated at all, even otherwise the same act is in disregard of the Judgment passed by the Hon'ble Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35).

12. In view of the foregoing discussion, this petition is allowed, however, with no order as to costs. The competent authority of the respondent-PIA is directed to recalculate the service and pensionary benefits of the petitioner and increases accrued thereon with regard to the withheld pensionary benefits with effect from 08.6.1999 to date. Petition and the pending applications stand disposed of accordingly.

JUDGE

JUDGE