

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

Suit No. 2999 of 2021

Civil Aviation Authority Officers Association of Pakistan
& another

Versus

Federation of Pakistan & others

Date of Hearing: 10.03.2022 and 15.03.2022

Plaintiffs: Through Mr. Faizan H. Memon Advocate.

Defendant No.1: Through Mr. Khursheed Jawed, DAG.

Defendants No.2 to 4: Through Mr. Khalid Mahmood Siddiqui Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This suit challenges a memo that concerns with pre-selection of candidates/employees/officers of Executive Group 5 to Group 8 by the Board for promotion in Civil Aviation Authority.

2. Plaintiff No.1 is a self-created association of officers of Civil Aviation Authority whereas plaintiff No.2 claimed to be its secretary general. It is case of the plaintiffs that Civil Aviation Authority was constituted by virtue of Civil Aviation Authority Ordinance, 1982 (hereinafter referred to as “Ordinance 1982”). However, by virtue of Pakistan Civil Aviation Authority Ordinance, 2021 (hereinafter referred as “PCAA Ordinance”) and Pakistan Airport Authority Ordinance, 2021 (hereinafter referred to as “PAA Ordinance”), two respective authorities were constituted and defendant No.4 i.e. Director HR was looking after affairs of both the authorities.

3. It is argued that by virtue of PCAA Ordinance, the employees of the then defunct Civil Aviation Authority belonging to Regulatory Division were to be transferred to Pakistan Civil Aviation Authority of 2021's Ordinance on the same terms and conditions with the existing rules and regulations whereas by virtue of PAA Ordinance the employees belonging to airport and operation division of Civil Aviation Authority were required to be transferred to newly established Pakistan Airport Authority on the date to be fixed by the federal government in this regard. Although nothing claimed to have been done under these two ordinances till filing of this suit on 20.12.2021 however on the countdown of statutory period, the ordinances stood repealed.

4. It is plaintiffs' case that plaintiff No.2 is liable to be transferred to Pakistan Airport Authority under PAA Ordinance and hence no pre-selection board meeting could be held under the common umbrella of Civil Aviation Authority Ordinance of 1982, for officers of executive group 5 onwards unless the employees of the two divisions stood transferred to their respective authorities under PCAA and PAA Ordinances. He claimed that two separate lists of divided authorities were to be prepared before pre-selection of Board meeting for their individual pre-selection.

5. Mr. Khalid Mehmood Siddiqui, learned counsel for defendants on the other hand has raised objection to the maintainability of this suit as it was filed by alleged association, which ceased to exist on account of its tenure and also plaintiff No.2 ceases to act as its secretary general. Learned counsel further submitted that the two ordinances relied upon have lapsed by application of Article 89 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred as "the Constitution") and no benefit could be derived by the plaintiffs thereunder. He argued that the employees of Civil Aviation Authority under Ordinance 1982 are

being considered for promotion for which pre-selection board meeting was being convened when this suit was filed however injunctive order was obtained which virtually halted entire process of promotion of 180 employees of Civil Aviation Authority.

6. I have heard the learned counsel for parties and perused material available on record.

7. Along with the suit plaintiffs have filed application for interim relief seeking orders that the Board be restrained from convening the meeting for pre-selection for the purposes of promotion of the respective officers of executive group 5 onwards. Similarly, defendants have filed an application for modification in the order along with an application under order VII rule 11 CPC for rejection of plaint as no cause, per learned counsel, accrued to the association, which is otherwise defunct and ceased to exist at the time of filing of suit.

8. Previously Pakistan Civil Aviation Authority was performing its functions in pursuance of Civil Aviation Ordinance, 1960. However, this is only for the purposes of tracing the history of the functions undertaken by the Federal Government through a statutory frame. Plaintiffs have attempted to seek their respective reliefs under the repealed ordinances, as referred above. The two presidential ordinances, which are relied upon, were promulgated on 06.07.2021 for 120 days. By virtue of proviso to Article 89(2)(ii) it could have been laid before two houses (as it did not contain legislation dealing with any of the matter referred to in paragraph i) for an extension. By virtue of a resolution of National Assembly the two ordinances were extended for further period of 120 days w.e.f. 03.11.2021 under the aforesaid proviso. Now the implication of these repealed ordinances is questioned.

9. This subject of temporary legislation was first dressed up in the case of Muhammad Sharif¹ under Article 69 of Constitution of 1956. This was followed by another judgment in the case of Mir Ahmed Nawaz² under Article 29 of Constitution of 1962. The country was then graced with 1973 Constitution and the pari materia for above issue is contained in Article 89.

10. Article 89 of the Constitution was then came for consideration before Hon'ble Supreme Court in the case of Zia Ullah Khan³ and relying on the case of Mehreen Zaibun Nisa⁴, the Five-Member Bench held that temporary legislation cannot be given permanency in the absence of any sound legal principle or backing of law. Paragraph 7A of the judgment provides that in terms of Article 264a where law is repealed or deemed to have been repealed, the repeal shall not, except as otherwise provided in the Constitution, affect the previous operation of the law or anything duly done or suffered under the law. Counsel therein, relying on Section 6-A of the General Clauses Act, 1897 sought continuation of repealed ordinance, which submission was repelled by Hon'ble Supreme Court in the following terms:-

“9. A plain reading of the above section 6-A shows that when an amending Act, whereby the text of a Central Act or Regulation was amended, is repealed, then, unless a different intention appears, the repeal is not to affect the continuance of any such amendment made by the amending enactment so repealed. In other words, the effect of above section 6-A of the General Clauses Act is that, in spite of the repeal of an amending Act, the amendment, if it was in the text of any Act or Regulation, was to continue.

10. Mr. Irfan Qadir has not been able to press into service the above section 6-A in the case in hand, as it is well-settled proposition of law that General Clauses Act cannot be used in aid while construing a Constitutional

¹ PLD 1960 Lahore 236 wherein Article 69 of 1956 Constitution was discussed.

² PLD 1964 (WP) Lahore 202 on the basis of Article 29 of 1962 Constitution.

³ Government of Punjab v. Zia Ullah Khan (1992 SCMR 602)

⁴ Mehreen Zaibun Nisa v. Land Commissioner (PLD 1975 SC 397)

provision in the absence of making the same applicable through a Constitutional provision, as it was provided in Article 219 of the late Constitution of Islamic Republic of Pakistan, 1956, which provides as under:

"219 (1). Unless the context otherwise requires the General Clauses Act, 1897, shall apply for the interpretation of the Constitution as it applied for the interpretation of a Central Act, as if the Constitution were a Central Act.

(2) For the application of the General Clauses Act, 1897, to the interpretation of the Constitution, the Acts repealed by the Constitution shall be deemed to be Central Acts."

11. It may be mentioned that since there is no corresponding provision in the Constitution, the General Clauses Act cannot be pressed into service in the instant case, as has been rightly conceded by Mr. Irfan Qadir. However, his submission was that the above clause (b) of Article 264 of the Constitution can be equated with section 6-A of the General Clauses Act. In our view the above contention is not tenable as in fact, section 6 of the General Clauses Act, and not its section 6-A, is couched in terms of Article 264 of the Constitution, which is evident, if we were to place the above two provisions in juxtaposition.....

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14. We may state that, if we were to accept Mr. Irfan Qadir's above contention, the same would be violative of Article 89 of the Constitution, which envisages that, if an Ordinance of the type in issue is not approved by both the Houses before the expiry of four months from its promulgation, the same shall stand repealed. The above clear Constitutional mandate cannot be defeated by pressing into service any rule of construction of statutes or a provision of a statute which cannot be pressed in aid while construing a Constitutional provision. We may further observe that our Constitution is a written Constitution based on Federal System. It envisages tracheotomy of powers between the three limbs of the State i.e. the Legislature, the Executive and the Judiciary. In the above political set up the power to legislate is vested in the parliament. However, Article 89 of the Constitution empowers the President to promulgate an Ordinance when the National Assembly is not in Session or stands dissolved and he (the President) upon being satisfied that the circumstances exist which render it necessary to take immediate action. Such an Ordinance is to last, at the most, for four months, if not approved or if

not rejected by the parliament earlier or withdrawn by the President in terms of sub-clause (a) of clause (2) of the above Article 89 of the Constitution.

The rationale behind providing an outer limit of four months for an Ordinance seems to be that even if the National Assembly or a Provincial Assembly stands dissolved at the time of promulgation of an Ordinance, the election of it is to take place within 90 days from the date of its dissolution in terms of clause 5 of Article 48 of the Constitution. Since Ordinance XIX of 1988 was not placed for approval before the Parliament within the above time limit of four months in terms of sub-clause (a) of clause (2) of the Article 89, it stands repealed with the amendments contained therein upon the expiry of four months from the date of its promulgation.”

11. The issue then came up for consideration in the case of Muhammad Arif⁵ which discussed the nature of temporary enactment and permanent enactment.

12. The provisions of Article 264 of the Constitution were then taken into consideration in the case of Jannat-ul-Haq⁶ which distinguished the law which stands repealed and the law violative of fundamental rights and the implication of Article 264 of the Constitution.

13. In the case of Mubashir Hassan⁷ again Hon’ble Supreme Court further highlighted implication of Article 264 which governs repealed law and was not attracted to the laws which are declared to be void on the ground of those being violative of fundamental rights.

14. This issue last came before a Bench of Hon’ble Supreme Court in the case of Pakistan Medical & Dental Council⁸ which discussed all the aforesaid case laws and Hon’ble Supreme Court concluded that amending ordinance since lapsed or being repealed therefore the body constituted thereunder ceased to exist with effect from the date of repeal whereas the actions, activities, orders, decisions taken in the

⁵ Muhammad Arif v. The State (1993 SCMR 1589)

⁶ Jannat-ul-Haq v. Abbas Khan (2001 SCMR 1073)

⁷ Federation of Pakistan v. Dr. Mubashir Hassan (PLD 2012 SC 106)

⁸ Pakistan Medical & Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956)

ordinary day to day business of PMDC were protected under the de facto doctrine until reviewed, revised amended or modified by the new body to be constituted afresh.

15. Different theories were considered by the Benches in the aforesaid judgments such as Bindra's interpretation of temporary statute, Crawford's Statutory Construction, Interpretation of Statutes by Maxwell and Craies on Statute and the view formed was that unless it contains some special provision to the contrary, after expiry of temporary law, no proceedings can be taken up and it ceases to have any further effect except those matters which are past and close under the law.

16. The two ordinances thus though lived their lives but were never acted upon. On the strength of a notification dated 11.11.2021 Federal Government was pleased to allow Flt. Lt. (R) Khakan Murtaza to continue as director general of newly created Pakistan Civil Aviation Authority with additional charge of office of director general of Pakistan Airport Authority for initial period of three months however nothing could be presumed to be a past and closed transaction under the two repealed ordinances. No sooner the notification referred above completed its entire life in idle condition, the ordinances repealed by efflux of time.

17. In view of above it is inconceivable that under the *ibid* repealed Ordinances, which were never in fact acted upon, plaintiffs could exert for the transfer of the employees/officers of the two divisions to their respective authorities. The law that stood prior to the repeal of the ordinances under consideration revived and the two authorities are now deemed to be working under the common umbrella of Ordinance 1982 as were earlier.

18. As far as locus standi of the plaintiffs are concerned, the memorandum of association of plaintiff No.1 discloses the aims and objects of the association and under no circumstances the memorandum of association of plaintiff No.1, which is a welfare association, in terms of 3(d), could enable the association to file a suit for redressal of their contractual obligations against Civil Aviation Authority. The objectives of the association are described as under:-

“3. Objectives of the Association shall be as enumerated below:-

- a) To promote and maintain high standard of efficiency in service and to suggest improvements in rules and procedures to reduce wastage of time and resources on un-productive and futile practices in the best interest of employees and organization.*
- b) To maintain cordial relations between the members and the management to abreast with the safety and progression of the organizational interests and to organize the members for furtherance and achievements of the optimum objectives of the Authority and the country as well.*
- c) To assist the management in devising and implementing employee’s friendly policies and procedures with regard to career progression, remuneration and service benefits to boost up their moral and better working environment.*
- d) Act as a welfare forum to foster unity and cooperation amongst the officers to share and strive the collective genuine problems faced by the CAA Officers to enhance their operational efficiency.*
- e) To organize symposium or seminars on different topics/areas to share the exercise of the professional and retired CAA officers for grooming of the members.*
- f) To print and publish any news-lets, books, periodicals, pamphlets or posters which may be considered useful for promotion of the objectives of the association.*
- g) To cooperate and federate with any such Association(s) of officers and welfare organization(s) in the country, having similar aims and objectives.*
- h) To propose and execute welfare schemes at all CAA Stations/Units anywhere in the country, Airport and HQ CAA. Undertake measures ameliorate and improve the social, environmental, educational and economic conditions of the CAA Officers Community.*
- i) To initiate and do all other such acts and things which are incidental or conducive to attain the objectives as decided/approved by the Executive Committee or General Body of the Association.*

19. It does not mandate initiation of legal proceedings against their employer PCAA. Similarly the secretary is not empowered under the constitution of Civil Aviation Officers Association of Pakistan to file a suit on behalf of an association. In addition to this the tenure of plaintiff No.2 who purportedly is acting as a secretary of the association ceased to act as secretary on completion of his tenure. On 04.04.2019 plaintiff No.2 took over as the secretary general of the association for two years, as disclosed in the constitution of Civil Aviation Authority Officers Association of Pakistan, which tenure completed on 03.04.2021 and admittedly neither any elections were held nor the secretary general could continue in terms of letter of 20.01.2022 issued by the directorate of Industries where plaintiff's association was registered, which letter is filed by learned counsel for defendants, contents of which are not denied by plaintiffs. In terms of the said letter association is a dormant body and the secretary general ceased to hold such charge by 03.04.2021.

20. Mr. Khalid Mehmood Siddiqui, learned counsel appearing for defendants has absolutely not opposed plaintiff No.2 from being considered by the Board whose pre-selection memo is impugned here.

21. With the above understanding, questions here being legal alone and short cause, I deem it appropriate to dispose of suit along with pending applications as under:-

- i) That the two ordinances i.e. Pakistan Civil Aviation Authority Ordinance, 2021 and Pakistan Airport Authority Ordinance, 2021 since repealed left no triggered or concluded rights for the employees of Civil Aviation Authority and hence no steps could now be taken under repealed ordinances;
- ii) After the repeal of the two ordinances, the original Civil Aviation Authority Ordinance, 1982 revived and the Civil Aviation

Authority with all its authorities is operating and functioning thereunder;

iii) The Board as constituted may convene its meeting for pre-selection of the candidates for their promotion as being undertaken by virtue of a memo impugned in this suit.

22. With the above observation, suit along with pending applications stands disposed of.

Dated: 21.03.2022

Judge