

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

C.P. No. D-1010 of 2007

Mohammad Aslam
Petitioner through : M/S M.M Aqil Awan and Danish Rashid Khan,
advocates

Respondents
Through : Mr. Khalid Javed, Ms. Farkhunda Shaheen and
Barrister Yousuf, advocates.

Mr. Muhammad Nishat Warsi, DAG

Dates of hearing: **14.02.2022, 08.03.2022 & 17.03.2022**
Date of announcement: **01.04.2022**

ORDER

Through this petition, the petitioner has assailed his earlier retirement from the employment of Pakistan International Airline (**PIA**) vide letter dated 31.12.2006; and, also challenging the appellate order dated 7th March 2007 passed by the respondent-PIA, whereby his departmental appeal for such compulsory retirement from service was rejected on the ground of downsizing policy.

2. The relevant facts of the case as per pleadings of the parties are that the petitioner was appointed as Trainee Officer in respondent PIA in 1985, and lastly, he was placed into Pay Group-IX, in the year 2007 as Deputy General Manager Human Resources (Employee Leadership Team). Petitioner has averred that he was abruptly served with compulsory retirement order with retrospective effect, without assigning reason, thus he was condemned unheard, which is violative of the principle of natural justice as ordained by the Honorable Supreme Court in its various pronouncements. The petitioner being highly aggrieved by and dissatisfied with his forcible retirement order dated 31st December 2006, filed the departmental appeal/ representation before the appellate authority of PIAC but no fruitful result came out; and, was rejected on the ground that his retirement was under the policy decision of PIAC, vide office order dated 7th March 2007.

3. Parties, hereinabove, have raised two primordial questions for our determination; whether the captioned petition is maintainable against the PIAC, on the plea of non-statutory rules of service; and, whether the earlier retirement of the petitioner from the service of Pakistan International Airlines was/is justified under the law.

4. Mr. M.M Aqil Awan, learned counsel for the petitioner, has firstly addressed the question of maintainability of the captioned petition and contended that initially this petition was held to be maintainable vide order dated 18.4.2011 passed by this Court, however, the respondent PIAC assailed the vires of the order dated 18.04.2011 before the Hon'ble Supreme Court of Pakistan in Civil Petition No.778-K/2011. The Hon'ble Supreme

Court of Pakistan vide order dated 18.12.2011 directed this Court to decide the issue under the law without being influenced by the opinion about the maintainability of the petition, therefore, this petition has to be decided on merits without being influenced by the opinion about the maintainability of the instant petition. He further went ahead and submitted that PIAC is a statutory body, initially incorporated under the Pakistan International Airline Corporation Act of 1956 and now under Pakistan International Airline Corporation (conversion) Act, 2016 as a company; and, urged that Constitutional Petition under Article 199 of the Constitution is maintainable against the statutory body. Learned counsel, averred that PIAC had framed service rules as well as regulations that were/are bound to strictly follow the same, and deviation from such rules could be treated as a violation of the law and principle of natural justice. He further submitted that it is well-settled law that if adverse action is taken against an employee, the opportunity of hearing is a mandatory requirement, and in this case, the petitioner was forcibly retired from PIAC Service, with stigma, vide letter dated 31.12.2006 without providing an opportunity of hearing to the petitioner to put his defense. Learned counsel emphasized that it is also well-settled law that if the employee is forced to retire from service, without his fault, it carries stigma and disgrace in the public eye, thus this type of retirement adversely affects the reputation also, therefore, hearing is necessary before taking adverse action. Learned counsel cited the case of *Ms. Anisa Rehman v. PIAC*, **1994 §CMR 2232** and submitted that irrespective of PIAC does not have statutory service rules, however, would not negate the application of maxim *Audi Alteram Partem*, therefore, Constitutional jurisdiction for seeking such relief is maintainable under Article 199 of the Constitution. Per learned counsel, mere non-statutory rules and regulations do not absolve the PIAC from adherence to the law. In support of his contentions, he relied upon the cases of *Pakistan Defense Housing Authority v. Lt. Col. Syed Javed Ahmed*, **2013 §CMR 1707** and *Pakistan DHA v. Mrs. Itrat Sajjad Khan*, **2017 §CMR 2010** and submitted that violation of service rules/regulations framed by the statutory bodies under the powers derived from statute can be enforced through Constitutional Petition. In support of his contentions, he relied upon the cases of *Muhammad Janan v. G.M. Pakistan Mineral Development Corporation*, **PLD 2003 §C 156**, *House Building Finance Corporation v. Syed Muhammad Ali Gohar Zaidi*, **2004 PLC (CS) 1488**, *Abdul Hafeez Abbasi v. M.D.PIAC*, **2002 PLC (CS) 1083**, *Government of Pakistan v. Farheen Rasheed*, **2011 §CMR 1**, *Tariq Azizuddin (Human Right case)*, **2010 §CMR 1301**, *Corruption in Hajj Arrangement (Human Rights case)*, **PLD 2011 §C 963**, *Justice Khurshed Anwar Bhinder v. Federation of Pakistan*, **PLD 2010 §C 483**, *Pir Imran Sajid v. M.D. Telephone Industries*, **2015 §CMR 1257**, *Warid Telecom Pvt. Ltd. v. Pakistan Telecom Authority*, **2015 §CMR 338**, *Azad Govt. of Jammu & Kashmir v. Javed Anwar*, **2015 PLC (CS) 354**, *PIAC v. Nadeem Murtaza Khan*, **2007 PLC (CS) 334**, *Waliyat Ali Mir v. PIAC*, **PLJ 1995 §C 387**, *PIAC v. Nasir Jamal Malhi*, **2001 §CMR 934**, *DHA v. Ghulam Mustafa Khan*, **2011 §CMR 480**, *Aijaz Akbar Kasi v. Ministry of Information & Broadcasting*, **2011 PLC (CS) 367**, *Federal Government Employees Foundation v. Muhammad Akram Alizai*, **PLD 2002 §C 1079**, *Arshad Jamal v. NWFP Forest Development Corporation*, **2004**

§CMR 468, *KDA v. Wali Ahmed Khan*, **1991 §CMR 2434**, *Muhammad Rafi & others v. Federation of Pakistan*, **2016 §CMR 2146**, *The Director General, National Commission for Human Development v. Ambreen Ansari*, **2015 §CMR 1188**, *Zarai Tarqati Bank v. Said Rehman*, **2013 §CMR 642**, *Maj. (Retd) Syed Muhammad Tanveer Abbas v. Federation of Pakistan*, **2019 §CMR 984**, *Chairman NADRA Islamabad v. Muhammad Ali Shah*, **2017 §CMR 1979**, and *Nighat Yasmin v. Pakistan International Airlines Corporation*, **2004 §CMR 1820**. He lastly prayed for the decision of this lis on merit in terms of the ratio of the aforesaid judgments of the Honorable Supreme Court, rather than knocking out the petitioner on technical grounds of statutory and non-statutory rules of service.

5. Mr. Khalid Javed learned counsel for the respondent-PIAC has attempted to distinguish the aforesaid judgments cited by the learned counsel for the petitioner on the premise that there was/is a relationship of Master and Servant between the petitioner and PIAC, therefore, the constitution petition under Article 199(1)(a)(i) of the Constitution is not maintainable because the PIAC has no statutory rules of service, as such this Court has no jurisdiction to entertain the constitution petitions filed by the petitioner. He further submitted that it is well-established law that an employee, in the absence of violation of law or any statutory rules of service could not press into service the constitutional jurisdiction or civil jurisdiction for seeking relief for the enforcement of his terms and conditions of service, including reinstatement in service; his remedy is to claim only damages if he at all proves his case before the court of plenary jurisdiction. He also emphasized that the principle of Audi alteram partem, could not be treated to be universal nature; he further stated that before invoking/applying the said principle one has to specify that the person against whom action was/is contemplated to be taken prima facie had a vested right to defend the action and in those cases where the claimant had no basis or entitlement in his favor he would not be entitled to the protection of the principles of natural justice. In support of his contentions, learned counsel cited the judgments of the Honorable Supreme Court rendered in the cases of *Raziuddin v. Chairman Pakistan International Airlines Corporation*, **PLD 1992 §C 531**, *Pakistan International Airline Corporation, and others v. Tanweer-ur-Rehman and others*, **PLD 2010 §C 676**, *PIA Corporation Vs. Syed Suleman Alam Rizvi*, **2015 §CMR 1545**, *the Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others*, **2016 §CMR 14** and *Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others*, **2019 §CMR 278**.

6. We have heard learned counsel for the parties, firstly on the maintainability of the instant petition, and perused the material available on record and case-law cited at the bar.

7. To address the aforesaid question, we have noticed that the PIAC is a statutory body established under the Pakistan International Airlines Corporation Act 1956, now converted into a company vide Pakistan International Airline Corporation (conversion) Act, 2016. PIAC is though having no statutory rules of service but is an organization being controlled by the Government of Pakistan, having a majority stake with the majority of

Directors on its Board. The Managing Director and other members of the Board of PIAC are appointed by the Government of Pakistan, thus is performing the functions, in line with the Federal Government's command, and exercising public power by creating public employment. PIAC is, therefore "person" within the meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution.

8. Dilating upon the service rules of PIAC, primarily, PIAC had earlier framed the PIA Employees (Service & Discipline) Regulations, 1956, then 1985; however the same have neither been notified with the approval of the Federal Government nor placed before the parliament as required under sections 29, 30, and 31 of the Act. Thus Service Regulations cannot be termed as "Statutory Rules" determining the terms and conditions of service of the employees of PIAC. On the aforesaid proposition, we seek guidance from the judgments rendered by the Hon'ble Supreme Court of Pakistan in the cases of Raziuddin, Pakistan International Airline Corporation, and others v. Tanweer-ur-Rehman, PIA Corporation Vs. Syed Suleman Alam Rizvi, the Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others, and Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others, supra.

9. In absence of statutory rules of service i.e. Pakistan International Airline Corporation Employees (Service & Discipline) Regulations, 1985, the real question for determination in the present case is whether the present petitioner can seek his reinstatement in service along with back benefits.

10. To address the aforesaid proposition, we seek guidance from the authoritative judgment of a five-member bench of the Hon'ble Supreme Court in the case of Raziuddin, supra; whereby it has been declared that the remedy available to an employee of PIAC, in case of termination or compulsory retirement from service is only to claim damages. The Hon'ble Supreme Court further settled the proposition that PIA has no statutory rules of service and an employee of PIAC cannot seek reinstatement. A similar position was taken into consideration by the Honorable Supreme Court in the case of Nighat Yasmin v. PIAC, 2004 SCMR 1820. In the case of Mrs. Aneesa Rehman v. PIAC, 1994 SCMR 2232, the Honorable Supreme Court held that in absence of statutory service rules, the relationship between the statutory corporation and its employees was that of "master" and "servant". The Hon'ble Supreme Court of Pakistan in the cases of Arshad Jamal v. N.-W.F.P. Forest Development Corporation, 2004 PLC (C.S.) 802, PIAC v. Nasir Jamal Malik, 2001 SCMR 934 and Hafeez Abbasi v. Managing Director PIAC, 2002 SCMR 1034 held that where removal order of such an employee of Corporation even in the absence of statutory rules is made on particular grounds which are like charges, the employee has a vested right of hearing before any order adverse to his interest was passed under the principle of Audi alteram partem which was the least requirement. A judgment rendered by the Hon'ble Supreme Court in PIAC v. Tanweer Rehman, supra, concluded as under;

"However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its function in connection with

the affairs of the Federation, the aggrieved person cannot approach the High Court by invoking its constitutional jurisdiction as observed hereinabove. But as far as the cases of the employees regarding their individual grievances are concerned they are to be decided on their own merits only if any adverse action has been taken by the employer in violation of the statutory rules only then such action could be amiable to the writ jurisdiction. However, if such action has no backing of the statutory rules then the principle of master and servant would be applicable and such employees have to seek remedy permissible before the court of competent jurisdiction."

11. The Hon'ble Supreme Court in the case of *Justice Khurshid Anwar Bhinder, supra* wherein while dealing with the right of hearing had observed that the principle of Audi alteram partem at the same time could not be treated to be of universal nature because before invoking/ applying the said principle one had to specify that a person against whom action was contemplated to be taken prima facie had vested right to defend the action and in those case where the claimant had no basis or entitlement in their favor he would not be entitled to the protection of the principle of natural justice. Accordingly, the Hon'ble Supreme Court dismissed the contentions of the employees who had sought constitutional jurisdiction to seek their reinstatement of service in PIAC. The Hon'ble Supreme Court very clearly laid down that there were no statutory rules governing the terms and conditions of the employees of the PIAC; and, thus their relationship was to be governed by the principle of "master and servant".

12. Much has been said about the crucial issue of statutory and non-statutory rules of service of the organizations/institutions/public sector universities/authorities and Government-owned and controlled entities, established under the Act of Parliament, all the learned counsel very adeptly and elaborately briefed us on the issue of statutory and non-statutory rules of service and took pains by saying that the status and nature of the Rules or Regulations governing the services of the employees is to be determined about the statutory instrument conferring rule-making power on the concerned authority; that when the statute provides that Rules may be framed by the concerned authority subject to the approval of the government, central or provincial, as the case may be, and shall be published in the official gazette, it must be followed and framed in the same manner. If the condition stipulated in the statute has not been followed and the rules/regulations are not framed, as prescribed in the statute, it may conveniently be termed as non-statutory. However, if there is no such condition imposed by the statute for the publication of the Rules/Regulations in the official gazette, it may not be poked into any hypothesis. The rule-making authority, in contemplation of the parent statute, cannot supply, what is not required of it nor can accord approval beyond its mandate; that it cannot be demanded of, nor supposed to make any addition, alteration, or subtraction in the elementary scope of delegating provision; it follows that the Rules/Regulations framed strictly under the requirement of the statute would be statutory and shall, accordingly, have inbuilt statutory credence; that in the present case the subject rules are not published in the official gazette. Per learned counsel, the regulations can only have the force of law if they have been published in the Official Gazette as provided under the General Clauses Act.

13. In our understanding, briefly, the term, statutory refers to organizations and bodies that are defined by a formal law or a statute and these bodies derive their power from a 'Law' or 'Statute' made by Parliament, which is called a statutory body or statutory authority. Statutory regulation is a law passed by a legislature. A non-statutory regulation is not based on legislative action but instead is derived from the interpretation of the federal or provincial statute.

14. In this context, the Parliament is the law-making authority. It passes the Acts and empowers the Government under the relevant Act to make Rules for carrying on the business. A statute is the formal "expression" in writing of the will of the legislative organ in a State. A 'Statute' is a declaration of the law, as it exists or as shall be from the time at which such statute is, to take effect. It is usually called an Act of the Legislature. It expresses the collective will of that body. A Statute is the highest constitutional formulation of the law after the fullest deliberation expresses its final will.

15. "Statutory law" is defined as the will of the nation, expressed by the Legislature, expounded by the Courts of Justice. If the Parliament is not in session then the laws are enforced through the Ordinances issued by the President or Governor expressing the will of the nation as the case may be. So, the Act passed by the Parliament and the Ordinance issued by the nation would be called the "Statutory Law". The Rules framed under the powers conferred by an Act are an integral part of the Act and these Rules are called Statutory Rules and are held to be part of the parent Act. It can do anything if within its scope. The Rules or the Bye-Laws made under the Statutes or Act cannot override the provisions of other Statutes. Neither the Rules control the construction to be placed on the provisions of the Act nor can they enlarge the meaning of the section. The Rules are framed under the Act in aid to the construction of ambiguous Statutes. The Rules under the Act shall be made by the Authority, empowered under the Act to frame the Rules or Bye-Laws. No other authority who is not empowered under the Act makes the Rules. A Rule Making Body also cannot frame the Rules in conflict with or derogating from the substantive provisions of law or Statute under which the Rules are framed. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court in the cases of Salahuddin and 2 others v. Frontier Sugar Mills, **PLD 1975 SC 244**, Muhammad Yousuf Shah v. PIA, **PLD 1981 SC 224**, Principal Cadet College Kohat v. Muhammad Shoaib Qureshi, **PLD 1984 SC 170**, Anwar Hussain v. Agricultural Development Bank of Pakistan, **PLD 1984 SC 194**, Raziuddin v. Chairman Pakistan International Airlines Corporation and 2 others, **PLD 1992 SC 531**, Muhammad Tariq Badr and another v. National Bank of Pakistan and others, **2013 SCMR 314**, Zarai Taraqati Bank Limited v. Said Rehman and others, **2013 SCMR 642**, Muhammad Ashraf Tiwana v. Pakistan and others, **2013 SCMR 1159**; Abdul Wahab and others v. HBL and others, **2013 SCMR 1383**, Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed, **2013 SCMR 1707**, Syed Nazir Gillani v. Pakistan Red Crescent Society and another, **2014 SCMR 982**, Warid Telecom (Pvt.) Limited and 4 others v. Pakistan Telecommunication Authority through Chairman, **2015 SCMR 338**,

Shafique Ahmed Khan and others. v. NESCOM through Chairman, Islamabad, and others, PLD 2016 SC 377 and Muhammad Zaman and others. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad, and others, 2017 SCMR 571.

16. On reviewing the aforesaid judgments pronounced by the Hon'ble Supreme Court of Pakistan, it is obvious that PIAC is a statutory body, has non-statutory rules of service, therefore, the invocation of the writ of Mandamus under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been restricted to enforce the terms and conditions of non-statutory rules of service of government-owned and controlled organizations. However, it has been made clear by the Honorable Supreme Court in the case of Nighat Yasmin v. PIAC, supra while dilating upon the Service Rules as discussed supra and the rights of employees in PIAC, that the PIAC Regulations are not statutory yet once these have been framed by the Board of Directors of the Corporation, these are binding for all intents and purposes on the respondent- Corporation who cannot arbitrarily deviate from such instructions and unilaterally violate the Regulations which are like a contract, binding on all the parties.

17. In principle, we are under command of Article 189 of the Constitution to follow the "ratio decidendi" of the judgments rendered by the Honorable Supreme Court in the cases of Raziuddin v. Chairman Pakistan International Airlines Corporation PLD 1992 SC 531, Pakistan International Airline Corporation, and others v. Tanweer-ur-Rehman and others, PLD 2010 SC 676, PIA Corporation Vs. Syed Suleman Alam Rizvi, 2015 SCMR 1545, the Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others, 2016 SCMR 14 and Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others, 2019 SCMR 278.

18. In view of the law laid down by the Honorable Supreme Court in the aforesaid cases, we feel no hesitation in drawing the inference that the Respondent-PIAC is a statutory entity and the service of the Petitioner is not governed under statutory rules of service, hence non-statutory terms and conditions of service of employees of PIAC are not enforceable under the writ like mandamus.

19. Prima facie, the case of Petitioner is neither covered under the enforcement of terms of statutory law nor is a violation of the rule of natural justice attracted, in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings, undertaken against him under statutory rules of service. The Service Rules, Regulations/Human Resource/manual/ Policy of the Respondent PIAC are not statutory, therefore, for all intent and purpose, these are contractual terms for internal use, hence, the law laid down by the Hon'ble Supreme Court in Pakistan Defence Housing Authority (supra), does not support the case of the Petitioner as we see no violation of law as agitated by the Petitioner. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court in the cases of Maj. (R) Syed Muhammad Tanveer Abbas

and other connected Appeals, 2019 SCMR 984 and Miss Naureen Naz Butt Vs. Pakistan International Airlines through Chairman PIA and others 2020 PLC (CS) 1502.

20. Taking up the issue of compulsory retirement of the petitioner from PIAC service vide letter dated 31.12.2006 as agitated by the petitioner through the instant petition, we have noticed that the management of respondent-PIA to rationalize, reorganize and achieve optimal utilization of main power decided to retire the petitioner along with others from service, however, petitioner's service has been severed with PIAC with the following service benefits vide letter dated 13.12.2006.

"RETIREMENT FROM PIA SERVICE

In view of the necessity to rationalize, re-organize and achieve optimal utilization of manpower, the Management has decided to retire you from the service of the Corporation with effect from 31st December 2006.

2. Upon retirement, the Management has decided to allow you the following payments/benefits:

- a. Salary and allowances as admissible to you as a regular employee of your substantive pay group and rank in a lump sum up till the age of Superannuation or maximum up to 36 months, whichever is shorter / earlier (w.e.f January 1, 2007).
- b. The said lump sum payment shall include encashment of accumulated privilege leave up till December 31, 2006. The said lump sum payment shall be subject to the recovery/adjustment of any amount due to the Corporation, from you against any account/head. The final payment will be settled and released in due course, after receipt of the Clearance Certificate, as per rules of the Corporation.
- c. Medical and Passage facilities for self and family as would be admissible to you as a regular employee before reaching the age of 60 years. After attaining the age of 60 years, these aforesaid facilities would be governed by the applicable rules/regulations for retired employees.
- d. Admissibility of Group Insurance benefits and Insurance against Provident Fund Contribution will be up to the age of 60 years.
- e. In addition to the above lump sum payments/benefits, you will be milled to normal retirement benefits of Provident Fund.
- f. PIA's contribution to the employee's Provident Fund Account shall be paid to you along with dues in lump sum till the age of Superannuation or maximum up to 36 months, whichever is shorter / earlier (w.e.f January 1, 2007).
- g. Pension / Gratuity will be calculated up to December 31, 2006.
- h. The settlement of your final accounts shall be subject to completion of a Clearance Certificate as per Corporation Rules.

3. While expressing our concern that this action had become imperative on of re-organization, we wish you well in your future.

21. It appears from the record that the petitioner assailed the vires of the retirement from service order before the Chairman and Chief Executive Officer of PIA vide letter dated 24.01.2007, *inter alia*, on the ground that the petitioner was a confirmed employee, thus service rights accrued to him which could not be interfered on the plea of reorganization and optimal utilization of main power, because of the principle of locus poenitentia. The petitioner also took the plea of discrimination on the premise that he was only picked up from Group-IX officers; in violation of principles of natural justice. An excerpt of the appellate order dated 07.03.2007 is as under:

**APPEAL AGAINST RETIREMENT
VIDE ORDER DATED 31.12.2006**

Please refer to your appeal dated 24.01.2007 received in Chairman Secretariat PIA Head office Karachi, on 31.01.2007.

The above referred appeal has been considered which reveals that same is misconceived and based on wrong assumption of facts and erroneous consideration of law.

Your retirement and release from Corporations' service were under the Corporation's policy. The same is / was in consonance with law / rules in vogue and your contention regarding breach of law and policy of Airline is incorrect. Other statements made in your above-preferred appeal and having any nexus with your retirement are not admitted herein and are denied.

Management has rejected your appeal under reference being incompetent and devoid of merits."

22. On the aforesaid viewpoint of the appellate authority of PIAC, Mr. M.M Aqil Awan, learned counsel for the petitioner submitted that the petitioner was a regular employee of PIAC in Pay Group IX and under Regulation 25(2)(b) of PIAC (Service & Discipline) Regulations 1985, the retiring age of the petitioner was 60 years which could have ended to 5th June 2015 rather than 31.12.2006 when he was forcibly retired from the service of PIAC with retrospective effect. The petitioner preferred to appeal against the aforesaid decision but the same was dismissed. Learned counsel for the petitioner further submitted that both the original and appellate orders are against the law, facts, evidence, equity, and justice; that if the order of retirement is demonstrated to violate the law, the appellate order in the shape of the superstructure will also fall on the ground. The attendance sheet clearly shows that petitioner has worked with respondent No.1 as Deputy General Manager Human Resources up to 11th January 2007, whereas the order dated 31st December 2006 retiring him with immediate effect, as such has been passed with retrospective effect which is illegal act on the part of PIAC; that any Corporation, statutory body or Government functionary cannot pass any order with the retrospective effect which is adversely affecting the terms and conditions of service of its employee and as such the same is illegal and not sustainable in law; that out of 351 persons not a single officer had been removed from the service either by way of retirement or removal simplicitor and only the petitioner was left in the lurch; that in such like cases where downsizing has to take place in pursuance of reorganization or rationalization, under the provisions of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968, the last came had to go first which principle is recognized by superior Courts as principle of "LIFO"; that in the present case, in the department of the Human Resources of the respondent No.1, there were 14 officers and as per the Seniority List 05 were junior to the petitioner and all the 05 had been retained, whereas petitioner had been fired by way of retirement. He further submitted that to retire an employee abruptly without any reason, where under his connection is severed from his service, without affording any opportunity of hearing before passing the order of retirement, is bad in law, violating the principle of natural justice; that abrupt removal from service in the shape of retirement not only lowers down the prestige of the concerned employee in the eyes of the general public but stigmatize his service career also because the normal expectancy under service regulations for retirement is superannuation which takes place on attaining the age of 60 years, whereas the date of birth of petitioner is 6th June 1955 and he reached the age of superannuation on 5th June 2015. He further submitted that the order of retirement is a malafide order; that the petitioner has been discriminated and

victimized by the management of PIAC. He further submitted that the petitioner has been removed from service in the garb of retirement order for the reasons (a) No reorganization or rationalization to achieve optimal utilization of manpower has taken place either in the PIA, as a whole, or in the Human resources Department where petitioner was discharging his duties (b) The decision of reorganization and consequent retrenchment cannot be decided by a person but it is the function of Board of Directors of PIAC which is the Competent Authority. Per learned counsel, there was/is no such decision of the Board of Directors of PIAC. His further submission is that there is no decision of competent authority to reorganize the department of the petitioner or the PIAC as a whole. The decision taken at the administrative level is also not signed by the Chairman of respondent No.1 before passing the order of retirement of the petitioner (c) That appellate order explicitly shows that the petitioner is retired in pursuance of the policy which aligns with law/ rule in vogue presently. He further submitted that respondent PIAC has failed to disclose the policy so framed, which authority framed, since when it is enforced, and what are those provisions of law which approved such policy under which petitioner was retired. In support of his contentions, he relied upon the cases of Pakistan v. Public at Large, PLJ 1987 SC 319, Chairman, Pakistan Broadcasting Corporation, Islamabad v. Nasir Ahmad and 3 others, 1995 SCMR 1593, Abdul Hafeez Abbasi and others v. Managing Director, Pakistan International Airlines Corporation, Karachi and others, 2002 PLC (CS) 1083, and Muhammad Ashraf Tiwana and others v. Pakistan and others, 2013 SCMR 1159. He lastly prayed for allowing the instant petition.

23. The aforesaid stance of the petitioner has been refuted by Mr. Khalid Javed, learned counsel representing respondent PIAC, and contended that the original order of retirement and appellate order has been passed under law and rules; that if the petitioner had marked his attendance on any of the attendance machines placed at various locations in the different buildings of the PIA Head Office, it does not constitute that he had been regularly working after 31st December 2006 as alleged; that retirement order was passed with immediate effect on the date of the letter of retirement dated 31st December 2006 and the same was passed properly, under law/rule. Moreover, the petitioner had accepted the amount which was given to him by respondent Corporation with his retirement letter without any objection; no prejudice had been caused to the petitioner by his retirement as he had been granted all retirement benefits including salary for three years after his retirement; that due to the retirement, the petitioner was given such huge benefits on his retirement to which no employee in a normal course is entitled to claim such benefits; that the petitioner is not only the employee who has been retired from service as there is the number of officers including Directors, General Managers who are retrenched/retired on same rules, regulations, and policy of the respondent Corporation. Even the retirement age of Flight Engineers had been reduced from 60 years to 57 years which explicitly shows that respondent PIAC was being reorganized, therefore, the retirement of the petitioner was justified; the list enclosed by the petitioner of various persons is not relevant to the case which is even otherwise not admitted as pleaded by the petitioner; that the petitioner has not been discriminated or

victimized as alleged; that the judgments of the Hon'ble Superior Courts are to be looked into under the facts and circumstances of each case. So far as the well-settled principle of law having been declared by the superior courts are concerned, no one can deny those principles of law, however, whether the same applies to a particular case or that is to be seen under the facts and circumstances of the relevant case; that the petitioner has not suffered any loss what to say about an alleged irreparable loss; that the relationship between the petitioner and respondent Corporation is that of master and servant; that the respondent Corporation does not have statutory Service Rules / Regulations; that the petitioner has not come with clean hands and the petition involves disputed questions of facts which cannot justly and properly be adjudicated upon through Constitutional Petition; that the petitioner is not entitled to reinstatement as claimed particularly because of the judgments of the Hon'ble Supreme Court of Pakistan on this particular point. In support of his contentions, he relied upon the statement dated 11.02.2011 along with documents attached thereof and submitted that the petitioner has been paid all the dues and there is nothing left on their part to be paid more. He also relied upon the cases of *Anwar Hussain v. ADBP and others*, **1992 §CMR 1112**, *Raziuddin v. Chairman PIAC and two others*, **PLD 1992 §C 531**, *Muhammad Yousuf Shah v. PIAC*, **PLD 1981 §C 224**, *Pakistan Red Crescent Society & others v. Syed Nazir Gilani*, **PLD 2005 §C 806**, *Ms. Zeeba Mumtaz v. First Women Bank Limited and others*, **PLD 1999 §C 1106**, *Habib Bank Ltd & others v. Syed Zia-ul-Hasan Kazmi*, **1998 §CMR 60**, *United Bank Limited and others v. Ahsan Akhtar & others*, **1998 §CMR 68**, *Anwar Hussain v. ADBP & others*, **PLD 1984 §C 194** and *Muhammad Mumtaz Javed v. Pakistan through Secretary Ministry of Communication, Government of Pakistan and 2 others*, **1988 CLC 1965**. He lastly prayed for the dismissal of the instant petition.

24. Since the Hon'ble Supreme Court of Pakistan vide order dated 08.12.2011 passed in Civil Petition No.778-K/2011 has directed this Court to decide the issue under the law without being influenced by the opinion about the maintainability of the subject petition, therefore, while following the direction of the Hon'ble Supreme Court of Pakistan, we have no option but to take into consideration all the submissions made by the parties including the issue of maintainability of the instant petition. Primarily, the maintainability issue has already been dealt with and discussed in the preceding paragraphs, therefore, no further deliberation is required in this regard.

25. Having dilated upon the issue of maintainability of the instant petition, it appears from the record that the petitioner was a regular employee of the respondent PIAC as he has 21 years' service in his credit, when he was prematurely retired from PIAC service vide letter dated 31.12.2006 under the policy decision of PIAC Board of Directors in its 288th meeting held on 25.8.2005 and letter dated 26.12.2006. Before going ahead on the subject issue, we have noticed that in service jurisprudence, there are different kinds of retirement envisaged, which are as under:

i. Superannuation retirement takes place when an employee crosses the maximum age prescribed under the service rules beyond which he cannot remain in active service.

ii. Compulsory retirement is one of the penalties under different service regulations. It can be imposed on an employee upon a departmental inquiry based on proven charges.

iii. Premature retirement is a concept where the employer in terms of service regulations has the power to order the retirement of an employee upon crossing certain age or completion of a certain number of years of service in the public interest.

iv. Voluntary retirement is a concept where an employee upon completion of a certain number of years of qualifying service can with the permission of the employer proceed on voluntary retirement. If the employee has put in a sufficient number of years of service and is permitted to retire on a voluntary retirement basis, he retains all the benefits of the service already put in and would be entitled to all post-retiral benefits based on the number of years of service put in by him.

v. In certain service regulations, there is also a concept of retirement on medical grounds permitting the employee to seek pension called invalid pension even though the employee may not have put in the sufficient number of qualifying years of service to seek pension under the normal rules.

26. It may be noted that the term compulsory retirement is often used for non-penal premature retirement. However, we may not lose sight of the fact that there is a distinction between these two kinds of retirements, namely, penal retirement upon departmental inquiry based on proven misconduct which normally results in disentitling an employee from seeking any pensionary benefits, and a non-penal retirement referred to as the premature or compulsory retirement upon completion of a certain number of years of service in which case the employee retains all the benefits of the past service and is entitled to full post-retirement benefits on that basis.

27. In the present petition, this Court is concerned with a case of early/premature retirement of the petitioner from the service of PIAC, who was otherwise required to be retired, before the normal age of superannuation by the respondent- PIAC, upon completion of 60 years of age in the year 2015. The short question is whether retiring the petitioner on the aforesaid grounds, agitated by the learned counsel for the respondent PIAC, would be a valid exercise of the powers; and, whether such purpose could be termed to be in the public interest?

28. Primarily an employee who has crossed certain age that may be specified in the service rules and whose service is found to be not satisfactory may be required to be retired compulsorily before attaining the age of superannuation and such powers have been recognized and protected in the public interest.

29. Prima-facie the reason assigned by the respondent- PIAC to retire the petitioner, on the premise to rationalize, reorganize and achieve optimal of the Corporation now company. In our considered view, the expression in the context of early/premature retirement has a well-settled meaning. It refers to cases where the interests of public administration require the retirement of a Public servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility

called for by the Government service to which he belongs; that no stigma or implication of misbehavior is intended, and punishment is not the objective. It also appears to us to be beyond dispute that the balance between the rights of the individual Public Servant and the interests of the public. While a minimum service is guaranteed to the public/government servant, however, the Government is given the power to reenergize machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in the public interest.

30. In the present case, primarily, the petitioner has been dealt with under the garb of policy decision as discussed supra, whereby certain officers of different groups of PIAC were sent packing on retirement vide minutes of the meeting dated 26.12.2006, and letter dated 04.11.2009 has been placed on record, which was the policy decision of the PIAC and interference at this juncture, is not called for when the petitioner received all his service benefits; besides that much water has already flown under the bridge since 2007.

31. In the light of the above, we are of the candid view that the competent authority of PIAC is at liberty to remove any of its employees, from service, or may require him to retire from it on the ground of misconduct, insolvency, or inefficiency under the regulations 1985 as amended up-to-date and/or under the policy decision which could not be interfered until and unless it is shown to have deviated from the fundamental rights of the petitioner/employees of PIAC.

32. Thus, we are of the considered view that it is for the Respondent-PIAC to place its employees according to its Service Rules and Regulations, which is an internal matter of the Respondent-PIAC, thus devoid of any Constitutional interference under the writ of mandamus.

33. In the light of the above discussion and the case law referred above, the instant Petition is dismissed along with the pending application(s), with no order as to costs, leaving the petitioner at liberty to avail his remedy before the Court of plenary jurisdiction.

J U D G E

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