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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Rahmat Hussain Jafferri
Mr. Justice Ghulam Rabbani

CIVIL APPEAL NOS.172-K TO 175-K, 177-K TO 182-K OF 2009.

(On appeal from the judgment dated 3.7.2008,
14.10.2008, 28.11.2008 passed by High Court of
Sindh at Karachi in CP. Nos. D-2042 to D-2044/07,
D-101, D-1570 to D-1572/2007)

Pakistan International Airline Corp.in CA 172-K to 175-K,
& 179-K to 181-K/2009
Zafar Ahmad Khanin CA 177-K/2009
Salman Javedin CA 178-K/2009
Muhammad Manzoorin CA 182-K/2009
..... Appellants

Versus

Tanweer-ur-Rehmanin CA 172-K/09
Adnan Ahmed Malikin CA 173-K/09
Adnan Zoraiz Qureshiin CA 174-K/09
Roopa Syedin CA 175-K/09
Zafar Ahmed Khan & othersin CA 179-K/09
Slaman Javed & anotherin CA 180-K/09
Mahmood Manzoor & anotherin CA 181-K/09
Federation of Pakistan & othersin CAs 177-K to
178-K & 182-K/09
..... Respondents

For the PIAC : Mr. Khalid Javed, ASC
with Mrs. Shiraz Iqbal Ch. AOR
(in CAs 172-K to 175-K/09)
Mr. Mazhar Ali B. Chohan, AOR
(in CA 179-K to 181-K/09)

For the Employees : Syed Shahenshah Hussain, ASC
with Mr. Ghulam Qadir Jatoy, AOR
(in CA 177-K, 178-K & 182-K/09)
Mr. A.S.K Ghorri, AOR (in CA 175-k/09)
Nemo (in other cases)

Date of Hearing : 03.02.2010.

.....

JUDGMENT:

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – Listed

Appeals, by leave of the Court, are directed against the judgments dated 03.07.2008, 14.10.2008, 28.11.2008 passed by High Court of Sindh at Karachi in C.P. Nos. D-2042 to D-2044/07, D-101/2007, D-1570 to D-1572/2007, respectively. As common questions of law are involved in all the cases, we intend to dispose them of by means of instant common judgment.

2. Leave to appeal was granted in one set of the cases i.e. Civil Appeal Nos. 177-K to 182-K of 2009 on the following grounds:-

- i) *Whether the period of 90 days prescribed in clause (c) of para 109 of the judgment in case of Muhammad Mubeenus-Slam and another versus Federation of Pakistan and others (PLD 2006 SC 602) will be applicable to the Constitutional Petitions filed under Article 199 of the Constitution for which no period of limitation is prescribed under any law subject however, to the question of latches;*
- ii) *Whether the afore noted period of 90 days shall be applicable to those cases where a period of time is prescribed by law and that has not expired;*
- iii) *Whether Constitutional Petition against Pakistan International Airlines being a Corporation having no statutory rules would be maintainable in cases of disputes as regards the terms and conditions of its employees, more particularly as, the Pakistan International Airlines was not performing any functions, in connection with the affairs of the Federation.*

3. However, in the remaining cases (Civil Appeal Nos. 172-K to 175-K/09), leave was granted pursuant to the above order.

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4. Relevant facts of each case, in brief, are as under:-

- (i) C.A 172-K to 174-K/2009: In these appeals respondents joined the Pakistan International Airlines Corporation (hereinafter referred to as 'appellant-corporation') as First Officer on F-27 Aircraft, vide separate agreements all dated 30.10.2003 on contract basis. Article 1 of the agreement stipulates that the said agreement shall remain in force for a period of five years, extendable or till the depending upon the sole requirement of the appellant-corporation. It further clarifies that the position of the respondents is exclusively on contract and is not liable for absorption on permanent basis in the appellant-corporation. As per Article 4 of the agreement the appellant-corporation was authorized to terminate the services of the respondents at any time on one month's notice in writing or on payment of one month's salary in lieu of the notice. A dispute arises when the respondents were superseded as some officers junior to them were sent on Aircraft B-737 as P2. It was claimed by the respondents that B-737 is an Aircraft superior to ATR in which the respondents had been performing duties and being senior it was their right to have been promoted so as to perform in the B-737 Aircraft. They approached the High Court of Sindh at Karachi by filing the Constitution Petitions challenging the relevant circulars/administrative orders by the administration and sought promotion and seniority. The appellant-corporation raised objection upon maintainability of the writ petitions. The High Court rejected the objection with regard to the maintainability of the writ petitions, however, dismissed the same on merits.

- (ii) C.A. 175-K/2009: The respondent Roopa Syed was initially appointed as Airhostess as permanent employee on 14.05.1992. However, she resigned from service and later on got reappointed vide letter dated 02.07.1995 on contract basis for a period of one year, convertible into regular employment subject to satisfactory performance. During the persistence of contract, she was informed vide letter dated 29.12.2006 that her contract, due to expire on 31.12.2006, would not be further extended. Feeling aggrieved, the respondent filed a constitution petition before the High Court of Sindh at Karachi, challenging the letter dated 29.12.2006. The High Court vide impugned judgment allowed the said petition, by providing the respondent an opportunity to appear before the Suitability/Regularization Board of appellant-corporation, within one month, for examination of her case for regularization. Hence this appeal.
- (iii) C.As. 177-K to 182-K/2009: The respondents in Civil Appeal Nos. 179-K to 181-K of 2009 (appellants in Civil Appeal Nos.177-K, 178-K & 182-K of 2009) were appointed as high officials in the Pakistan International Airlines Corporation (appellant in Civil Appeal Nos. 179-K to 181-K of 2009 and respondent in Civil Appeal Nos.177-K, 178-K & 182-K of 2009). However, before attaining the age of superannuation, vide letters dated 13.09.2005, 08.08.2005 & 13.09.2005 respectively, they were prematurely/compulsorily retired from service. The respondents assailed the said orders before the Federal Service Tribunal under Section 2A of the Service Tribunals Act by way of filing appeals, which abated in view of the judgment in Muhammad

1/12/09

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Mubeen-us-Slam's case (supra). The respondents ultimately approached the High Court of Sindh Karachi by filing petitions under Article 199 of the Constitution, challenging the orders of their compulsory retirement. The learned High Court, by means of impugned judgment, while overruling the objection of appellant-corporation regarding the maintainability of petitions, dismissed the same being barred by time limit prescribed in Muhammad Mubeen-us-Slam's case (supra). Both the parties, i.e. the appellant-corporation and the respondents, have challenged the impugned judgment by means of above listed appeals.

5. Learned counsel for the appellant-corporation contended that as there was relationship of Master and Servant between the appellant (employer) and its employees, therefore, writ petitions under Article 199(1)(a)(i) of the Constitution were not maintainable in view of the fact that the appellant-corporation was not performing functions in connection with the affairs of the Federation, as such the High Court had no jurisdiction to entertain the writ petitions filed by employees/respondents.

6. On the other hand learned counsel appearing for the respondent-employees contended that the appellant-corporation was founded in pursuance of an enactment namely, Pakistan International Airlines Corporation Act, 1956 (hereinafter referred to as 'the Act, 1956') and Section 10 of the Act, 1956 dealt with the appointment of the officers, etc. therefore, writ petitions were entertainable before the High Court. Reliance in this behalf was

placed on Muhammad Dawood v. Federation of Pakistan [2007 PLC (CS) 1046].

7. In view of the arguments put forth by both the sides, question for examination is as to whether the appellant-corporation is performing functions in connection with the affairs of the Federation.

8. At the outset, it is pertinent to have a glance at the history of the appellant-Corporation. The Pakistan International Airlines Corporation (PIAC) was originated from Orient Airways which was registered in Calcutta (British India) on 23rd October, 1946. It was established at the behest of Quaid-e-Azam Muhammad Ali Jinnah by the Muslim business families. The initial capital was put up by the Ispahani, Adamjee and the Arag group. The first operating license was issued in May, 1947 and the operation started on 4th June, 1947. Within two months of its operational beginnings, Pakistan came in to being and as such Orient Airways transferred its base to Pakistan. After a short period of independence, in 1951, Government of Pakistan decided to have a national flag carrier airlines, as such Pakistan International Airlines was incorporated under Pakistan International Airlines Corporation Ordinance, 1955 and on 11th March 1955, it formally took over the assets and routes of Orient Airways and other airlines, which had in fact been part of PIAC since October 1953. On 18th April 1956, the Pakistan International Airlines Ordinance 1955 was replaced by the Act, 1956.

The Government of Pakistan is the largest shareholder of PIAC having around 89.93% of the total shares.

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9. As per Section 4 of the Act, 1956, the main function of the appellant-Corporation, apart from others, is to provide and further develop safe, efficient, adequate, economical and properly coordinated air-transport services, internal as well as international and to exercise its powers to secure that air-transport services are developed to the greatest possible advantage in the interests of the country. Under sub-Section (2) of the said Section, the appellant-Corporation has the powers; to operate any air-transport service or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work; to acquire, own, run, manage, or participate in the running or management of, any hotel or business connected therewith; to provide for the instruction and training in matters connected with aircraft or flight by aircraft of persons employed or desirous of being employed either by the Corporation or by any other person; with the previous approval of the Central Government, to promote any organisation outside Pakistan for the purpose of engaging in any activity of a kind which the Corporation has power to carry on; to acquire, hold or dispose of any property, whether movable or immovable, or any air-transport undertaking; and to repair, overhaul, reconstruct, assemble or recondition aircraft, vehicles or other machines and parts, accessories and instruments thereof or there for and also to manufacture such parts, accessories

and instruments, whether the aircraft, vehicles or other machines are owned by the Corporation or by any other person.

10. Section 5 of the Act, 1956 deals with the administration of the affairs of the appellant-Corporation, which provides that general direction and the administration of the appellant-Corporation and its affairs shall vest in the Board of Directors which may exercise all powers and do all acts which may be exercised or done by the Corporation. Sub-Section (2) provides that the Central Government may, as and when it considers necessary, issue directives to the appellant-Corporation on matters of policy, and such directives shall be binding on the Corporation; if a question arises whether any matter is a matter of policy or not, the decision of the Central Government shall be final.

11. Sections 6 and 8 of the Act, 1956 provide that the Board of Directors shall consist of eleven Directors, out of which the Chairman and eight Directors are to be nominated by the Federal Government and the remaining two will be elected by the shareholders other than the Federal Government.

12. Now let us see what is meant by the expression 'performing functions in connection with the affairs of the Federation'. The expression clearly connotes governmental or state functions involving an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order or they may be functions concerning economic development, social welfare,

education, public utility services and other State enterprises of an industrial or commercial nature. Generally, these functions are to be performed by persons or agencies directly appointed, controlled and financed by the State; either by Federation or a Provincial Government. On the other hand, private organizations or persons, as distinguished from Government or Semi-Government agencies and functionaries, cannot be regarded as a person performing functions in connection with the affairs of the Federation or a Province, simply for the reason that their activities are regulated by laws made by the State. The primary test must always be:-

- i) whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power;
- ii) whether the control of the organization vests in a substantial manner in the hands of Government; and
- iii) whether the bulk of funds is provided by the State.

If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province, otherwise not. [see Salahuddin v. Frontier Sugar Mills & Distillery Ltd. (PLD 1975 SC 244)].

13. Now we have to see whether the functions entrusted to the appellant-corporation are indeed functions of the State involving some exercise of sovereign or public power. The expression 'sovereign power' has been defined in **Black's Law Dictionary 6th Ed. (1990)** as "that power in a State to which none other is superior or

equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government". The expression 'public power' has not been defined in any legal instrument, however, the word 'public' means "*the whole body politic, or the aggregate of the citizens of a state, district or municipality*" whereas the word 'power' means "*the right, ability, or faculty of doing something*" [Black's Law Dictionary 6th Ed. (1990)]. The above definitions of words 'public' and 'power' collectively suggest that 'public power' means "the right or authority vested in the whole body politic or the aggregate of the citizens of a State, District or Municipality to do something".

14. In order to understand the above proposition, it would be advantageous to have a glance to Maqsood Ahmed Toor v. Federation of Pakistan (2000 SCMR 928) and Aitchison College v. Muhammad Zubair (PLD 2002 SC 326). In Maqsood Ahmed Toor's case (supra) it has been held that an organization, not performing the functions of the State involving some exercise of the public powers, would not fall within the definition of a person. However, while applying the above referred tests in Aitchison College's case (supra), this Court observed that "*we feel no hesitation in drawing inference that the Board of Governors, Aitchison College, Lahore headed by the Governor of the Province as its President along with other officers i.e. Secretaries Education, Finance and General Officer Commanding as well as unofficial Members are involved in providing education which is one of the responsibility of the State and by taking over its management and control the Board, exercises sovereign powers as well as public powers*

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being a statutory functionary of Government who in order to provide it full legal/Constitutional protection had brought it into the folds of its Education Department by amending the Provincial Rules of Business as back as in 1994 and even if for sake of arguments if it is presumed that no financial aid is being provided to the College from the Provincial Public exchequer, even then, the College remains in dominating control of the Provincial Government through Board of Governors; therefore, the above test stands fully satisfied and we are persuaded to hold that organization of the Aitchison College, Lahore falls within the definition of a person".

Likewise, in Ziaullah Khan Niazi v. Chairman Pakistan Red Crescent Society (2004 SCMR 189), while discussing the status of the Pakistan Red Crescent Society, it has been observed that "the respondent-Society was constituted by the provisions of section 2 of the Pakistan Red Crescent Society Act, 1920; its operational area covers the whole of Pakistan; the President of Islamic Republic of Pakistan is the President of the Society as provided by section 3 of the Act; by section 4 of the Act it is a body corporate having perpetual succession and a common seal with power to hold and acquire property, movable and immovable and may sue or be sued by the name of the Society; as enumerated in the General Principles of Society, its object and principal aims include the prevention and alleviation of the suffering with complete impartiality both at national and international level. The Society cannot be treated as a person performing functions in connection with the affairs of the Province; therefore, the employees of the Society cannot be treated as civil servants of the Province of Punjab, by any stretch of imagination".

Subsequently, in Pakistan Red Crescent Society v. Nazir Gillani

(PLD 2005 SC 806), the Court while following the dictum laid down in above mentioned case held that *"a careful perusal of the above mentioned observations would reveal that it has been decided in a categoric manner that the Pakistan Red Crescent Society cannot be treated as a person performing function in connection with the affairs of the Federation or Province; we are conscious of the fact that the President of Pakistan is the President of the Pakistan Red Crescent Society and Minister Health, Government of Pakistan, is the ex-officio Vice-President but it would have no substantial bearing on the legal character of the Society because no budget allocation has been made by the Federal Government and no share capital is involved; the Pakistan Red Crescent Society generates its income from the donation made by public and allocation from International Agencies having a charitable character. It is pertinent to point out that under section 5 of the Act the management and control of the affairs of the Society exclusively vests in the Managing Body; In the light of what has been mentioned hereinabove, the only inescapable conclusion would be that Federal or Provincial Governments have nothing to do with the affairs of the Society and vice-versa"*. It has been further held that *"a careful perusal of the said rule would indicate that the "Managing Body" is competent to frame rules for the management, control and procedure of the Society; the rule-making powers has been conferred upon the Managing Body in an unambiguous manner and from whatever angle it is interpreted no role for framing of rules has been assigned to the Government and moreso no such role has been reserved by the Government for itself; it is worth-mentioning that no sanction or approval from any quarter including the Government is*

required for framing of such rules, which shall be framed by the "Managing Body" alone. It can thus safely be inferred that the powers qua rule-making exclusively fall within the jurisdictional domain of "Managing Body" and the ultimate conclusion would be that the rules or regulations framed by the Managing Body are non-statutory."

15. Another key factor in determining the status of an organization to be within the effective control of the Government is the factum of having controlling shares in it by the Government. This proposition has been elaborately examined by a larger bench of this Court in Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602), wherein following the rule pronounced in Printing Corporation of Pakistan v. Province of Sindh (PLD 1990 SC 452), the Court held that *"the fact that the part of the capital has been subscribed by the Government does not in any manner establish that the Federal Government Controls the affairs of the appellant and the workers of the appellant are in the service of the State; similarly, if the Government has provided working capital, it would be a loan to the appellant, which has to be repaid; therefore, it cannot be said by any reason or logic that by doing so the Federal Government controls the affairs of the appellant or the workers of the appellant could be considered to be in the service of the State"*. It is also pertinent to mention here that in Muhammad Idrees v. Agricultural Development Bank of Pakistan (PLD 2007 SC 681) the impact of Muhammad Mubeen-us-Salam's case (supra) was reconsidered but as far as the above

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findings are concerned, these were not disturbed for the reason that there was no challenge to it.

16. A careful perusal of the above referred case law reveals that the facts of each case are distinct and different from each other but the question of law, to some extent, is similar i.e. whether any organization/corporation/society is performing functions in connection with the affairs of the State.

17. Adverting to the case in hand, keeping in view the dictum laid down in the above referred cases, now it would be examined whether the appellant-corporation is performing functions in connection with the affairs of the Federation. In the preceding paragraphs, the purpose and functions for the establishment of the appellant-Corporation has been quoted with reference to Sections 3 and 4 of the Act, 1956, which provides that appellant-corporation shall provide and further develop safe, efficient, adequate, economical and properly coordinated air-transport service within and outside the country. At this juncture, reference to Federal Legislative List Part-I of Fourth Schedule (item No.24), would not be out of context, whereby the carriage of persons and goods by sea or air has been made the legislative subject of the Parliament. Similarly, under Schedule II, item 5(20), Rules of Business, 1973, the appellant-corporation has been included within the domain of Defence Division, Government of Pakistan. It is also apparent from the Act, 1956 that nine Directors of the appellant-corporation, out of eleven, including the Chairman are to be

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appointed by the Federal Government. Although, the Government has no direct control in the appellant-corporation as its affairs are to be managed by the Board of Directors under Section 5 of the Act, 1956, but the fact remains that the Federal Government has power to issue directives to the Corporation on matters of policy if it considers necessary and such directives are binding on the Corporation. More so, the power to appoint Chairman and Directors remains with the Government and in addition to it the Government also holds the controlling shares of more than 50%. Further, the appellant-corporation is providing carriage of persons and goods, which is one of the functions of the State, as mentioned in the Federal Legislative List and its affairs are indirectly controlled by the Defence Division of the Federal Government, therefore, the above test stands fully satisfied and we are persuaded to hold that the appellant-corporation is performing its functions in connection with the affairs of the Federation.

18. Next question for consideration, in the instant case, is somewhat different, keeping in view the facts and circumstances of the cases narrated hereinabove. No doubt Section 10 of the Act, 1956 provides that appointment of the officers etc. is to be made by the appellant-corporation as it considers necessary for the efficient performance of its functions on such terms and conditions, as it may see fit. Similarly, under Section 30 of the Act, 1956, the Board of Directors has been authorized to make regulations with the previous sanction of the Federal Government, not inconsistent with the Act,

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1956 to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act, 1956. Admittedly, the appointments of the respondent-employees had not been made under the regulations framed by the Board with the prior approval of the Federal Government as it is evident from letters of their appointment and retirement. Therefore, question for consideration would be as to whether in absence of any breach of statutory provision, the employees of appellant-corporation can maintain an action for reinstatement etc. This Court when faced with the same question in the case of Principal Cadet Collage Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170), held that "*where the conditions of service of an employee of a statutory body are governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules can be set aside by a writ petition; however, where his terms and conditions are not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he is employed, has issued for its internal use, any violation thereof will not, normally, be enforced through a writ petition*". Likewise, in Raziuddin v. Chairman, PIAC (PLD 1992 SC 531), this Court has held that "*the legal position obtaining in Pakistan as to the status of employees of the Corporations seems to be that the relationship between a Corporation and its employees is that of Master and Servant and that in case of wrongful dismissal of an employee of the Corporation, the remedy, is to claim damages and not the remedy of reinstatement; however, this rule is subject*

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to a qualification, namely, if the relationship between a Corporation and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee of such a Corporation may maintain an action for reinstatement". It was further held that "the PIAC has the Regulations which have been framed by the Board of Directors of the PIAC, pursuant to the power contained in Section 30 of the Act; however, there is nothing on record to indicate that the above regulations have been framed with the previous sanction of the Central Government or that they were gazetted and laid before the National Assembly in terms of Section 31 of the Act; in this view of the matter, the Regulations cannot be treated as statutory rules of the nature which would bring the case of the PIAC within the above qualification as to entitle the employees of the PIAC to claim relief of reinstatement on the ground of breach of the statutory provisions". The above view has been reiterated in Habib Bank Ltd. v. Syed Zia-ul-Hssan Kazmi (1998 SCMR 60) and Pakistan Red Crescent Society v. Nazir Gillani (PLD 2005 SC 806). In the last mentioned pronouncement, it has been held that "an employee of a Corporation in the absence of violation of law or any statutory rule could not press into service the Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service; his remedy against wrongful dismissal or termination is to claim damages".

19. 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 functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by

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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 namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable 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.

20. It was also contended by the learned counsel for the respondents that writ petition before the High Court is maintainable against a statutory corporation. Reference in this behalf was made to Airport Support Services v. Airport Manager (1998 SCMR 2268), Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274) as well as to Aitchison College's case (supra).

21. So far as Airport Support Services' case (supra) is concerned, in this case the Authorities of Civil Aviation, dispossessed the appellant-company/licensee (therein) from the disputed premises on the breach of agreement by the said licensee; the High Court declined relief to the licensee in its exercise of jurisdiction under Article 199 of the Constitution on the ground that the matter relates to contractual obligation and arbitration clause in the agreement also came in its way; contention of the licensee before

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this Court was that question before the High Court was not one of enforcement of contractual obligations but of violation of mandatory provisions of the requiring prior notice as envisaged in Section 3 of the Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965; this Court while dismissing the appeal of the licensee held that *"it has consistently been held that while routine contractual dispute between private parties and public functionaries are not open to scrutiny under the Constitutional jurisdiction, breaches of such contracts, which do not entail enquiry into or examination of minute or controversial questions of fact, if committed by Government, semi-Government or Local Authorities or like controversies if involving discretion of obligations, flowing from a statute, rules or instructions can adequately be addressed for relief under that jurisdiction"*. Similarly in Ramna Pipe and General Mills (Pvt.) Ltd.'s case (supra), the question before this Court was with regard to interference by the High Court in writ jurisdiction, in the contract executed between a limited company and a public limited company, on the petition of a third party. Likewise, in Aitchison College's case (supra), one of the questions for consideration was whether the Aitchison College is a 'person' falling within the definition, as mentioned in Article 199(5) of the Constitution, which was answered in affirmative on the ground that the Aitchison College remains in the dominating control of the Provincial Government through Board of Governors. The second question for consideration, apart from others, was whether

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the Aitchison College is an institution, performing functions in connection with the affairs of the Federation and this question was also answered in affirmative on having taken into consideration the legislative history on which the college was founded and subsequent material available on record.

22. Thus the above judgments are not applicable to the present case being distinguishable on the basis of facts and the questions of law.

23. Learned counsel appearing on behalf of the respondent-employees contended that before passing any adverse order, the respondent-employees were entitled for opportunity of hearing, as it has been held in Anisa Rehman v. PIAC (1994 SCMR 2232). In this behalf, it may be noted that in the said case the question for consideration was with regard to demotion of the petitioner (therein) and in that context it was observed that right of hearing should have been made available to her. In addition to it, recently, this Court in Justice Khurshid Anwar Bhinder v. Federation of Pakistan (CMA No.2475 of 2009, etc.) while dealing with the right of hearing has 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 the person against whom action was 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 favour he would not be entitled to protection of the principles of natural justice".

24. Now the next question for consideration is whether the High Court was right in holding that 90 days time, specified initially in Muhammad Mubeen-us-Salam's case (supra) and then in Muhammad Idrees' case (supra) would also be applicable in the instant case. In this behalf, we are of the considered view that the impugned judgment, on this point, as well, is not maintainable because the period so mentioned hereinabove for filing of petition was with regard to the cases which stood abated in pursuance of the judgment in Muhammad Mubeen-us-Salam's case (supra) as well as in Muhammad Idrees's case (supra). But as far as the rule laid down in these judgments is concerned, it would not be applicable to an ordinary person filing petition by invoking jurisdiction of the High Court under Article 199 of the Constitution and he has to approach the Court within the reasonable time. Although, no definition of the expression 'reasonable time' is available in any instrument of law, however, the Courts have interpreted it to be 90 days. Reference in this behalf can be made to Manager, Jammu & Kashmir State Property v. Khuda Yar (PLD 1975 SC 678).

25. Thus, in view of discussion made hereinabove, we are persuaded to hold that although the appellant-Corporation is performing functions in connection with the affairs of the Federation

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but since the services of the respondent-employees are governed by the contract executed between both the parties, as is evident from the facts narrated hereinabove, and not by the statutory rules framed under Section 30 of the Act, 1956 with the prior approval of the Federal Government, therefore, they will be governed by the principle of Master and Servant.

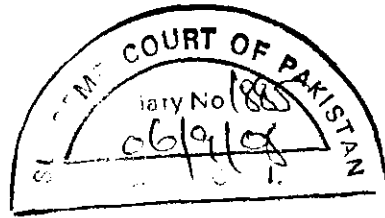
In view of above conclusion, Civil Appeal Nos. 172-K to 175-K, 179-K to 181-K of 2009 (filed by the appellant-corporation) are allowed where as Civil Appeal Nos. 177-K, 178-K and 182-K of 2009 (filed by respondent-employees) are dismissed, leaving the parties to bear their own costs.

Announced in Court
On 12th day of March, 2010.

13/3/10

APPROVED FOR REPORTING.

(2)



Filed: 6/19/2008
by: M. Sulaiman Habibullah
Asst. Registrar

Signature
AOR
(2)

CA. 172-W/09.

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

C.P.L.A. No. 382 -K of 2008

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Pakistan International Airlines Corporation
Head Office, Quaid-e-Azam International Airport
Karachi

----- Petitioner

(53)
Signature
Signature
Signature

VERSUS

Tanweer-ur-Rehman
son of Muhammad Ashraf, Muslim,
adult, Resident of House No.43,
Street No.5, Sector D, Phase I,
DHA, Karachi

---- Respondent

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 185(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

Humbly Sheweth:

Being aggrieved and dissatisfied by judgment dated 3rd July 2008 *partially impugned to the extent whereby the constitutional petition was held to be maintainable under Article 199 of the Constitution of 1973 in service matters even if the service rules of the corporation are not statutory rules and that the principle of master and servant could not be pressed into service*, passed by a learned Division Bench of the learned High Court of Sindh at Karachi in Constitutional Petition No.D-2042/2007 titled Tanweer-ur-Rehman v. Pakistan International Airlines Corporation, the petitioner begs to prefer this petition for Leave to Appeal on the following facts and grounds as following substantial questions of law of public importance arise for the consideration of this Hon'ble Court:-

QUESTIONS OF LAW

A. Whether the learned High Court has failed to appreciate that PIAC Employees' (Service and Discipline) Regulations 1985 are not statutory rules and as such the relationship between petitioner and respondent is that of Master and Servant, hence the constitutional petition under Article 199 of the Constitution-1973 in a service matter relating to terms and conditions of service/ employment was not maintainable in law as held in the following cases of PIAC already decided? 66

i) **PLD 1992 SC 531 Raziuddin v Chairman PIAC and two others;**

ii) **PLD 1981 SC 224 Muhammad Yousuf Shah v PIAC;**

iii) **Order dated 25 April 2000 passed in CPLA No.138-K/2000**

The reliance is also placed upon the following cases of other establishments:

i. **1998 SCMR 60 Habib Bank Ltd & ors v Syed Zia-ul-Hasan Kazmi;**

ii. **1998 SCMR 68 United Bank Ltd & ors v Ahsan Akhtar & ors;**

iii **PLD 1984 SC 194 Anwar Hussain v A.D.B.P. & ors;**

iv **1992 SCMR 1112 Anwar Husain v A.D.B.P. & ors;**

v **2007 PLC (C.S.) 138 Muhammad Asghar Ch. v State Life Insurance Corporation of Pakistan & ors;**

vi **1988 CLC 1965 Muhammad Mumtaz Javed v Pakistan through Secretary Ministry of Communication, Govt. of Pakistan & 2 ors.**

B) Whether the learned High Court has failed to appreciate that the respondent has claimed his alleged rights on the basis of *PIAC Employees' (Service and Discipline) Regulations 1985, which had not been framed with the previous sanction of the Federal Government nor these were gazetted and laid before the National Assembly, thus, the Regulations could not be treated as statutory rules of the nature which would bring the case of the Corporation within the qualification that its employees in case of wrongful*

dismissal from service could maintain action for reinstatement on the ground of breach of such Regulations/Rules of Service, as held by this Hon'ble Court in the above referred case reported at PLD 1992 SC 531?

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- C) Whether the Service Rules/Regulations of the petitioner being non statutory had merged in and formed part of contract of employment of the respondent with the petitioner Corporation and as such the employment of the respondent with the petitioner Corporation is purely contractual and the respondent employee is governed by the Principle of Master and Servant?
- D) Whether the learned High Court had the jurisdiction to pass the judgment in constitutional petition filed by the respondent against the petitioner in respect of terms and conditions of employment agreed/settled by way of a contract of service?
- E) Whether the leave granting order passed by the Hon'ble Supreme Court of Pakistan even if contains findings/decision on a particular law point is still cannot be treated as binding precedent or the same is not binding in nature as held by the learned High Court contrary to Article 189 of the Constitution 1973?
- F) Whether the Constitutional Petition filed by the respondent in the learned High Court was maintainable in Law?
- G) Whether the Judgment to the extent it is impugned herein passed by the learned High Court in facts and circumstances of the case is sustainable in Law?

FACTS

1. That the respondent joined the service of petitioner Corporation on 17th November 2003 as Cadet Pilot on contract basis for a period of five years, extendable, by executing and signing an Agreement dated 16th October 2003 with petitioner Corporation. After completion of training and successfully operating his first flight the petitioner was re-designated as First Officer on F-27 Aircraft with effect from 29th December 2004. Alongwith above referred Agreement, the petitioner also executed a surety/bond on 16.10.2003 containing terms and conditions of the training. The terms and conditions of the employment of the respondent are regulated and have been agreed upon by both the parties through a contract of employment which clearly provides that the employee's contract of employment shall not constitute any right in favour of the employee for permanent absorption in the service of the Corporation. The terms and conditions of the respondent's employment are fixed by the said contract of employment which are applicable in the matter.

2. That after operating the flights of F-27 Aircraft and completion of requisite further training, the respondent had operated his first flight of ATR Aircraft. On completion of requisite training and operating flights of ATR Aircrafts the respondent was not required to have training of B-737 Aircraft as the Captains and First Officers of ATR/B-737 Aircrafts are promoted on A-310 Aircrafts on completion of requisite training for A-310 Aircrafts subject to availability of vacancy and completion of other perquisites. As per career plan of the pilots, at the relevant time the B-737 Aircrafts and ATR Aircrafts have been equated and as such an employee who has completed the training and operation of ATR Aircraft was not required to send for training of B-737 Aircrafts as he was entitled to be promoted on A-310 Aircraft on completion of requisite training etc. However, if an employee does not have the training on ATR Aircraft he used to be sent for

training on B-737 Aircraft before his becoming entitled for further promotion on A-310 ATR. Some cadet pilots who were not sent for training on ATR, were sent for training on B-737 Aircraft. The respondent insisted that he may also be sent on training on B-737 Aircraft and challenged his so-called seniority in a vague manner. The respondent had therefore filed a constitutional petition in the learned High Court of Sindh at Karachi challenging the issuance of relevant circulars/admin orders by the petitioner and seeking promotion and seniority.

3. That the petitioner contested the said Constitutional Petition filed by the respondent by filing parawise comments at the first instance and then a counter affidavit in detail opposing the grant of relief. It has specifically been pleaded by the respondent that the Constitutional petition is not maintainable in law. Legal objections have been raised. Facts stated by the respondent in the Constitutional petition were denied. It has also been pleaded that disputed questions of facts are involved in the matter which cannot be justly and properly adjudicated upon in the constitutional petition.
4. That the learned High Court after hearing, has passed the judgement whereby the legal grounds/objections raised by the petitioner have been rejected and the constitutional petition as framed and filed has been held to be maintainable. However, the constitutional petition was dismissed on merits by holding that the constitutional petition was merit less.
5. That since the Hon'ble Supreme Court of Pakistan has already held in a number of reported and un-reported judgements that the Service Regulations of petitioner PIAC are not statutory rules of service and as such the relationship of employer and employee between the parties is that of master and servant and the constitutional petition is not maintainable under Article 199 of the Constitution 1973 which principles of law having been well settled, have not been followed by the learned High Court in the judgement partially impugned in this case and it will

effect a large number of cases, hence this CPLA. So far as dismissal of petition by the learned High Court on merits is concerned the petitioner is satisfied by such decision to that extent and the decision of the petition to the extent of its dismissal is not being challenged by the petitioner in this CPLA.

GROUNDS

A. That the learned High Court has failed to appreciate that PIAC Employees' (Service and Discipline) Regulations 1985 are not statutory rules and as such the relationship between petitioner and respondent is that of Master and Servant, hence the constitutional petition under Article 199 of the Constitution-1973 in a service matter relating to terms and conditions of service/ employment was not maintainable in law as held in the following cases of PIAC already decided.

- i) PLD 1992 SC 531 Raziuddin v Chairman PIAC and two others;
- ii) PLD 1981 SC 224 Muhammad Yousuf Shah v PIAC;
- iii) Order dated 25 April 2000 passed in CPLA No.138-K/2000

The reliance is also placed upon the following cases of other establishments:

- i. 1998 SCMR 60 Habib Bank Ltd & ors v Syed Zia-ul-Hasan Kazmi;
- ii. 1998 SCMR 68 United Bank Ltd & ors v Ahsan Akhtar & ors;
- iii PLD 1984 SC 194 Anwar Hussain v A.D.B.P. & ors;
- iv 1992 SCMR 1112 Anwar Husain v A.D.B.P. & ors;
- v 2007 PLC (C.S.) 138 Muhammad Asghar Ch. v State Life Insurance Corporation of Pakistan & ors;
- vi. 1988 CLC 1965 Muhammad Mumtaz Javed v Pakistan through Secretary Ministry of Communication, Govt. of Pakistan & 2 ors.

B. That the learned High Court has failed to appreciate that the respondent has claimed his alleged rights on the basis of *PIAC Employees' (Service and Discipline) Regulations 1985*, which had not been framed with the previous

sanction of the Federal Government nor these were gazetted and laid before the National Assembly, thus, the Regulations could not be treated as statutory rules of the nature which would bring the case of the Corporation within the qualification that its employees in case of wrongful dismissal from service could maintain action for reinstatement on the ground of breach of such Regulations/Rules of Service, as held by this Hon'ble Court in the above referred case reported at PLD 1992 SC 531.

- C. That the Service Rules/Regulations of the petitioner being non statutory had merged in and formed part of contract of employment of the respondent with the petitioner Corporation and as such the employment of the respondent with the petitioner Corporation is purely contractual and the respondent employee is governed by the Principle of Master and Servant.
- D. That the learned High Court had no jurisdiction to pass the judgment in constitutional petition filed by the respondent against the petitioner in respect of terms and conditions of employment agreed/settled by way of a contract of service.
- E. That the leave granting order passed by the Hon'ble Supreme Court of Pakistan containing the findings/decision on a particular law point has to be treated as binding precedent and the same is binding in nature and the findings/observation of the learned High Court in this regard are not tenable in law and is in complete violation of Article 189 of the Constitution 1973.
- F. That the Constitutional Petition filed by the respondent in the learned High Court was not maintainable in Law.
- G. That the Judgment to the extent it is impugned herein passed by the learned High Court in facts and circumstances of the case is not sustainable in Law.

The petitioner craves the leave of this Hon'ble Court to urge further/additional grounds at the time of hearing.

PRAYER

It is therefore respectfully prayed that this Hon'ble Court may be pleased to grant Leave to Appeal and after hearing the parties may further be pleased to allow the appeal and set aside the Impugned Judgement dated 3rd July 2008 partially to the extent whereby the constitutional petition was held to be maintainable under Article 199 of the Constitution of 1973 in service matters even if the service rules of the corporation are not statutory rules and that the principle of master and servant could not be pressed into service, passed by a learned Division Bench of learned High Court of Sindh at Karachi in Constitutional Petition No.D-2042 of 2007 titled 'Tanweer-ur-Rehman v. Pakistan International Airlines Corporation', by holding that constitutional petition filed by the respondent was not maintainable in law.

DRAWN AND SETTLED BY

FILED BY



KHALID JAVED
ADVOCATE SUPREME COURT
OF PAKISTAN
FOR PETITIONER



SULEMAN HABIBULLAH
ADVOCATE ON RECORD
SUPREME COURT OF PAKISTAN
FOR PETITIONER

Karachi

Dated: 6-09-2008

This is first Petition and no other Petition has been filed prior to this Petition regarding this matter.



(SULEMAN HABIBULLAH)
A.O.R. FOR THE PETITIONER.