

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE IJAZ UL AHSAN

**CIVIL APPEAL NO. 585 OF 2018**

(On appeal against the judgment dated  
23.09.2016 passed by the High Court of Sindh,  
Karachi in C.P. No. D-2353/2014)

Pakistan Airline Pilots Association and others

... Appellants

**VERSUS**

Pakistan International Airline and another

... Respondents

For the Appellants: Barrister Umaima Anwar Khan, Advocate  
(With Court' permission)

For the Respondents: Mr. Muhammad Ilyas Siddiqui, ASC

Date of Hearing: 13.12.2018

**JUDGMENT**

**FAISAL ARAB, J.-** The appellant No. 1 is Pakistan Airlines Pilots Association and the remaining appellants are retired pilot officers who served Pakistan International Airline Corporation "PIAC". They are aggrieved with the current method of calculation of pension. Their case is that the pension be calculated in accordance with the formula articulated in the Trust Deed known as the "PIA PALPA FENA Pension Fund". The said trust was created on 12.02.1980 for the benefit of its eligible pilots and flight engineers only. On 15.08.1981 a Martial Law Regulation No. 52 was passed which stated that *"Any existing agreement entered into between the corporation and any employee of the corporation or any class, union, association or organization of such employee stood terminated and were held not to form basis for a fresh agreement on the resumption of activities of PIAC"*. Thus the Trust stood rescinded. Thereafter new

service rules were introduced by respondent No.1 which included a pension scheme on 07.09.1982 whereby the "PIAC, PALPA and FENA Pension Fund" was converted to "PIAC Cockpit Crew Pension Fund", the same was later replaced by PIAC Pension Fund Rules. Then a supplemental trust deed was signed called the "PFF Rules" dated 04.09.1988 by which a method of calculation of pension was provided under Rule 9. Later various Admin Orders were issued from time to time regulating pension, last of which being Admin Order No.8 of 2004.

2. To seek the calculation of pensionary benefits on the basis of Trust Deed dated 12.02.1980, which had ceased to exist way back in 1981, the appellants filed constitution petition in 2014 in the High Court of Sindh, which was dismissed vide impugned judgment on the ground that it was not maintainable as the relationship of parties is governed by the principle of "master and servant". Hence, this appeal with the leave of this Court.

3. Learned counsel on behalf of the appellants argued that the Trust Deed of 1980 sets out the proper calculation method of pension and such formula cannot be altered by respondent No. 1 as the trust had specifically established parameters regarding the trustees autonomy and dispenses PIAC from its interest in the trust as they have no authority under the deed except for the fact that they have to make contributions to the fund; that the trust is a separate entity and through Martial Law Regulation, it cannot be terminated; that the Admin Order No. 34/2003 which froze the salary for the purposes of calculating pension was passed without notice which has caused detriment to the Cockpit Crew who retired after 01.01.2003.

4. Learned counsel of the respondents argued that the Martial Law Regulation No. 52 when passed in 1981 had the effect of rescinding the Trust Deed created in 1980 hence it had become defunct and thus unenforceable; that the pension of the Cockpit Crew is now being governed by the Admin Order No. 08 of 2004 to which the appellants have already acquiesced and now belatedly are raising a controversy which has no merits and even otherwise its determination is beyond the scope of writ jurisdiction.

5. We have heard the counsel for the parties. After MLR-52 rescinded the Trust Deed of 1980 in 1981, pension benefits were being calculated first under pension scheme of 1982 then under PFF Rules of 1988 which were followed by Admin Order 34 of 2003 and finally under Admin Order No. 08 of 2004. The appellants who retired on 2008, 2009 and 2014 are now seeking calculation of retirement benefits on the basis of Trust Deed of 1980 that as stated earlier stood rescinded in 1981. In Admin Order No. 34/2003 it is no doubt stated that pension, commutation and gratuity shall be calculated on the basis of the salary frozen on 31.12.2002 without taking into consideration future annual increments thereby resulting in the salary component to become stagnant as its effect was that no matter how much the salary increased after 31.12.2002 the pension was to be calculated on the salary drawn on 31.12.2002 but the anomaly so created was reversed by the respondent No.1 through Circular No. 21/2003 issued on 31.07.2003 which provided that future revision in pension shall be linked with last drawn salary. So the grievance that pension was not being calculated on last drawn salary also stood redressed in 2003. Thus it is clear that the appellants/pilots shall be

entitled to the pension on the basis of the last drawn salary which they were getting at the time of their retirement. It is only in 2014 that the pensioners are seeking calculation of pensionary benefits on the basis of the Trust Deed of 1980 that stood revoked way back in 1981 under MLR-52 and replaced by other pension schemes hence the constitution petition also suffered from laches.

6. We may also state that where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant". As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", Article 199 of the Constitution of Pakistan 1973 cannot be invoked. Reliance is placed on PIA Corporation VS Syed Suleman Alam Rizvi (1996 SCMR 1185), Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In view of what has been discussed above, we find no legal justification to interfere in the impugned judgment. This appeal is, therefore, dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Approved For Reporting

Announced on 16.01.2019 at Islamabad.

Khurram