

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2076 /2011

Flt. Lt. (R) Noor A. Qureshi
Vs

Pakistan International Airline (PIA) and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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19.02.2015	Mr. Muhammad Shoaib Shaheen, Advocate for the petitioner. Mr. Mohammad Umer Khan Verdag, Advocate for respondents.
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The petitioner was employed with Pakistan International Airline Corporation (PIA) w.e.f. 22.06.1993 and retired on 05.03.2003 therefrom. On retirement the petitioner was allowed pensionary benefits as shortfall in 10 years of service was condoned. At the time of retirement petitioner requested respondents to allow the post retirement benefit of Air Passage Facility which is the entitlement of an employee of the Corporation after a minimum of 10 years of service. Respondents approved the said benefit to the petitioner vide letter dated 12.08.2005. The said benefit of the petitioner was discontinued on 20.12.2010 when the petitioner was refused tickets. The petitioner issued a legal notice to respondents on 07.02.2011 which was replied on 02.03.2011. The petitioner has assailed, in the instant writ petition, discontinuation of Air Passage Facility allowed to him vide letter dated 12.08.2005.

2. At the outset learned counsel for the respondents took an objection regarding the maintainability of the writ petition in light of case titled *Pakistan International Airline Corporation and others v. Tanweer ur Rehman and others* (PLD 2010 Supreme Court 676). It was contended that in light of above judgment since there are no statutory rules of service, therefore, the relationship between the PIA Corporation and its employees is that of master and servant, hence the writ petition is not maintainable.

3. Learned counsel for the petitioner *inter alia* argued that the writ petition is maintainable inasmuch as the view taken by the Hon'ble Supreme Court of Pakistan in the abovementioned case is no longer applicable and the view adopted by the Apex Court in the case titled "*Pakistan Defence Officers' Housing Authority v. Jawaaid Ahmed* (2013 SCMR 1707) holds the field. It was further submitted by the learned counsel for the petitioner that the competent authority of the respondents allowed the benefit of Air Passage Facility to the petitioner which subsequently cannot be taken away on the basis of principle of *locus poenitentiae*. It was contended next that in light of the judgment cited as 2013 SCMR 1707 *supra* as well as the judgment of the Hon'ble Supreme Court of Pakistan in case of Civil Aviation Authority 2009 SCMR 956, Constitutional petition is maintainable even in cases where there is relationship of master and servant, if there is violation of any law. Learned counsel submitted that in the instant case respondents have violated the law inasmuch as before discontinuation of Air Passage Facility no notice was given or an opportunity of hearing granted to the petitioner which amounts to violation of principle of natural justice. Under the principle of *locus poenitentiae*, which is a legal principle, a right once conferred cannot be subsequently taken away. The respondents are now estopped from denying/discontinuing the benefit earlier granted to the petitioner.

4. Learned counsel for respondents has vehemently opposed the contentions of learned counsel for the petitioner and submitted that the petitioner was not entitled to Air Passage Facility after retirement inasmuch as his length of service was less than 10 years and on few occasions he had only been allowed the facility as grace. It was further contended that letter allowing the petitioner the Air Passage Facility was not issued by the competent authority and hence, was illegal and did not confer any right.

5. The Hon'ble Supreme Court of Pakistan in the case of Tanveer ur Rehman *supra* held that PIA Corporation is a person within the meaning of word as mentioned in Article 199 (1) as well as (5) of the Constitution of Islamic Republic of Pakistan, 1973 and the Constitutional petition against the referred Corporation is maintainable. However, while examining the status of employees of the Corporation it was held that the relationship is that of master and servant as the Rules of service are non-statutory and therefore, on that basis Constitutional petition is not maintainable by an

employee against employer. In the case of *“Pakistan Defence Officers’ Housing Authority v. Jawaaid Ahmed* (2013 SCMR 1707) the Hon’ble Supreme Court of Pakistan revisited the law vis-a-vis the status of the employees of various organizations and maintainability of Constitutional petition against them. It was held by the Hon’ble Supreme Court of Pakistan as follows:

“The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:--

- (i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- (ii) *Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*
- (iii) *In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- (iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
- (v) *That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.*

6. The Hon’ble Sindh High Court in case titled *Dawood etc. v. Federation of Pakistan etc.* (2007 PLC (C.S.) 1046) held as follows:

"From the above somewhat detailed discussion, we have arrived at the following conclusions:-

- (i) *Irrespective of an employee of a State controlled corporation not being a civil servant the*

corporation themselves continue to remain amenable to the jurisdiction of this Court under Article 199 of the Constitution.

(ii) The rule of master and servant is inapplicable to cases where there is violation of statutory provisions or of any other law.

The expression "violation of law" would not be confined merely to violation of any specific provision of a statute but the expression "law", as observed by Hamoodur Rehman, J., (as his Lordship then was) in Government of West Pakistan v. Begum Agha Abdul Karim Sorish Kashmiri PLD 1969 SC 14 at page 31 and ought to be considered in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts. It means according to the accepted norms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may, for instance, include the principles of natural justice, the public duty to act fairly and honestly and absence of mala fides in fact and law. In all such cases the Court would be competent to grant relief of reinstatement."

7. In view of above judgment, the expression law is not confined to any specific provision of statute but is to be considered in its generic sense and includes judicial principles laid down from time to time by the Superior Courts.

8. The respondents vide letter dated 12.08.2005 specifically allowed the benefit of Air Passage Facility to the petitioner which continued for almost a period of five years. The respondents relaxed the rules and allowed the benefit, of Air Passage Facility as they did in the case of pension allowed to the petitioner. Even in reply to the legal notice the respondents have taken a specific stance that the benefit of Air Passage Facility was allowed to the petitioner by competent authority. It is established principle of law that where a right has been created in favour of the petitioner the same cannot be retraced as provided in section 21 of the General Clauses Act, 1897 as well as in various pronouncements the same has been recognized as principle of *locus poenitentiae*. However, the principle of *locus poenitentiae* has no application where the right has accrued on the basis of an illegal or unauthorized act by the authority. In the instant case, the principles of natural justice were not adhere to, before stopping the benefit of Air Passage Facility. The fact that the competent authority of the respondent Corporation had no discretion to relax the Rules vis-à-vis Air

Passage Facility, is not evident from the available record. The principles of *locus poenitentiae* and natural justice are legal principles and their violation tantamount to violation of law as elaborated by the Hon'ble Sindh High Court in its judgment cited as 2007 PLC (C.S.) 1046 *supra*.

9. In view of above, the instant writ petition is disposed of with direction to the respondents to provide an opportunity of hearing to the petitioner with respect to stoppage of benefit of Air Passage Facility and intimate him the outcome of same through a reasoned and speaking letter.

(AAMER FAROOQ)
JUDGE

M.Naveed

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