

JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Intra Court Appeal No.59 of 2008

Chairman PIAC and others

Vs

Tayyaba Hasnain and others

Date of hearing: 21-12-2011

Appellant By: Mr. Atta Ullah Hakim Kundi, Advocate

Respondent by: Sh. Riaz-ul-Haq, Advocate

SHAUKAT AZIZ SIDDIQUI, J:

Through instant, Intra Court Appeal, appellants (PIAC) challenged the order dated.18.03.2008, passed by learned single Judge, in Writ Petition No.11/2008.

2. Brief facts, gleaned out from the pleadings of the parties are that, Respondent No.1 (Tayyaba Hasnain) joined PIAC being Airhostess on 29.08.1995, as contract employee for a period of one year, which ended on 28.8.1996 but she continued performing her duties without any restraining order or fresh contract. She got married in September 2004 and availed 18(eighteen) months leave without pay. During this period she was blessed with two children due to which, to remain in job became difficult for her, therefore, vide application dated.25.4.2007 she applied for early retirement w.e.f 01.06.2007. The authorities (PIAC) turned down her request on the ground that period of 10 years had not been completed, due to availing of two years leave without pay, authorities further informed that her continued length of service was 9 ½ years. She, without dragging herself into any controversy, continued

performing her duties. On completion of requisite period she again applied for retirement on 23.01.2008, but this time, her request was declined with observation that period of service has to be counted w.e.f 04.2.2000, the date on which she was permanently absorbed.

3. Feeling aggrieved she invoked the constitutional jurisdiction of this court by filing Writ Petition, which was allowed vide impugned order, operative paras of which are reproduced herein below:-

"In view of the foregoing, it appears that there is no dispute as to the initial induction of the Petitioner, and the contract for one year. The issue arises what was the position after the one year contract, whether the Petitioner was converted into regular employment or not. This contention is supported by the Respondents letter dated 10.05.2007, in which the actual service was confirmed to be 9 and half years and a further 06 months would indicate completion of 10 years of actual continuous service w.e.f 23.11.1995. The petitioner has 10 years continuous service and is entitled to get retirement benefits. There has also been violation of Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 in that to enjoy the protection of law and discrimination based on sex alone.

In view of the above the Writ Petition is accepted with the direction to the Respondents that the request of the Petitioner for early retirement be accepted. The parties to bear their own costs."

4. Learned counsel for appellants vehemently argued and raised following points;

- Writ Petition against PIAC, is not maintainable for the reason that its Rules are non-statutory.
- Impugned order could not have been passed for want of territorial jurisdiction.

- Learned single Judge failed to appreciate the contents of letter dated.14.05.2007, through which letter dated.10.05.2007 was superseded and Petitioner was not justified to make any claim from the mistake of facts recorded by the appellants.
- Period of contract employment, which is more than four years could not have been counted towards regular service for the purpose of retirement and pecuniary benefits, thereunder.
- The impugned order is without jurisdiction, result of non-adherence to provisions of law and judgments of court of apex.

Learned counsel placed reliance on cases of; PIAC Vs. Samina Masood (PLD, 2005 SC 831), PIAC Vs. Jamalur Rehman Durrani Vs. Secretary to Govt. etc. (PLD, 1990 SC 719) and PIAC Vs. Tanweer-ur-Rehman (PLD 2010 SC 676).

5. Conversely, learned counsel for Respondent No.1 submits that Appellants are estopped by their words and conduct. Exclusion of service spread over more than four years was tainted with malafide, ulterior motives and to malign lady employee. Learned counsel further submits that as per policy all those employees were offered to take early retirement, who had rendered continued service for period of 10 years or more. From day one of service till applying for retirement, respondent No.1 remained on the Pay Roll, so much so, after completing first year, no fresh contract was signed, which for all practical intent and purposes presumed to be regular employment. Learned counsel adds that element of malafide has always been looked by superior courts, above technicalities, therefore, Writ was maintainable and impugned order is just, lawful and speaking one. At the end learned counsel prayed for the rejection of appeal and implementation of the order.



6. We have heard the learned counsels for the parties, perused the record and gone through the impugned order.

7. This is an admitted fact that Respondent No.1 remained in continuous service from the date of her joining i.e 29.08.1995, till she applied for premature/early retirement. This is also an admitted position that on expiry of contract employment on 28.08.1996, no fresh contract was offered by the employer and accepted by the employee, and that, date of her absorption is 04.02.2000. Respondent No.1 moved an application dated.25.04.2007 for early retirement in accord with optional "Early Retirement Policy" (for permanent female cabin crew), circulated vide circular No.29/2006, dated.28.04.2006. Appellant (PIAC) declined her request vide letter Ref. No.HRM/(FS)/P-54559/2007, dated.10.05.2007, contents of same are reproduced herein below:-

"REQUEST FOR EARLY RETIREMENT."

Reference your application dated 25.04.2007 for early retirement with effect from 01.06.2007.

You were appointed on 23.11.1995 and you have completed 11 ½ years of service.

During this period you have availed two (02) years leave without pay as such your actual service comes to 9 ½ years.
(emphasis underlined)

Since you have not completed 10 years of actual service, therefore, as per rules your request for early retirement cannot be considered."

This letter was followed by letter Ref. No.HRM/(FS)/P-54559/2007, contents of which read as under:-

"Reference our letter No.HRM(FS)/P-54559/2007, dated 10.05.2007 on the above subject.

*On scrutiny of your personal file it has revealed that you were appointed on 23.11.1995 on contract and permanently been absorbed with effect from 04.02.2000, therefore, your **seniority** will reckon with effect from 04.02.2000 as such you have completed only 05 years & 06 months service (excluding LWP of 01 year & 09 months).*

In view of the above your request for early retirement cannot be considered."

8. It is important to note that despite issuance of letter dated.14.05.2007, letter dated.10.05.2007 was never withdrawn and even, it is nowhere recorded that latter was issued in supersession of earlier.

9. On the principle of locus potentiae, it was submitted by the counsel for respondent that valuable right was accrued in her favour which could not have been taken away through arbitrary and colourable exercise of the Authority. It is the case of Appellant itself that contract employment was **convertible into regular** and this benefit was extended to Respondent No.1 by way of her absorption on 04.02.2000. It is well settled law, with the mandate of dictums of the Court of Apex that, when any employee on contract is absorbed into regular employment, and there is no break in his/her service, then period on contract employment has to be considered for counting length of service for pensionary benefits etc. In this regard, guidance has been sought from the cases reported as 2002 PLC (CS) 225, 1996 SCMR 1185 and 1993 SCMR 609.

10. On the point of contract employment the learned counsel for Appellants relied on the case of Jamalur Rehman Durrani

(PLD 1990 SC 719). With utmost reverence, it is being observed that facts and circumstances of said case are quite different to the case in hand, moreover careful perusal of judgement in above case shows that observations recorded therein support the case of Respondent No.1 instead of Appellants. Similarly, judgement, in case of PIAC Vs. Samina Masood (PLD 2005 SC 831) does not support the contentions of the learned counsel. As per, dictum laid down in case of PIAC Vs. Tanveer-ur-Rahman (PLD 2010 SC 676) is concerned, Honourable Supreme Court, declared that;

- iii) PIAC is performing its functions in connection with the affairs of the Federation.
- iv) But, since services of employees were governed by the contract executed between both the parties and not by Statutory Rules framed under 5.30 of PIAC, Act 1956, with prior approval of Federal Govt. therefore, they would be governed by the principle of "Master and Servant".

11. Admittedly, rules of PIA are non-statutory and, therefore, the employees of the PIAC would be governed by the principle of Master & Servant. The dispute between the parties is regarding terms and conditions of service. The appellant calculated her service as less than 10 years which is not a pensionable service, on the other hand respondent emphasizes that she had completed more than 10 years' service and is entitled for the pensionary benefits. Worth mentioning point over here is that her services were regularized on 04-02-2000 which was accepted by her without objection at that time and therefore at this stage, the respondent cannot take a different stand by stating that she had been a regular employee from the very



beginning. This period starting from 04-02-2000 is less than 10 years.

The rules of PIA clearly mention that 10 years regular service entitles the employee for pensionary benefits, but apart from the dispute about calculation of service period, the fact remains that writ cannot be issued against a Corporation in favour of an employee where the service rules have not been framed with the prior approval of the Federal Govt. and are non-statutory.

Keeping in view the above, the appeal is accepted and order dated.18-03-2008 passed on petition No.11, is set aside, leaving the parties to bear their own costs.

(MUHAMMD ANWAR KHAN KASI)
JUDGE

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Announced in open Court on 02.02.2012.

Judge

Judge

Approved for Reporting.

Waqar Ahmed.

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