

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3437 of 2021
Muhammad Akhtar Ur Islam and others
Versus
Aviation Division and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.09.2021	M/s. Nabeel Javed Kahloon and Muhammad Waqas Ali, Advocates for the petitioners.

Through the instant writ petition, the petitioners, who are former employees of Pakistan International Airlines Corporation (“P.I.A.C.”) impugn various terms and conditions of the Voluntary Separation Scheme dated 07.12.2020 (“V.S.S.-2020”). All the petitioners retired from service as a result of opting for the V.S.S.-2020.

2. The petitioners also seek a direction to P.I.A.C. to issue fresh terms and conditions for the V.S.S.-2020 which are not less favorable than the Voluntary Golden Handshake Scheme offered by P.I.A.C. to their employees on 02.12.1997.

3. Learned counsel for the petitioners drew the attention of the Court to the terms and conditions of the V.S.S.-2020 and submitted that all the petitioners retired from service after opting for and receiving all the benefits under the said scheme. Their grievance is that the benefits under the V.S.S.-2020 are less attractive than the benefits which were given to the employees of P.I.A.C. who had opted for retirement on the Voluntary Golden Handshake Scheme dated 02.12.1997. Learned counsel for the petitioners also referred to section 3(6)(iii) and (iv) of the Pakistan International Airlines Corporation (Conversion) Act, 2016 (“the 2016 Act”) and

submitted that the service and retirement benefits of the petitioners could not have been changed to their disadvantage; and that the petitioners were arm-twisted and coerced by the management of P.I.A.C. to opt the V.S.S.-2020 failing which they were threatened to be mandatorily retired from service under the Mandatory Separation Scheme dated 29.12.2020. The petitioners seek issuance of a writ to the P.I.A.C. to amend the V.S.S.-2020 so as to give to the petitioners the benefits which had been given to the employees of the Voluntary Golden Handshake Scheme dated 02.12.1997.

4. I have heard the contentions of the learned counsel for the petitioners and perused the record with their able assistance.

5. Perusal of the terms and conditions of the V.S.S.-2020 shows that the last date for submission of application for opting for the said scheme was 22.12.2020. It is an admitted position that all the petitioners opted for retirement under V.S.S.-2020 and have already obtained all the benefits thereunder. More than eight months after opting for the V.S.S.-2020 the petitioners have filed the instant writ petition with the purpose of seeking more benefits than those to which they were entitled under the V.S.S.-2020.

6. Before delving into the merits of the case, it first needs to be determined whether this Court can issue a writ of mandamus to the P.I.A.C. at the instance of the petitioners who have admittedly opted for and obtained all benefits under V.S.S.-2020.

7. The petitioners had not retired from service in the ordinary course or under any statutory

rules of P.I.A.C., if any, but as a result of opting for the V.S.S.-2020. The question whether the petitioners were coerced into opting for V.S.S.-2020 is a controversial question of fact which cannot be resolved in the constitutional jurisdiction of this Court. The Mandatory Separation Scheme dated 29.12.2020 was floated by the P.I.A.C. after the deadline of 22.12.2020 for opting for V.S.S.-2020. Therefore, on the basis of the documents on the record it cannot be held that the petitioners were coerced into opting for V.S.S.-2020.

8. By virtue of section 3(1) of the 2016 Act, the P.I.A.C. was converted into a public company limited by shares with effect from the date of the enactment of the said Act. Section 3(6)(iii) and (iv) of the 2016 Act provides that the salaries of employees, emoluments and all other terms of service of employees, whether permanent or contractual, shall not be changed to their disadvantage; and pensions and other existing obligations of the P.I.A.C. to retired employees shall not be changed to their disadvantage. These provisions cannot be stretched to be made applicable to the employees who opt for a Voluntary Separation Scheme, which is purely contractual in nature. The said provision provides protection of the terms and conditions of service to the employees of P.I.A.C. upon conversion of P.I.A.C. into a public limited company and do not apply to the employees who voluntarily opt for and obtain benefits under V.S.S.

9. In the case of State Bank of Pakistan Vs. Imtiaz Ali Khan (2012 SCMR 280), the respondent had opted for the Voluntary Golden Handshake Scheme introduced by the State Bank of

Pakistan that offered a voluntary exit to its employees on payment of retirement benefits under the existing rules in addition to other normal benefits as compensation. The writ petition filed by the respondent was accepted by the Hon'ble High Court directing the State Bank of Pakistan to pay commutation on the respondent's gross pension irrespective of the Golden Handshake Scheme. The Hon'ble Supreme Court, while allowing the State Bank of Pakistan's appeal against the judgment of the Hon'ble High Court, held *inter alia* that the respondent had not retired from service by application of the State Bank of Pakistan's Regulations but only after he had voluntarily accepted the Golden Handshake Scheme, which was to govern his case. In paragraph 28 of the said report, it was held as follows:-

"28. Since the respondent-employees have not retired from service of the appellant-Bank by application of the Regulations, 1980 nor under the Staff Regulations, 1993 but they have left the service of the appellant-Bank at their own exercising their own right of option by accepting the Scheme, therefore, their cases are squarely governed and controlled under the terms and conditions as was clearly spelt out in the Scheme itself. As no reference can be made as to how and against whom the respondents were differently treated in a discriminatory manner, we have failed to understand as to how there was any violation of Article 25 of the Constitution."

(Emphasis added)

10. The door of this Court exercising Constitutional jurisdiction cannot be left ajar for the retired employees of P.I.A.C. who had opted to avail the benefits under the V.S.S.-2020, I say this, because the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132) held as follows:-

“29. As to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions.”

(Emphasis added)

11. On the basis of the law laid down by the Hon’ble Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), this Court, vide order dated 16.02.2017, dismissed a number of writ petitions as not maintainable wherein retired employees of Pakistan Telecommunication Company Limited had sought to impeach the V.S.S. entered into by them on the ground that they were coerced or arm-twisted into doing so.

12. Additionally, the Hon’ble Lahore High Court vide judgment dated 27.05.2016 passed in writ petition No.5978/2011 titled S.M. Abu Talib Naqvi Vs. President/Chief Executive Officer PTCL held that the petitioners who had availed the V.S.S. package were not entitled to the relief granted vide Finance Division’s Office Memoranda issued on 05.07.2010 regarding increase in pension, medical allowance and in family pension.

13. In view of the above, I hold that the instant petition is not maintainable and consequently the same is dismissed in limine.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**