

**2003 S C M R 1128****[Supreme Court of Pakistan]****Present: Syed Deedar Hussain Shah and Muhammad Nawaz Abbasi, JJ****PAKISTAN INTERNATIONAL AIRLINES CORPORATION through  
Chairman---Petitioner****Versus****INAYAT RASOOL---Respondent**

Civil Petition No.371-K of 2001, decided on 27th May, 2002.

(On appeal from the judgment dated 31-3-2001 of the Federal Service Tribunal, Islamabad passed in Appeal No. 1560 (K) of 1998).

**(a) Pakistan International Airlines Corporation Personnel Policies Manual---**

---- C1. 18:06:05---Pakistan International Airlines an Essential Utility Service (M.L.R. 52), para.5---Qanun-e- Shahadat (10 of 1984), Art. 114---General Clauses Act (X of 1897), S.21---Service Tribunals Act (LXX of 1973), S.4---Constitution of Pakistan (1973), Art.212(3)-- Dismissal from service under M.L.R. 52---Review Board declared such order void ab initio---Re-employment of respondent through order dated 14-2-1990 without benefit of his previous service---Authority though order, dated 3-7-1995 counted previous service of respondent for purpose of pensionary benefits in terms of cl. 18:06:05 of PIAC Personnel Policies Manual---Respondent opted for Voluntary Golden Handshake Scheme subject to grant of benefit of service rendered by him prior to his termination and also for period during which he remained out of service in terms of letter dated 31-7-1995 issued on recommendation of Review Board---Authority accepted such option without giving benefit of service rendered prior to re-employment---Respondent approached Authority for injustice done to him by depriving him from legitimate right of re-instatement in service- with benefit of previous service, but failed---Service Tribunal accepted respondent's appeal---Validity- Review Board had recommended re-employment of respondent with grant of benefit of previous service towards pensionary benefit and seniority---Review Board had used word 're-employment' for re instatement and its recommendation practically was for re-instatement in service without grant of financial back-benefits---Authority having extended benefit of previous service to respondent and acknowledged same before Supreme Court in Pakistan International Airlines. Corporation v. Malik Khalid Hussain and others (C.R.P. No.7-K of 2001 etc.), could not re-trace its steps and change its position contrary to stand earlier taken before Supreme Court---Such admission of Authority would estop it from taking a different position at the cost of disadvantage to respondent in the present case---Benefit of previous service given to respondent through order dated 3-7-1995 having taken effect had created valuable rights in his favour and had attained finality, which could not be undone on the strength of re-employment order, dated 14-2-1990, rather same would be deemed to have been superseded and merged in subsequent order, dated 31-7-1995, which would hold field for purpose of Golden Handshake Scheme---Supreme Court dismissed petition for leave to appeal.

Civil Review Petitions Nos.7-K to 13-K of 2000 and Pakistan International Airlines Corporation v. Malik Khalid Hussain and others C.R.P. No.7-K of 2001 etc. rel.

**(b) Civil service---**

---- Re-employment and reinstatement in service ---Distinction---Re employment in plain words is fresh appointment, whereas reinstatement is to place a person in his previous position.

**(c) Locus poenitentiae, principle of---**

----Authority having power to make an order has also power to undo the same--- Exception---Order once having taken legal effect and created certain rights in favour of any individual cannot be withdrawn or rescinded to the detriment of those rights- -- General Clauses Act (X of 1897), S.21.

Pakistan v. Muhammad Himayatullah PLD 1969 SC 407 fol.

Government of Pakistan v. Fauji Cement Company Ltd. 2001 SCMR 1771; 2000 SCMR 2883; Muhammad Nawaz v. Federation of Pakistan 1992 SCMR 1420; Government of Sindh v. Niaz Ahmad 1992 SCMR 2293; Excel Builders v. Ardeshir Cowasjee 1999 SCMR 2089; Ardeshir Cowasjee v. Karachi Building Control Authority 1999 SCMR 2883; Engineer-in-Chief Branch v. Jalaluddin PLD 1992 SC 207 and Themis v. Dawar Khan PLD 1990 SC 629 rel.

Fazal-i-Ghani, Advocate Supreme Court and Miss Wajahat Niaz, Advocate-on-Record (absent) for Petitioner.

Respondent in person.

Date of hearing: 27th.May, 2002

**JUDGMENT**

**MUHAMMAD NAWAZ ABBASI, J.**---This petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been preferred by the Pakistan International Airlines Corporation, the petitioner herein, seeking leave to appeal against the judgment dated 31-3-2001 passed by the Federal Service Tribunal, Islamabad in a Service Appeal.

The facts in the small compass giving rise, to this petition are that respondent joined Pakistan International Airlines, Karachi as Economist in the Planning Department in 1970. The respondent was holding the position of Finance Manager in Pay Group-IX when on 25-2-1982 he was terminated from service under Martial Law Regulation No.52. Later the Government of Pakistan declared to review the cases of Government servants who were removed or dismissed under Martial Law Regulations No-52 as a result of `political victimization and constituted a Review Board, vide a Notification dated 3-6-1989 issued by the Labour Division. The respondent also approached the said Board for review of his case and the Review Board having scrutinized the case of respondent made the following recommendations:--

"For the above reasons we hold the impugned order dated 25-2-1982 void ab initio and recommend to the Federal Government (Ministry of Defence, Aviation Division) to direct the P.I.A.C. to re-employ the petitioner at the post and with the same seniority which the petitioner would have enjoyed had his services not been terminated out of service are not allowed. This period, however, will be counted towards the service for the purpose of Pension etc."

In pursuance of the above recommendation the respondent was offered to rejoin the service vide letter dated 31-1-1990 issued by the Managing Director, P.I..A.C. which provided as under:--

"3 (a). On accepting this offer, you shall rejoin the same pay Group in which you were on the date of censure of your employment in P.I.A.C. You shall, however, be entitled to such advance increments as you would have earned had you remained in the service of the Corporation.

- (b) On rejoining of the P.I.A.C., your basic pay will be Rs.4777-180-5670 plus usual admissible allowances with effect from the date of your reporting for duty on 1-2-1990 or thereafter.
- (c) Other terms and conditions of service will be the same as applicable to the regular employees of P.I.A.C as laid down in P.I.A. Personnel Policies Manual, Employees (Service and Discipline) Regulations and other orders/instructions issued by the Management from time to time. "

Subsequently, the order of re-employment was issued vide letter dated 14-2-1990 in the following manner:

**SUBJECT: APPOINTMENT LETTER**

1. Reference this Office Letter No. PIA/SD/90 dated 28th January 1990, and your joining report dated 1st February, 1990.

2. We are pleased to inform you that you have been re-employed as Finance Manager, Flight Services in the Corporation with effect from 1-2-1990 in the Pay Scale of Rs.4770-480-5670.

3. On re-employment, you will be entitled to the following:

Salary

(i) Basic Pay Rs.5,670.00 p.m.

(Pay Group: IX (i)

(ii) House Rent @ 60% of Basic Pay: Rs.4,500.00

(iii) Dearness Pay: Rs.175.00

(iv) Additional Dearness Pay Rs.250.00

(v) Compensatory Allowance: Rs.200.00

(vi) Entertainment Allowance: Rs.700.00

(vii) Indexation: Rs.119.00

(viii) Conveyance/Car Maintenance Rs.300-00/1,050.00 p.m.  
Allowance, as per Corporation  
Rules:

(ix) Utility Allowance: Rs.477.00 p.m.

4. Probationary period has been waived off by the Managing Director, as a very special case.

5. Passage facilities will be available to you as per rules of Corporation. Your passage entitlement will be determined on the basis of service that you had put in prior to dispensation of service.

6. On re-employment, your seniority will be fixed from the date of joining. No benefits other than mentioned at 3, 4 and 5 above, will be allowed on the basis of previous employment.

7. Pension, Provident Fund and Leave shall be governed by the Corporation Rules applicable to regular employees. from the date of joining.

8. Your -re-employment in the Corporation is subject to the following:--

(a) Medical fitness by the PIA Medical Authorities. . .

(b) Security clearance/Police Verification by the Competent Authority.

(c) Release certificate from the previous employer if any.

(d) Photostat copy of National Identity Card.

(e) Six recent passport size photographs.

9. Other terms and conditions of your employment shall be the same as laid down in the PIA Personnel Policies Manual, Employees (Service and Discipline) Regulations and other orders/instructions issued by the Management from time to time. "

The respondent on re-employment, joined Pakistan International Airlines in Pay Group No. IX and later was promoted in Pay Group No. X vide letter dated- 31-7-1995 with the following benefit:--

"Mr. Inayat Rasool's previous service will also be counted towards Pensionable service as per clause 18-06-05 of the PIAC Personnel Policies Manual."

The respondent was given the charge of General Manager in May, 1996 but due to the internal differences of the" management at senior level, the respondent was placed in the surplus pool in October, 1997. In December, 1997 Voluntary Golden Handshake Scheme was introduced by PIAC which was subsequently revised and the respondent opted for the said Scheme subject to the grant of benefit of the service rendered by him prior to his termination and also for the period during which he remained out of service in terms of letter dated 31-7-1995 issued in the light of recommendations of the Review Board. The option given by the respondent was accepted by the petitioner vide letter dated 14-5-1998 in the following manner:--

"2. As per record/investigation Report received from different Government Agencies, cases of misconduct and your irregular promotion from Pay Group IX to Pay Group X have been proved, instead of taking further disciplinary action against you the Competent Authority has taken a very lenient view and considered your option for Golden Handshake Scheme and accepted your option and you are hereby retired from the service of Corporation with effect from 15-5-1998 (A.N.)."

The petitioner without giving the benefit of service rendered by the respondent prior to the re-employment accepted the option of respondent on the basis of the period of his service after re-employment i.e. about 7 years and 11 months. The mode of acceptance of option being not acceptable to the respondent, he made a representation to the Managing Director of PIAC and upon failure of Managing Director to decide this representation within the prescribed period of 90 days the respondent filed an appeal before the Federal Service Tribunal and the Tribunal having heard the parties, through their learned counsel allowed the appeal with the following observations:--

"We are in respectful agreement of the authorities cited by the learned counsel for the respondents and while considering the facts, which have come on record, we are of the considered view that the respondents were in not counting the service rendered from 2-7-1970 to 25-2-1982 and so also the period which he remained out of job on account of his dismissal under M.L.R. 52 till 1990, when he was reinstated. Since the decision of the Review Board is on the ground that the very order of dismissal was void ab initio and was against the principles of natural justice, the said order does not hold field and since it was decided by the Board that he would not be paid arrears for the said period, but the said period was to be counted towards pensionary benefits, therefore, we while allowing the appeal in hand, direct the respondents to take into account the period towards the pensionary benefits of the appellant as under:--

from 30-6-1970 to (the period the. appellant remained in 25-2-1982: service).

from 26-2-1982 to (the period which the appellant 31-1-1990: remained out of job without arrears but only counted towards pension).

from 1-2-1990 to (the period which appellant served 15-5-1998: respondents after the order of the Board).

and to make payment accordingly and deduct whatever .has been paid as advance to the appellant after retirement. This is being done as similar benefits have been granted by the respondents to others as is evident from Minute-II dated 6-1-1998, for which it was being said that it was a case of favouritism. We are not inclined to go into details of the said summary but since we have considered it to be a case of discrimination, we allow the appeal to the extent as indicated above with no order as to costs. "

The learned counsel for the petitioner has contended that in pursuance of the recommendations made by the Review Board, the respondent was offered re-employment vide letter dated 14-2-1990 on the basis of terms and conditions contained therein and the respondent having accepted the same-joined the service as fresh appointee, therefore, he would not be entitled to the benefit of service rendered by him in the Corporation prior to the re-employment. Learned counsel next submitted that since the recommendations made by the Review Board would have no binding force, therefore, it was not incumbent upon the petitioner to fix the terms and conditions of re-employment in terms of said recommendations. Learned counsel vehemently argued that re-employment is nothing but a fresh appointment and the grant of benefit of previous service to the respondent made at the time of his promotion in Group X was an act of undue favour which was bound to be ignored.

The letter dated 3-7-1995 by virtue of which the respondent was promoted in Pay Group X reads as under:--

**"PERSONAL ORDER No.006/JUL/95**

- (1) The Competent Authority has approved reckoning of seniority of Mr. Inayat Rasool, P-49537, Manager Capital Budget at the time of induction/re-employment on 1<sup>st</sup> February, 1970 at Serial No. 1 of Pay Group IX Seniority List of Finance Department.
- (2) Mr. Inayat Rasool, P-49537, is now promoted as General Manager in Finance Department in Pay Group-X with effect from 3rd July, 1995. He will remain on probation for six months and on satisfactory completion of this period, will be confirmed as General Manager.

- (3) Mr. Inayat Rasool's previous service will also be counted towards pensionable service as per clause 18-06-05 of the PIAC Personnel Policies Manual.
- (4) By a copy of this Order, Director Finance is requested to assign/allocate proper duties/responsibilities to Mr. Inayat Rasool, an Admin. Manager (Finance) to refix his salary accordingly."

The respondent while appearing in person has forcefully argued that the order dated 3-7-1995 was passed on the basis of recommendations made by the Review Board, according to which his previous service was to be counted for the purpose of pensionary benefit and seniority and therefore, the same was to be necessarily counted for the purpose of Golden Hand Shake Scheme, as he would be deemed to be in continuous service without any break. The respondent argued that the injustice being done by depriving him from legitimate right of reinstatement in service, with benefit of previous service as recommended by the Review Board was undone and the terms and conditions of service contained in the letter dated 14-2-1990 would be deemed to be revised.

The pivotal question for determination would be as to whether the respondent was entitled to the benefit of previous service on re employment or not. The difference of re-employment and reinstatement is obvious as re-employment in the plain words is fresh whereas re-instatement is to place a person in his previous position the present case, the Review Board recommended the re-employment the respondent with grant of benefit of previous service pensionary benefit and seniority and thus practically, recommendation was for reinstatement in service without grant financial back-benefits. 'It appears that the Review Board used the re-employment for reinstatement. However, the respondent was employed on the basis of conditions contained in his appointment according to which he was a fresh appointee and was not entitled to benefit relating to his previous service but at the time of promotion Pay Group-X, vide letter dated 31-7-1995, the notwithstanding the condition of service contained in his letter, allowed him the benefit of previous service rendered, by before his termination and was also treated in service during the he remained out of job and thus by virtue of this letter, the terms conditions of service of respondent were revised and settled in the of recommendations made by, the Review Board in the manner:--

"Having carefully examined the petition of termination from service of the petitioner, we observe that the order 25-2-1982 is the result of political victimization."

It is devoid of any moral or legal sanction behind it and does fulfil the requirement of natural justice.

For the above reason we hold the impugned order 25-2-1982 void, ab initio and recommended to the Federal Government (Ministry of Defence, Aviation Division) to direct the PIAC to employ the petitioner at the post and with the same seniority which the petitioner would have enjoyed had his service not been terminated. The arrears for the period the petitioner remained out of service are not allowed. This period, however, will be counted towards service for the purpose of pension etc."

The order dated 3-7-1995 by virtue of which respondent was promoted as General Manager in Pay Grade No.X appears to have been issued consciously with a view to give benefit of the previous service to the respondent in the light of recommendations made by the Review Board and consequently, the period of his previous service was counted for the purpose of pensionary benefits in terms of clause 18-06-05 of PIAC Personnel Policy Manual. The option given by the respondent for voluntary Golden Handshake Scheme was accepted with the exclusion of his previous service for the reason that he was fresh appointee and the recommendations for re-employment made

by the Review Board were given effect subject to the acceptance of terms and conditions of service contained in the letter of appointment dated 14-2-1990, therefore, the subsequent approval for reckoning his seniority from the date of his initial induction in service at the time of grant of promotion in Pay Grade No.X vide order, dated 3-7-1995 would be of no consequence and would no-convert the re-employment into reinstatement in service.

The Service Tribunal while dealing with the grounds taken by the respondent in the appeal, allowed the same with the following observations:--

"No doubt, the learned counsel for the respondents; placing reliance on PLD 1987 SC 107, has contended that the appellant cannot be allowed to approbate and reprobate and at same time cannot be allowed to blow hot and cold, but, in our view, .the respondents have themselves tried to approbate and reprobate as they have backed out from their own letter (Annexure-G, page 49) which has been reproduced above, where at para. 3, it has clearly been stated that his previous service will be counted towards pensionary service. Similar is the position of re-instatement order but the respondents in their parawise comments have taken a plea that clause 18-06-05 of the PIAC Personnel Policies Manual does not give this sort of concession to a dismissed employee. As against this, the decision of the Review Board (Annex-D, page 29), reproduced above, clearly makes a mention that the very order of: dismissal was the result of political victimization and such an allegation leveled against the appellant was false and baseless, as such the impugned order, which was against the requirement of natural justice, was void ab initio, and the recommendations which it cannot be said that the respondents were correct in their approach for not counting the period of the previous service of the appellant and so also the period which he remained out of towards his pensionary benefits. No doubt, the appellant was not paid for the intervening period, but that portion was to be counted towards pension. At the same time, Minute-2, dated' 29-6-1998, as well as Minute-6, dated 15-7-1998, signed by Mr. Arif Ali Khan Abbasi, Managing .Director, speak of the fact that the appellant was not given a fair deal, as not only his request was considered but he was sent to surplus pool whereafter his application for exercising the option for Voluntary Golden Handshake Scheme was accepted without giving him the benefits."

This Court in Civil Review Petitions Nos.7-K to 13-K of 2000 and few other similar petitions, filed by PIAC against Malik Khalid Hussain and others, in the light of policy decision made by the Federal Government regarding the rights and liabilities of employees on re employment in the light of the recommendations of the Review Board made the following observations:--

"9. For what has been discussed above, it is a case of mistake apparent on the face of record, therefore, we accept these review petitions, judgment dated 10-1-2002 of this Court under review is modified, and it is held that on re-employment, the respondents were entitled to be dealt with according to the offer made by the petitioner through letter dated 20-5-1990 which they had accepted and joined the service by way of re-employment."

The policy of the Federal Government referred to above was as follows:--

(a) Those ex-employees whose recommendation for re-employment by the Review Board has been specifically and separately endorsed by the Ministry of Defence, Aviation Division, may be offered re-employment in the service of the Corporation in, the same pay group/level in which they were working on the date of the termination, dismissal or retirement of their service. The Management may grant to them such number of advance increments in the same pay group as it may deem appropriate on a case to case basis. However,

this will be done only in exceptional cases and not as a rule. The re-employment personnel will be given fresh 'P' numbers. This re-employment will be considered as fresh employment.

- (b) Those ex-employees recommended for employment by the Review Board and endorsed by the Ministry of Defence, Aviation Division for re-employment, who are either unwilling or unable to take up employment shall be entitled, in lieu of re employment, to a lump sum compensation to be calculated at the rate of 1/3rd of their basic salary and house rent from the date of their removal, retirement and dispensation or dismissal from service till 31st January, 1990."

Learned counsel for the petitioner has contended that above named two employees were re-employed in similar circumstances on the basis of similar conditions, therefore, the respondent could not be dealt with differently as he having accepted the conditions contained in his appointment letter joined the service, therefore, he would be estopped to claim the benefit of his previous service on the basis of recommendations made by the Review Board and the conditions contained in the order dated 3-7-1995 by virtue of which he was promoted in Pay Group No.X, subsequently would not change his terms and conditions of service.

It is noticeable that the petitioners in the above-referred review petitions pleaded that Inayat Rasool (the present respondent) and two others namely, Ghulam and Akbar were rightly given the benefit of previous service on re-employment and that the case of respondents in review petitions being distinguishable, they could not be dealt with in the same manner as they would not stand at par to Inayat Rasool (the respondent in the present petition) and two others.

We are afraid, the petitioner cannot subsequently change his position and be allowed to plead approbate and reprobate and further the order, dated 3-7-1995 having taken effect and created valuable right in favour of the respondent could not be rescinded and amended. The admission made by the petitioner regarding entitlement of respondent for grant of benefit of previous service, before this Court in the review petitions referred to above would estop the petitioner from taking a different position at the cost of disadvantage to the respondent in the present petition. It was held in *Pakistan v. Muhammad Himayatullah* (PLD 1969 SC 407) as under:--

"The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights. "

The reliance can also be placed on the following judgments in support thereof:--

*Government of Pakistan v. Fauji Cement Company Ltd.* (2001 SCMR 1771), 2000 SCMR 2883, *Muhammad Nawaz v. Federation of Pakistan* (1992 SCMR 1420), *Government of Sindh v. Niaz Ahmad* (1991 SCMR 2293), *Excell Builders v. Ardeshir Cowasjee* (1999 SCMR 2089), *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883), *Engineer-in-Chief Branch v. Jalaluddin* (PLD 1992 SC 207) and *Themas v. Dawar Khan* (PLD 1990 SC 629).

The petitioner having extended the benefit of previous service to the respondent and acknowledged the same before this Court in *Pakistan International Airlines Corporation v. Malik Khalid Hussain and others* (C. R. P. No.7-K of 2001 etc.) could not retrace his steps and change his position contrary to the stand earlier taken before this Court. The order by virtue of which the benefit of previous service was given to the respondent having taken effect has attained finality and would not be undone on the



strength of order dated 14-2-1990 rather the earlier order, dated 14-2-1990 would be deemed to have been superseded and emerged in the subsequent order, dated 3-7-1995 which would hold field for the purpose of Golden Handshake Scheme.

For the foregoing discussion, we while upholding the judgment of the Federal Service Tribunal impugned herein, dismissed this petition. Leave is refused.

S.A.K./P-61/S Petition dismissed.

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