

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: June 3rd, 2011

+ **W.P.(C) 545/2006**

National Aviation Company of India Ltd(NACIL)..... Petitioner
Through:Mr.Lalit Bhasin with Ms.Ratna
Dhingra & Ms.Shreya Sharma,Advocates

-versus-

Government of India & Ors Respondents
Through:Mr.Sachin Datta with
Mr. Abhimanya Kumar, Advocates
for respondent no.1.
Mr. Ashok Agarwal with Mr.Anuj
Agarwal for respondent no.3.

CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J

1. By way of this petition under Article 226 and 227 of the Constitution of India, petitioner has prayed for issuance of a writ in the nature of certiorari or any other appropriate writ seeking quashing of impugned order of reference dated 3rd

October, 2005 under section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as `the I.D Act') passed by the Ministry of Labour i.e Government of India. The impugned reference order reads as under:-

“Whether the termination of services of Shri Ravinder Chandra and 42 others by the Management of Indian Airlines Ltd. is legal and justified? If not, to what relief they are entitled to?”

Petitioner has also challenged the subsequent notice dated 10th October, 2005 issued in the aforesaid reference by Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi i.e. respondent no.2. Respondent no.3 is the employees union representing the workmen.

2. Background of the case as alleged in the petition is as under:-

In order to fill up certain vacancies on regular basis in the category of Helper (Engg.), Helper (Stores), Helper (Commercial) etc, a notification was issued in the year 1988-1989 inviting applications for the same and panels were prepared in the year 1990 after following the provisions of Recruitment & Promotion Rules of Indian Airlines Ltd. The

validity of these panels was for a period of two years and the candidates were offered appointment in terms of their merit on the panel as and when the vacancies arose. The validity of panels finally expired on 15.7.1994. In the year 1994-95, a large number of writ petitions were filed by different categories of casual workers praying for regularization of their services in Indian Airlines Ltd. On 7th December, 1995, in CWP No. 4113/94 titled S.K. Saini and Indian Airlines Ltd. i.e. this court vide its interim order dated 7.12.95 directed the petitioner to prepare a panel for engaging casual workers on a daily rated basis in different categories from amongst the casuals who had worked with petitioner on daily rated basis. Pursuant to the said order, panels were formed and the petitioner started engaging workers from those panels. On 9th May, 1997, the aforesaid writ petition was disposed of along with other connected writ petitions wherein petitioner was directed to engage casuals on a daily rated basis as per its requirement firstly from the panel prepared and approved on 20th November, 1990, as such, persons engaged on a daily rated basis pursuant to the interim order dated 7th December, 1995 had to be discontinued and the persons whose names

were borne on the panel formulated in the year 1990 were offered appointment on casual basis. Subsequently, SLP being SLP No. 16392-16399/97 were filed by the workers challenging the aforesaid order. The same was dismissed by the Supreme Court on 15th September, 1997.

Thereafter, another batch of 25 writ petitions was filed by the casuals in the year 1997-98 praying for regularization wherein WP(C) 2644/1997 was the lead case. The claim of the workers in the said petitions for regularization was dismissed vide order dated 21st August, 1998. By the said order, this court also directed the petitioner to consider the persons who have been continuously been engaged on casual daily rated basis by virtue of interim order or otherwise be given an opportunity of being considered for regular appointment at the time when petitioner would like to fill regular vacancies and persons getting over age for selection be given relaxation in age. The workers challenged the aforesaid order by filing Special Leave Petitions before the Supreme Court which were also dismissed vide order dated 28th November, 1998. It is stated that another writ petition being WP© 4799/1997 was filed by Sh. J.D.Biswas before this

court challenging his disengagement as a casual. The same was dismissed by this court vide order dated 10th September, 1999.

The case of the petitioner is that despite the decisions of this court in WP(C) nos.4133/1994-S.K.Saini Vs. UOI & ors, 2644/1997-Gurpal Singh Vs. UOI & ors and 4799/1997-J.D.Biswas Vs. Indian Airlines, respondent no.3 had made representation on behalf of the workers to the Assistant Labour Commissioner for reinstatement and regularization which resulted in the Government making a reference for adjudication vide earlier order dated 17th February, 2004. The petitioner had challenged the same by filing WP© 13580/2004 praying for quashing of the aforesaid order of reference. The said writ petition was disposed of by this court vide order dated 3rd May, 2005 on the statement made by counsel for respondent/UOI that he had no objection to the quashing of the said reference as the same was contrary to the judgment of the Division Bench of this court. The counsel for respondent/UOI further stated that the Government will take appropriate steps as may be available to it for issuing a fresh reference. Thereafter, the Government has issued the

impugned order of reference dated 3rd October, 2005 which is already reproduced above. The case of the petitioner is that the aforesaid reference is bad in law as the dispute raised by workmen represented by respondent no.3 has already been adjudicated upon by this court in WP(C) nos.4133/1994-S.K.Saini Vs. UOI & ors, 2644/1997-Gurpal Singh Vs. UOI & ors and 4799/1997-J.D.Biswas Vs. Indian Airlines.

3. Respondent no.1 i.e. Union of India has opposed the present writ petition by filing a counter affidavit. The stand of respondent no.1 is that the impugned reference order has been made in accordance with the order of this court dated 3rd May, 2005 in WP(C) 13581/2004. It is stated that in the aforesaid writ petition, counsel for petitioner had raised an objection that the question of regularization has already been adjudicated by the Division Bench of this court in WP(C) 4113/1994 as well as in WP(C) 2644/1997. Accordingly, counsel for respondent no.1/UOI conceded for quashing of reference order dated 17/20th February, 2004 issued by the Government of India, Ministry of Labour wherein reference was made in respect of demand of the workmen for reinstatement as well as regularization. It is stated that while

conceding for quashing, counsel for respondent no.1/UOI made a statement that the Government will take appropriate steps as may be available for issuing a fresh reference. In view of the said statement of the parties, the said reference dated 17/20th February, 2004 was quashed. Respondent no.1 has denied that the impugned order of reference is in disregard to the orders of this court as is alleged. The stand of respondent no.1 is that by reading the order of this court dated 3rd May, 2005 in WP(C) 13581/2004, it is clear that the earlier order of reference dated 17/20th February, 2004 was quashed in the light of statement of counsel for respondent no.1/UOI that the Government will take appropriate steps for issuing a fresh reference in respect of adjudication of their rights for reinstatement alone without including the issue of regularization. It is stated that the impugned reference is in accordance with the decision of this court in WP© 13581/2004, as such, it may be allowed to go to the Labour Court for adjudication. It is further stated that at no point of time issue related to employment of casual workmen by petitioner has undergone an industrial adjudication. It is further stated that for the first time, the respondent

no.3/workmen had challenged their termination by filing WP(C) 3343/1999 which was dismissed as withdrawn vide order dated 29th January, 2002 of this court and liberty was granted to respondent no.3 to approach the competent authority. Thereafter respondent no.3 had filed a claim before the Conciliation Officer. Accordingly the order of reference dated 17/20th February, 2004 was issued which was challenged by the petitioner by filing WP(C) 13580/2004 which was quashed by this court vide orders dated 3rd May, 2005 and the present reference is made in compliance of the said order. It is stated that the present reference is for adjudication of the rights of the workers for reinstatement without including the issue of regularization and the reference is legal and valid and does not call for any interference of this court.

4. The respondent no.3/union representing the workers has also filed counter affidavit wherein it is alleged that termination of workers is unjustified, illegal and contrary to the orders passed by this court from time to time. It has taken the same stand as is taken by respondent no.1/UOI in its counter affidavit. It is stated that workers are entitled to

raise an industrial dispute. They had earlier filed WP(C) 3343/1999 which was dismissed as withdrawn wherein liberty was given to them to approach the competent authority under the Industrial Disputes Act. In view of the liberty granted by this court, they had approached the Competent Authority under the Industrial Disputes Act, wherein order of reference dated 17/20th February, 2004 was passed which was challenged by the petitioner by filing another writ petition being WP(C) 13580/2004. It is stated that the impugned reference order is in compliance of order of this court dated 3.5.2005 passed in aforesaid writ petition as the question of regularization has been dropped in the present terms of reference.

5. The main contention of learned counsel for petitioner is that the impugned reference is bad-in-law and needs to be set aside as the dispute referred has already been decided by the Division Bench of this court in WP(C) 4113/1994 & 2644/1997 and the Single Bench in WP(C) 4799/1997. It is further contended that respondent no.1 in WP(C) 13580/2004 wherein earlier reference order was challenged had conceded that the issue of regularization and reinstatement of the

workmen is contrary to the decisions of this court, as such the present reference is not maintainable. It is further contended that workmen represented by respondent no.3 were engaged pursuant to the directions of this court purely on daily rated basis and their disengagement was also pursuant to the directions of this court, as such no dispute exists and no reference could have been made by respondent no.1 for adjudication.

6. The stand of respondent no.1/UOI and workmen represented by respondent no.3 is that there has never been any adjudication of dispute of the workmen relating to their termination/reinstatement. It is further contended that purpose of filing the present petition is to delay the adjudication of disputes which is pending before the Industrial cum Labour Tribunal i.e appropriate forum for proper adjudication. It is also contended that vide order dated 29th January, 2002 of this court in WP(C) no.3343/1999, respondent no.3 were given liberty to approach competent authority under the Industrial Disputes Act and respondent no.3 is availing the said opportunity. It is contended that said fact is concealed by the petitioner from this court and the

petition is liable to be dismissed on this ground alone itself.

7. I have heard learned counsel for the parties and perused the material on record.

8. It is an admitted position that termination of service of workmen represented by respondent no. 3 has not been adjudicated in any forum. Earlier the workmen represented by respondent no.3 had directly filed a WP(C) 3343/1999 before this court wherein prayer was made for declaring the action of the petitioner in terminating the services of 81 workers named in Annexure-C annexed with the said petition and other similarly situated workers engaged during the year 1997-98 and by replacing them with fresh hands as arbitrary and discriminatory and further prayer was made for reinstatement of the aforesaid workers. In the said petition, petitioner-management had filed counter affidavit and it was contended that if the workmen were aggrieved, they should proceed under the I.D. Act which provides the appropriate forum for the alleged grievances and that the said petition was not maintainable as the same was an attempt to circumvent and overreach the due process of law by invoking jurisdiction of this court. On merits, the stand taken was that

petitioner-workmen therein were not entitled for relief of reinstatement with back wages as this court vide its judgment dated 9th May, 1997 in WP(C) 4113/1994 had directed the petitioner to engage casuals according to their merits from pre-existing select panel prepared for regular posts, as such, petitioner-workmen could not be engaged as they were not from pre-existing panels.

After completion of pleadings, when the matter was listed for hearing, this court vide its order dated 29th January, 2002 dismissed the said petition as withdrawn. The said order reads as under:-

“After some hearing, learned counsel for the petitioner seeks leave to withdraw the petition with liberty to approach the competent authority under the Industrial Disputes Act. Liberty granted. Petition is dismissed as withdrawn.”

Thereafter workmen had approached Assistant Labour Commissioner for reinstatement and regularization which resulted in the Government making a reference for adjudication vide its order dated 17th/20th February, 2004. Petitioner had challenged the same by filing another WP(C) 13580/2004 which was disposed of vide order dated 3rd May,

2005 which reads as under:-

WP(C)13580/2004 & CM No.9459/2004

Rule.

With the consent of counsel for the parties I propose to dispose of the present petition.

The present petition is directed against the order of reference dated 17/20th February, 2004 issued by the Government of India, Ministry of Labour. The following dispute was referred for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, New Delhi No.1:-

"Whether the demand of the Delhi Office and Estt. Employees Union for reinstatement and regularisation of Shri Ravinder Chandra and 42 others (list enclosed) in the Indian Airlines Ltd. From the date of their initial appointment is legal and justified? If yes, to what relief they are entitled?

Counsel for the petitioner states that the question of regularisation has been adjudicated upon by the Division Bench of this Court in WP(C) No.2644/97 (Gurpal Singh and Ors. Vs. Indian Airlines and Ors.) decided on 21st August, 1998 and the present reference has been made contrary to the orders passed by the Division Bench.

Counsel for the respondent/UOI fairly states that he has no objection to the quashing of the impugned reference since it is contrary to the judgment of the Division Bench. He further states that the Government will take appropriate steps as may be available to them for issuing a fresh reference.

In light of the aforesaid the impugned reference is

quashed.

The writ petition stands disposed of. All pending application also stand disposed of.”

In view of the above, it is seen that earlier the respondent no. 3 had directly approached this court for redressal of its grievance by filing writ petition i.e. W.P.(C) 3343/1999 under Article 226 of the Constitution of India challenging their termination and had prayed for reinstatement with back wages. In the said writ petition, the stand of the petitioner-management was that appropriate forum for them was to raise an Industrial Disputes Act and accordingly that petition was dismissed as withdrawn and liberty was granted to the respondent-workmen to approach the competent authority under the Industrial Disputes Act. Thereafter, when respondent no. 1 had referred the dispute raised the Authority under the I.D.Act for adjudication, petitioner-management challenged the said action by filing WP(C) 13580/2004 by contending that no cause of action survives in their favour as their services were terminated pursuant to the order passed in WP(C) 4113/1994. In the

aforesaid petition, counsel for the petitioner had also contended that the question of regularization has been adjudicated upon by the Division Bench of this court in WP(C) No.2644/97 vide judgment dated 21st August, 1998, as such reference was contrary to the order passed by the Division Bench of this court. Thereupon, counsel for respondent/UOI agreed for quashing of the impugned reference and stated that Government will take appropriate steps as may be available to them for issuing a fresh reference. In the light of submissions of counsel for the parties, the earlier order of reference dated 17/20th February, 2004 challenged in the said petition was quashed.

9. The impugned order of reference dated 3rd October, 2005 which is now under challenge is the fresh reference order which has been issued by respondent no.1/UOI after the order of this court dated 3rd May, 2005 which has been reproduced above and the dispute of regularization has been deleted from the impugned order of reference. The dispute which is now referred for adjudication is only about alleged illegal termination of workmen. In the earlier order of

reference challenged vide WP(C) 13580/2004 the petitioner had raised an objection about reference of dispute by respondent no.1 about regularization only by contending that the same has been adjudicated by the Division Bench of this court in W.P.(C) No. 2644/97 as is reflected from the order dated 3.5.2005.

10. The stand of respondent nos. 1 & 3 is that petitioner is remixing the issue of termination of the workmen with issue of regularization in service. Their further stand is that in the garb of order passed in WP(C) 4113/1994 their services have been terminated. Petitioner has not placed on record any record concerning the workmen of present case including their appointment letters/termination letters etc. Learned counsel for respondent no.3 has also submitted that workers represented by it were not party in the earlier petitions i.e. writ petition nos. 4113/94, 4799/94 and 2644/97. Petitioner has also concealed in this petition about factum of filing of earlier WP(C) 3343/1999 by respondent no.3/workmen which had been dismissed as withdrawn wherein liberty was granted

to respondent no.3 to approach the Competent Authority under the I.D.Act.

11. Respondent no.1/Government after fully satisfying itself that prima facie there exists an industrial dispute has made a reference to the Central Government Industrial Tribunal. It is not the case of the petitioner that there was no material before the Government about its satisfaction. The workers had also taken a plea before Conciliation Officer that petitioner had not prepared a seniority list and were violating the order of this court. Their stand was that the petitioner had exhausted the panel of 1990 and people from outside were being engaged. Their further stand was that they have a right to be considered first before outsiders were engaged. They had also taken a stand that petitioner had failed to comply with the order of this court in W.P.(C) 2644/1997 wherein directions had also been given to petitioner for considering casual workers therein as well as other similarly placed persons who had been engaged on daily rated by interim order or otherwise be given an opportunity of being considered for regular appointment at the time when the

petitioner would like to fill regular vacancies. Their further stand is that petitioner has vacant posts and they are employing fresh hands taking the advantage of orders passed in WP(C) No. 4113/1994. In WP(C) 4799/1997, a casual employee had challenged his termination by filing a petition under Article 226 of the Constitution of India. The effect of the said judgment will be seen by the Tribunal. Whether the contentions raised are correct or not are required to be examined by the Tribunal. It will not be proper for this court to take up the job of Tribunal while exercising the jurisdiction under Article 226. It will be open to the petitioner to raise all the pleas before the Tribunal which are raised before this court.

12. The cases of these types are governed by their own facts and circumstances. The judgments relied upon by petitioners are not applicable to the peculiar facts and circumstances of this case as such are not discussed herein.

13. In WP(C) 3343/1999, the stand of the petitioner was that to circumvent the proceedings, respondent/workmen had approached this court. Now it will not be open for the

petitioner to contend that there is no existence of a prima facie dispute. However, I need not express my opinion and the Tribunal will examine now the contentions in this regard.

14. Keeping in mind the totality of the facts and circumstances of the case, it is appropriate that petitioner-management appear before the said Tribunal and file appropriate reply/documents in support of its stand. It will be open to the petitioner to take all the pleas which are raised in the present petition before the said Tribunal where the matter has been referred for adjudication.

15. The writ petition stands dismissed. The stay of further proceedings granted by this court during the pendency of present petition, stands vacated. There is no order as to costs.

VEENA BIRBAL, J.

June 3rd , 2011
ssb