

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 21<sup>st</sup> May, 2012**

+ **LPA No.381/2012**

% **THAI AIRWAYS EMPLOYEES ASSOCIATION  
AND ORS.**

**....Appellants**

Through: Mr. H.L. Tiku, Sr. Adv. with Ms.  
Yashmeet, Adv.

Versus

**THAI AIRWAYS INTERNATIONAL  
LTD. & ORS.**

**..... Respondents**

Through: Mr. Lalit Bhasin, Ms. Ratna  
Dhingra, Ms. Shreya S. Dabas & Ms.  
Bhauna Dhami, Advs. for R-1.

**AND**

+ **LPA No.386/2012**

% **THAI AIRWAYS EMPLOYEES ASSOCIATION** **....Appellant**

Through: Mr. H.L. Tiku, Sr. Adv. with Ms.  
Yashmeet, Adv.

Versus

**DELHI ADMINISTRATION & ORS.**

**..... Respondents**

Through: Ms. Anjana Gosain, Adv. for R-1&2.  
Mr. Lalit Bhasin, Ms. Ratna Dhingra,  
Ms. Shreya S. Dabas & Ms. Bhavna  
Dhami, Advs. for R-3.

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**JUDGMENT**

**RAJIV SAHAI ENDLAW, J.**

1. The challenge, in these Intra-Court appeals is made to the judgment dated 25<sup>th</sup> January, 2012 of the learned Single Judge allowing W.P.(C) No.80/2005 preferred by the respondent no.1 Thai Airways International Ltd. (Airlines) and dismissing W.P.(C) No. 2610/1991 preferred by the appellant.

2. The writ petition filed by the Airlines impugned the award dated 13<sup>th</sup> February, 2004 of the Industrial Adjudicator holding the termination of the employment of the appellants no.2 to 16 as illegal and in violation of Section 9A of the Industrial Disputes Act, 1947 as well as the settlement dated 21<sup>st</sup> June, 1990 arrived at between the appellant association and the Airlines and axiomatically directing reinstatement of the appellants no.2 to 16 with full back wages and continuity of service. The writ petition filed by the appellant Association and the workmen sought mandamus for initiating action under Section 29 of the Act for failure of the Airlines to comply with, i) the terms of settlement dated 21<sup>st</sup> June, 1990 and also impugned the communication dated 15<sup>th</sup> June, 1991 of the Joint Labour Commissioner refusing to take action under Section 29 of the Act. The learned Single Judge has, in a detailed, well reasoned judgment allowed the writ petition of the Airlines and axiomatically dismissed the writ petition of the appellant Association and workmen. The learned Single Judge has found:-

- a. that the settlement dated 21<sup>st</sup> June, 1990 was under Section 18 r/w Section 2(p) of the Act, before the Conciliation Officer;
- b. according to Clause 43(4) of the said settlement, employees other than permanent of the Airlines at the time of signing of

the settlement were to be issued a letter of probation for six months and the Airlines was to take a final decision with respect thereto within six months;

- c. that the Airlines in December, 1990 took a policy decision to give the work of utility services and ground handling, for which work the appellant workmen were engaged, to one M/s Cambatta Aviation Pvt. Ltd. (CAPL) and owing where to there were no vacancies or exigencies of work with the Airlines requiring engagement of casual/temporary workmen;
- d. that the Airlines, before expiry of six months from the settlement, issued termination letters to the appellant workmen engaged on casual/temporary basis and who were continuing on the basis of settlement;
- e. on humanitarian grounds, the appellant workmen were also offered work with M/s CAPL on the same terms & conditions on which they were working with the Airlines, with continuity of service;
- f. that on representation by the appellant association that the appellant workmen did not want to join M/s CAPL and in the interest of industrial harmony the Airlines agreed to review its decision and accordingly vide letter dated 22<sup>nd</sup> March, 1991 revoked the termination earlier effected and again gave time to the appellant workmen to join employment with M/s CAPL;
- g. that the appellant workmen however failed to join M/s CAPL and the Airlines in the circumstances again issued termination letters.

3. The learned Single Judge in the aforesaid facts observed/held:-
- i. that since the appellant workmen were employed as casual employees/workers, Section 9A of the Act was not attracted;
  - ii. that even in terms of the settlement aforesaid the appellant workmen were not permanent employees of the Airlines and the Airlines was only to take a decision qua them;
  - iii. that though the settlement mentioned that the Airlines would issue probation letters to the said workmen but since the decision as to their very continuance in the Airlines was to be taken within six months, the issuance of such a letter was a empty formality and non-issuance thereof was of no avail;
  - iv. that the appellant workmen, in the settlement itself were put to notice that their services could be discontinued within six months;
  - v. that non-issuance of probation letters did not prevent the Airlines from taking a decision to discontinue the services of the appellant workmen within six months of the settlement;
  - vi. that the Airlines had given ample opportunity to the appellant workmen to join the services of M/s CAPL to whom the ground handling services were transferred;
  - vii. that the termination letters dated 1<sup>st</sup> May, 1991 were owing to the failure of the appellant workmen to accept the offer of taking alternative employment with M/s CAPL and which offer itself was given purely on humanitarian grounds;
  - viii. that the appellant workmen, during the pendency of the writ petitions before the learned Single Judge had also been offered

employment with M/s CAPL Ltd. but had refused and which showed that they were only interested in reaping the benefit of Section 17B order and were not sitting idle;

- ix. that their such conduct was unethical;
- x. that each of the appellant workmen had already received more than Rs.2,50,000/- under Section 17B.

4. The senior counsel for the appellant Association and workmen has argued that the learned Single Judge has been unduly influenced by the refusal of the appellant workmen to join M/s CAPL. It is argued that the said offer could not be a substitute for the right of the appellant workmen against the Airlines. It is further argued that the letters of termination were not delivered within six months of the settlement and were ante-dated as is apparent from the date of the decision to outsource the ground handling.

5. We are unable to find any error in the view taken by the learned Single Judge. In terms of the settlement, the appellant workmen who were casual/temporary employees had no right against the Airlines and the Airlines was given time of six months for taking a decision qua such workmen. Such a decision having been taken by the Airlines, we fail to understand the grievance of the appellant workmen. As rightly observed by the learned Single Judge, the appellant workmen by settlement knew that the decision of the Airlines could also be of their termination and had, by entering into the settlement, acceded to the same. From the conduct of the appellant workmen of not accepting the offer of employment with M/s CAPL to whom the work which the appellant workmen were performing had been outsourced by the Airlines it is obvious that the appellant

workmen are gainfully employed. We, for this reason also are satisfied that no interference is required in appellate jurisdiction.

There is no merit in the appeals, the same are dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW, J**

**ACTING CHIEF JUSTICE**

**MAY 21, 2012**

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