

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

Date of Decision: 25.01.2012

+ W.P.(C) 80/2005

THAI AIRWAYS INTERNATIONAL LTD Petitioner

Through: Mr. Lalit Bhasin, Ms. Ratna
Dhingra, Ms. Shreya S.
Dabas, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr. H.L. Tikku, Sr. Adv.,
Ms. Yashmeet, Adv. for
R-3 to 24.

+ W.P.(C) 2610/1991

THAI AIRWAYS EMPLOYEES ASSN. Petitioner

Through: Mr. Lalit Bhasin, Ms. Ratna
Dhingra, Ms. Shreya S.
Dabas, Advs.

versus

DELHI ADMN. & ORS Respondents

Through: Mr. H.L. Tikku, Sr. Adv., Ms.
Yashmeet, Adv. for R-3 to 24.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. This order shall dispose of the above mentioned two writ petitions. So far as the first writ petition bearing no.

WP(C) 80/2005 is concerned, the prayer is for setting aside the award dated 13.02.2004 passed by respondents No.2 in Industrial Dispute No.9/1992 holding the termination of respondents No.4 to 24 (in the said writ petition) as illegal and in violation of Section 9A of the Industrial Dispute Act, 1947 and the settlement dated 21.06.1990 arrived at between the petitioner and the respondent No.3, (Thai Airways Employees Association, petitioner in the connected writ). It has been directed by the award that the petitioner shall reinstate respondents No.4 to 24 along with full back wages and continuity of service.

2. So far as the writ petition bearing No.2610/1991 is concerned, that has been filed by Thai Airways Employees Association against Thai Airways International Ltd. namely the employer for initiating action under Section 29 of the Industrial Disputes Act, 1947 for having deliberately and willfully failed to comply with the terms of settlement dated June, 21, 1990 and in particular clause 43(4) of the

settlement and also for setting aside the communication dated 15th June, 1991 written by Joint Labour Commissioner to the President of the Association/ respondent no.3. It may be pertinent here to mention that by virtue of the said letter, the Joint Labour Commissioner had refused to take an action under Section 29 of the Act against the petitioner on the ground that the respondent no.3/Association had already raised an industrial dispute about the same being arbitrary, uncalled and without jurisdiction.

3. Briefly stating, the facts of the case¹ are that the petitioner is carrying on business as an international airline by the name of Thai Airways. Respondent No.3 herein is known as Thai Airways Employees Association which had raised a charter of demands on 01.11.1989 in respect of which the petitioner and respondent No.3/Association after considerable negotiations entered

¹ *Facts are being given in reference to the Writ Petition No.80/05*

into a memorandum of settlement dated 21.06.1990 under Section 18 read with Section 2(p) of the Industrial Disputes Act, 1947 before the Conciliation Officer. According to Clause 43(4) of the said settlement, employees other than permanent with the petitioner-company at the time of signing of the settlement and whose names were not appearing in the annexure were to be issued a letter of probation for six months and the management, i.e., the petitioner was to take a final decision (regarding their continuation) within the said six months. It is alleged that the management of the petitioner company took a policy decision in December, 1990 to give the work of utility services and ground handling work to M/s Cambatta Aviation Pvt. Ltd. Further, as there were allegedly no regular vacancies or exigencies of work, requiring engagement of casual/temporary workmen, the petitioner as per the settlement and before the expiry of six months period issued termination letter dated 06.12.1990 to such of the employees who were

engaged on causal and temporary basis and who were continuing on the basis of settlement. These employees are respondents No.4 to 24 herein. It is alleged that all statutory dues were paid to them, but purely on humanitarian grounds the management of the petitioner-company offered them work with M/s Cambatta Aviation Pvt. Ltd. on the same terms and conditions on which they were working for the petitioner with the continuity of service rendered by them with the petitioner-company.

4. It is alleged that despite the fact that the services of respondents-workmen were terminated, the management of the petitioner-company was keen that the employees should be absorbed by M/s Cambatta Aviation Pvt. Ltd., and accordingly, it wrote to respondents No.4 to 24 vide letter dated 28.01.1991 intimating them that they may join M/s Cambatta Aviation Pvt. Ltd. on receipt of the letter. With a view to avoid unnecessary controversy and in the interest of industrial harmony, the petitioner-management decided to review its decision relating to the

stand taken by the association arising out of the memorandum of settlement dated 21.06.1990 on the ground that they did not want to join M/s Cambatta Aviation Pvt. Ltd. It was clarified that the assumption by the workmen that the management had committed breach of the agreement by not issuing letter of probation for six months was wrong as the fact remained that they were treated, as if they were on probation for a period of six months and a final decision was taken regarding the workmen concerned in terms of Clause 43(4). Accordingly, the petitioner-management vide letter dated 22.03.1991 revoked and superseded the earlier communication of termination of services of respondents No.4 to 24 dated 06.12.1990 and salary for the month of January, 1991 to 31st March, 1991 being the wages for a period of 3 months, were also dispatched to them by way of retrenchment compensation. Respondents No.4 to 24 were again given a week's time to confirm whether they would like to join employment with M/s Cambatta Aviation

Pvt. Ltd. They were accordingly advised to take up the matter with the said aviation company. As the employees, namely, respondents No.4 to 24 failed to join the services of M/s Cambatta Aviation Pvt. Ltd., the petitioner-company vide letter dated 30.04.1991 informed respondents No.4 to 24 again that no work was available with the petitioner-management and in case they are not interested in joining the services of M/s Cambatta Aviation Pvt. Ltd., the services of the workmen were being retrenched. Thereafter, a notice of termination dated 01.05.1990 was sent to respondents No.4 to 24 along with wages for the month of April and May, 1991 being the notice pay and the retrenchment compensation etc. It is accordingly alleged that the termination of services vide letter dated 06.12.1990 in respect of which the present reference has been made by the Conciliation Officer is bad inasmuch as the association has not challenged the effective and operative termination order dated 01.05.1991 as no dispute survived before the Industrial

Tribunal to adjudicate because letter dated 06.12.1990 was withdrawn. The dispute which was referred by the Conciliation Officer to the Industrial Tribunal for adjudication was framed as under:

"Whether the termination of the services of Shri S. Ashok Kumar, Ravi Chhetri, Balbir Singh, Ajit Singh, Banwari Lal Sharma, Ram Singh, Rajesh Bist, Rajendra Prasad Tiwari, Bhaskar Rao, Om Prakash, Pratap Chand, G. Baby Prakash, Amarjeet Rohtash, Mr. Aruna Arora, Ms. Soni Bakshi and Ms. Babita Sayal is illegal and/or unjustified and if, to what relief are they entitled and what directions are necessary in this respect?"

5. On the basis of the aforesaid reference, the learned Industrial Tribunal held that the petitioner-company has illegally terminated the services of respondents No.4 to 24 w.e.f. 06.12.1990 which was not only in violation of the provisions of Section 9(A) of the Industrial Disputes Act but also in violation of the memorandum of settlement dated 21.06.1990 arrived at between the parties and directed petitioners to reinstate respondents No.4 to 24 with full back wages and continuity of service.

6. The petitioner/employer feeling aggrieved by the said directions has chosen to file the writ petition bearing No.80/2005 assailing the award dated 13.02.2004. In the connected writ petition bearing No.2610/1991, the employees/association has sought implementation of the award by praying for prosecution of Thai Airways under Section 29 of the Industrial Disputes Act, 1947. It has also prayed for setting aside the letter dated 15.6.1991 issued by the Labour Department to the respondent no.3/Association on the ground of the same being arbitrary and unreasonable.
7. I have heard Mr.Lalit Bhasin and Mr.H.L.Tiku, the learned senior counsel for the petitioners and the respondents, respectively.
8. Mr.Bhasin, the learned counsel for the petitioner has contended that the Award dated 13.02.2004 passed by the Industrial Tribunal is based on an erroneous interpretation of law that the termination of services of the respondent no. 4 to 24 was in violation of Section 9A of

the Industrial Disputes Act, 1947. It was contended by the learned counsel for the petitioner that as a matter of fact there is not even a whisper by the respondent nos. 4 to 24 that there is any violation of Section 9A of the Industrial Disputes Act, yet the Industrial Tribunal has passed the Award on erroneous assumption that Section 9A of the Act has been violated. It is contended that Section 9A of the Act is applicable only when there is a subsisting relationship of employer and the employee but in the present case the said Section is not applicable as the respondent no.4 to 24, whose services were terminated by the petitioner w.e.f. 06.12.1990 were not permanent employees of the petitioner. It is further contended that this was followed by letters dated 28.01.1991, 22.03.1991, 30.04.1991 and finally by letter dated 01.05.1991 terminating their services by way of retrenchment which did not amount to change in service conditions as envisaged in (IV) Schedule of the Industrial Disputes Act.

9. Elaborating this submission further, it was submitted by the learned counsel that respondent Nos.4 to 24 were admittedly employed by the petitioner as casual workers whose services were originally terminated vide order dated 06.12.1990, and thereafter, the said termination was revoked vide letter dated 28.01.1991. So far as the salary on account of revocation letter dated 28.01.1991 is concerned, it was stated that the salary for the month of January, 1991 to 31.03.1991 was remitted to the workmen. The services of the respondent nos. 4 to 24/workmen were ultimately retrenched vide letter dated 01.05.1991 and they were duly paid retrenchment compensation in accordance with the provisions of Industrial Disputes Act, 1947. Their services were terminated on the ground that the ground handling work which was being carried out by the said respondents was actually outsourced to M/s Cambatta Aviation Pvt. Ltd. and they had written to the respondents/workmen and given them an option that they can join the services of

M/s Cambatta Aviation Pvt. Ltd. on account of termination of their services by the present petitioner but the respondent nos. 4 to 24 did not accept the said offer. The learned counsel for the petitioner has placed reliance in this regard on the judgment of the Apex Court in case titled **Robert D'souza Vs. Executive Engineer, Southern Railway & Anr.** (1982) 1 SCC 645.

10. It has also been contended by the learned counsel for the petitioner that the respondent nos.4 to 24 have not challenged the termination dated 01.5.91. In view of the fresh termination order having been issued on 01.5.91 the letter dated 06.12.90 had become infructuous, and therefore, the reference itself was not maintainable. It has been stated that the respondent nos.4 to 24 continued to be in the services of the present petitioner till 31.05.1991 and were duly paid wages upto the said date by the present petitioner which fact cannot be denied by them. It was also contended by the learned counsel for the petitioner since the respondent nos. 4 to 24 were

employed as casual labourers they were not entitled to the same benefits to which a regular employee was entitled.

11. It has been lastly contended by the learned counsel for the petitioner that the respondents nos. 4 to 24 were getting ₹30/- per day in terms of the order dated 12.01.2006 passed by this Court and an amount of ₹2,07,738.95/- has been paid to each respondent upto the month of April, 2009 by virtue of direction under Section 17B of the Act. It is prayed that the directions be issued to them to refund the said amount at the time of allowing of the petition.

12. Mr. H. L. Tiku, the learned senior counsel for the respondents vehemently contested the pleas raised by the learned counsel for the petitioner. It has been contended by Mr. Tiku that the termination/retrenchment of service of respondent nos. 4 to 24 was in violation of the procedure laid down under Section 9A of the Industrial Disputes Act, 1947 and item 10 of the IV Schedule which lays down that rationalization, standardization or

improvement of plant or technique which is likely to lead to retrenchment of workmen will be treated as a change in the conditions of service. It was contended that Section 9A of the Act postulates no employer who proposed to effect any change in the conditions of service applicable to any workman shall effect such a change without giving a notice to the workman likely to be affected by such change and admittedly so far as the present case is concerned, no notice was ever given to the respondent nos. 4 to 24. Thus, the termination of services of respondent nos. 4 to 24 is illegal and hence the same is liable to be set aside. Reliance in this regard has been placed on the judgments of the Apex Court in case titled **Workmen of the Food Corporation of India Vs. Food Corporation of India** (1985) 2 SCC 136, **Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad** (1999) 6 SCC 265.

13. With regard to the contention of the learned counsel for the petitioner that the notice of termination dated

06.12.1990 was recalled by the petitioner on 22.03.1991 and therefore, a reference to the said notice of termination dated 06.12.1990 is bad or infructuous, it was submitted that a perusal of the letter dated 22.03.1991 where notice dated 06.12.1990 was allegedly revoked would show that the revocation of notice was not to the effect that the termination dated 06.12.1990 stands withdrawn and the respondent nos. 4 to 24 would continue to join and report for the duty of the petitioner. On the contrary, the alleged revocation was to the effect that the termination dated 06.12.1990 is revoked subject to the condition that the respondent nos. 4 to 24 shall join a different entity, namely, M/s Cambatta Aviation Pvt. Ltd. It was contended that a revocation which was conditional on the respondent nos. 4 to 24 joining a different entity where they were not employed cannot be said to be a revocation at all and such a revocation is inconsequential.

14. So far as the question of second termination is concerned, it was contended that the question of second termination

would arise only when the first termination has been withdrawn rightfully. It was stated that the alleged revocation, of the earlier termination letter, dated 22.03.1991 was neither bona fide nor intended to be acted upon, and therefore, is of no consequence.

15. Lastly, it was contended that it is a settled law that an employer cannot change the service conditions of an employee, without employee's concurrence. Employer cannot force an employee to join a different entity, without the consent of the employee. Thus, any decision of the petitioner directing the respondent nos. 4 to 24 to join M/s Cambatta Aviation Pvt. Ltd. is illegal and cannot be relied as the respondent nos. 4 to 24 never agreed to join M/s Cambatta Aviation Pvt. Ltd. The services of the workmen were terminated on 06.12.1990, thus no occasion arose for the petitioner to ask the respondents to join M/s Cambatta Aviation Pvt. Ltd. Reliance was place on **Sindhu Resettlement Corporation Ltd. Vs. Industrial Tribunal Gujarat** AIR 1968 SC 529.

16. On the basis of the aforesaid submissions, it has been contended that the order passed by the Industrial Tribunal is perfectly valid and justified, and accordingly, does not suffer with any infirmity so as to call for any interference from this Court.
17. I have considered the submissions made by the respective sides and have gone through the record.
18. The sole question which arises for consideration in the instant case is as to whether the respondent nos. 4 to 24 are entitled to protection of Section 9A of the Industrial Disputes Act, 1947 which prohibits an employer from changing the condition of service without following the process prescribed under the said Section. If the answer to the aforesaid question is not in affirmative then the question arises that whether the respondent nos. 4 to 24 are entitled to retrenchment compensation on account of the termination of their services by the petitioner company. In order to appreciate this question, it would be

pertinent here to reproduce Sections 9A and 25F of the Industrial Disputes Act, 1947:

"9A. **Notice of change.**- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty- one days of giving such notice: Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any 1[settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

"25F. Conditions precedent to retrenchment of workmen

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

19. It is not in dispute in the instant case that the respondent nos. 4 to 24 were employed as casual labourers with the petitioner company. It is also not in dispute that in terms of the settlement dated 21.06.1990, it was agreed

between the parties, namely, the employer and the employees (respondent nos. 4 to 24) as under:

"43. *Miscellaneous*

1)

2)

3)

4) *The parties agree that those employees who are not permanent with the Company at the time of signing this Settlement and are not mentioned in the Annexure will be issued a letter of probation for six months. The Management will take a final decision regarding such employees within the said six months.*

5)

6)

7)

8)

9)"

20. A perusal of the Clause 43(4) clearly shows that the employees who were not permanent and whose names were not appearing in annexure were to be issued a letter of probation for six months and the management was to take a decision within six months. There is no dispute that respondent nos. 4 to 24 were not permanent

employees nor were their names appearing in Annexure, therefore, in their case latter procedure was applicable. According to this procedure, a letter of probation was to be issued within six months of signing the settlement as well as the decision was also to be taken within six months. Meaning thereby that issuance of letter of probation as well as the continuation of the services had to be decided within six months. If that be so then the issuance of letter of probation itself becomes an empty formality. This precisely has been the submission in essence by Mr. Bhasin that vide letter dated 06.12.1990 the services of the respondents were terminated as a policy decision was taken by the petitioner to transfer the utility services to M/s Cambatta Aviation Pvt. Ltd. In my opinion Section 9A of the Act was enacted to protect the service conditions of only the permanent employees and not of every daily wagers or the casual labourers unless and until special conditions like the one in Food Corporation of India's case, prevailed.

21. The objective of Section 9A of the Act has been explained by the Apex Court in case titled **The Management of Indian Oil Corporation Ltd. Vs. Its Workmen** AIR 1975 SC 1856:

"The real object and purpose of enacting Section 9A seems to be to afford an opportunity to the workmen to consider the effect to the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital."

22. There is another aspect of the matter. One of the essential of pleadings is that before a finding is returned on question of facts by a court or a tribunal, not only there must be a pleading but there must also be a prima

facie proof of the same and only then a submission in this regard can be urged. In the instant case since there was no pleadings by the respondent nos. 4 to 24 regarding violation of Section 9A of the Industrial Disputes Act, 1947, consequently, the submissions of the respondents itself was untenable. This is de hors the fact that Section 9A of the Act as has been observed would be applicable only to permanent employees and not to daily wagers or casual employees or even to temporary employees who are not sure as to whether they would be asked or required by the employer to attend the work on the next day.

23. In case titled **International Airport Authority of India Vs. International Air Cargo Workers'** (2009) 13 SCC 374 in somewhat similar circumstances the question of applicability of Section 9A had arisen. In that case the International Airport Authority of India (hereinafter referred as 'IAAI') by an agreement had granted the licence to M/s Air Freight Pvt. Ltd. (referred herein after

as 'Air Freight') to be a ground handling agent in respect of export, import and transshipment of cargo and consignment. It was required to pay a licence fee of the total revenue realized by it to IAAI. Under the agreement, Air Freight also had to engage a number of workers for handling the cargo and be responsible for the payment of the wages to them. It was entitled to receive payment from the owners of the cargo for work done.

24. In 1985, the IAAI decided to take over the ground handling work, and thereafter, gave the same to a new licensee by inviting competitive tenders, and it accordingly, terminated the licence of Air Freight. The workers/loaders/packers employed by the Air Freight made a request to IAAI to provide them employment who had them in casual employment for some time, purely as a temporary measure and on humanitarian ground. Subsequently, the workers formed a cooperative society to which the contract of ground handling of the

cargo was given again as a temporary measure. On these facts, three questions arose for consideration of the Apex Court, one of which was as to whether the status of workers/loaders/packers employed or engaged in the cargo handling work, allegedly & illegally on being changed from direct casual labourer to contract labourer, is in violation of the Section 9A of the Industrial Disputes Act, 1947.

25. While dealing with this issue, the Supreme Court ruled that notice of change under Section 9A of the Industrial Disputes Act, 1947 was required only if the employer wanted to change the service condition of its workmen with regard to the matters enumerated in the 4th Schedule of the Act. Applying the principle in this regard, the Court held that the workers were specifically put on notice that their casual employment was purely on ad hoc basis only as a humanitarian measure and it was to be continued only till the terms of contract labour was negotiated and finalized with the society. This was

recorded by the Court while dismissing the writ petition filed by the workers Union. The workers were not entitled to put forth with the condition contrary to the proposal/scheme of IAAI recorded by the High Court, and accordingly, the question of violation of Section 9A of the Industrial Disputes Act, 1947 did not arise. The Supreme Court observed that section 9A of the Industrial Disputes Act, 1947 is not applicable to them.

26. Similarly, in the facts of the present case also the respondent nos. 4 to 24 were not the permanent employees of the petitioner/company. They were only working as casual workers/daily wagers and the only obligation which was cast on the petitioner was that they would put the said respondents on probation for a period of six months and would also take a decision within six months as to whether to regularize their services or not. Thus, like in International Air Cargo Workers Case they were put to notice that their service could be discontinued within six months from the date of the

settlement as a decision had to be taken by the petitioner management within that period. Further, even if, for the sake of arguments, it is assumed that no formal order of putting the respondent on probation was passed by the petitioner it did not prevent the petitioner to take a decision regarding their continuance and in case their services were discontinued, it could only be done by termination of their services for which the respondents at best were entitled to retrenchment compensation under Section 25F of the Act. But despite this the petitioner company as a measure of model employer and purely on humanitarian ground gave ample opportunity to the respondents to join the services of an organization to which the ground handling services were transferred.

27. In the present case also, the petitioner terminated the services of the respondent nos. 4 to 24 vide letter dated 06.12.1990, w.e.f. 10.12.1990. Vide letter dated 28.01.1991, it was informed to the respondent nos. 4 to

24 that while negotiating the contract for transfer of utility services with M/s Cambatta Aviation Pvt. Ltd. they had been able to get them agreed to employ all the casual employees working with the petitioner. It was stated that they have still not resumed their duties and in case they do not join them, it will be presumed that they are not interested in the same.

28. By virtue of a letter dated 22.03.1991 after giving the detailed background of the facts, it was decided by the petitioner to revoke all previous termination letters etc. and dispensed with their services w.e.f. 01.04.1991 and the previous letter dated 06.12.1990 was withdrawn and the salary for the month of January to 31.03.1991 was sent to them. Since both these letters did not elicit a favourable response from the workers, the petitioner sent yet another letter on 30.04.1991 advising them to join M/s Cambatta Aviation Pvt. Ltd. as the work had been transferred by the petitioner to the said party, and it was informed to them that otherwise the petitioner

would be constrained to retrench their services. Finally vide letter dated 01.05.1991, the services of the respondents were retrenched and the compensation in lieu of notice period was sent to them.

29. No doubt, the said termination did not follow the period of notice as is required or envisaged under Section 25F of the Industrial Disputes Act, 1947, and therefore, the respondents are entitled to retrenchment compensation in terms of Section 25 F of the Industrial Disputes Act, 1947. The petitioner has stated that while issuing a fresh termination letter on 01.05.1991, a cheque amount being an amount of the salary for the month of May as well as retrenchment compensation was sent to the respondents which they failed to accept. In my considered opinion, if they failed to accept the retrenchment compensation, then they were doing so at their own peril and it could not be said that the petitioner was at fault. It may also be pertinent here to mention that the Supreme Court in case titled **Hindustan**

Petroleum Corp. Ltd. Vs. Ashok Ranghba Ambre

(2008)2 SCC 717 has drawn a distinction between regularization and permanency in the service/labour jurisprudence in the public employment law which has become an essential component of the Industrial Relation Laws in India. The Apex Court in the said case observed that while the Court may pass a direction for regularization of service on account of completion of probation but it did not mean that the services of the employee which are regularized becomes permanent. On the contrary, it has been observed that if a workman has regularly been appointed as workman for more than 240 days in a calendar year, then just preceding the date of his termination, he is entitled for retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947. In the instant case also the petitioner had terminated the services of the respondent nos. 4 to 24 w.e.f. 01.05.1991 as the respondents had failed to accept the offer of taking an alternative

employment with M/s Cambatta Aviation Pvt. Ltd. which was given to them purely on humanitarian ground, and therefore, at best they are entitled to only retrenchment compensation as their case was that they had been working with the petitioner company for different periods which was admittedly more than 240 days. Supreme Court in **D.Souza's case** (supra) has made a distinction in the notice required to be served under Section 9A and Section 25F of the Act. In the instant case, the petitioner was only under an obligation to give a notice under Section 25F of the Act and/or to give compensation in lieu of the notice period.

30. Mr. Tiku, the learned senior counsel for the respondents had placed reliance on two judgments, Food Corporation of India and Lokmat Newspaper Pvt. Ltd. (Supra) to support this submission of Section 9A of the Act being violated by the petitioner. The question involved in the Food Corporation's case was whether by cancelling the direct payment system and introducing the contractor for

the payment of wages and thus changing the mode of payment was falling within the meaning of item I of the Fourth Schedule of the Industrial Disputes Act, 1947 and tantamounted to altering the conditions of service of the workers without a notice of change being given under Section 9A of the Act. The answer to this question was given in affirmative. But so far as the facts of the present case are concerned, they are distinguishable. In the instant case, a settlement had been arrived at between the association of the workmen and the petitioner wherein a decision was to be taken regarding the continuance or discontinuance of their services. Since the petitioner had taken a policy decision to hand over the ground clearing facilities to M/s Cambatta Aviation Pvt. Ltd. obviously it has resulted in termination simplicitor or retrenchment of the workmen. It was in this context that the termination of the services of the respondent nos. 4 to 24 could not be construed as a change of their conditions of services and the only requirement was to

comply with Section 25F of the Act. Similarly, in Lokmat's case (supra) the Apex Court had held that commissioning of new machines by the management of the newspaper at Nagpur and Jalgaon and consequent transfer of the workmen from one place to another amounted to introduction of rationalization, standardization or improvement of plant or technique within the meaning of item 10 of the Schedule IV and consequently required compliance with the requirement of Section 9A of the Act. But so far as the present case is concerned, there are certain distinguishable features from the facts of the reported case. In the present case, the workers were the daily wagers. Secondly the settlement itself authorized the petitioner to take a decision either to continue or discontinue their services. Thirdly, the said decision was to be taken within six months and a conscious decision was taken not to continue with their services which in my view did not amount to change in the conditions of service warranting compliance of Section 9A of the Act.

In addition to this, the settlement in this regard constituted due notice to the respondent/workmen.

31. It may also be pertinent here to mention that during the course of hearing of the arguments, the respondent nos. 4 to 24 were also asked as to whether they would like to work with the petitioner company as the company had been persuaded to reconsider their stand and permit gainful utilization of the services of some of their ex-employees. In this regard, though Mr. Lalit Bhasin, the learned senior counsel for the petitioner had accepted the offer and was willing to consider the names of such of the employees who were prepared to work with the petitioner company, but to the utter dismay of the Court, the respondent nos. 4 to 24 were not at all prepared to serve the petitioner company or any of their other subsidiary. This clearly shows that the entire effort of the respondent nos. 4 to 24 is to continue to reap the benefit in terms of the relief under Section 17B of the Industrial Disputes Act, 1947, and also taking the anticipated

amount of arrears of pay and allowances, in the event of the order of Industrial Tribunal being upheld as binding yet continuing their present employment with different employers. The Court cannot be oblivious to the fact that a person whose services were terminated long back would not continue to sit idle and yet survive.

32. In my considered opinion such an unethical practice only bleeds the company and shows that the entire thrust of the respondent nos. 4 to 24 was to get some kind of permanent compensation from the petitioner company. I have been informed by the learned counsel for the petitioner that till now they have already paid an amount of more than Rs.2,50,000/- to each of the employees (respondent nos. 4 to 24), by way of compliance with the grant of interim relief under Section 17 B of the Industrial Disputes Act, 1947. The petitioner company was even prepared to offer the reasonable amount of retrenchment compensation, keeping in view the fact that at the time when they left the services of the

petitioner company, their daily wage was a mere sum of Rs.30 per day yet this offer was not accepted.

33. I am of the considered opinion that the respondent nos. 4 to 24 are trying to take undue advantage of their situation by continuing to get the benefit of Section 17B of the Industrial Disputes Act, 1947 and yet not coming forward to work or to accept the proposal to work with the ground handling agency. In view of the aforesaid reasons, I feel that the award passed by the Tribunal setting aside the termination of services of the respondent nos. 4 to 24 is illegal, erroneous and unsustainable in the eyes of the law, and accordingly, the same is set aside. Since the writ petition of the petitioner bearing no. 80/2005 has been allowed and the award dated 13.02.2004 directing the reinstatement of the respondent nos. 4 to 24 has been set aside, therefore, the necessary consequence of the same is that the writ petition bearing no. 2610/1991 filed by the respondents nos. 2 to 5 is dismissed on the ground that

no such direction can be issued to the respondents in the said case, namely, the Labour Department, to seek prosecution of the petitioner company for not having complied with the industrial award dated 13.02.2004 directing the reinstatement of the respondent nos. 4 to 24, accordingly, the said writ petition is dismissed.

34. The award dated 13.02.2004 directing the reinstatement of the respondent nos. 4 to 24 has been set aside. The question which would now arise is as to the orders which are to be passed regarding the disbursal of the amount purported to have been deposited by the petitioner company with the Registrar General of this Court as well as what is to happen with the amount released to the respondent nos. 5 to 8, 12, 14, 15 and 23 in terms of the Section 17B of the Industrial Disputes Act, 1947. Before passing any such order, it may be pertinent here to refer to the order dated 24.10.2005 passed by this Court which has noted the fact that the petitioner company has deposited a sum of Rs.9,16,000/- stating to be

equivalent to 25% of the awarded amount. It was observed by that order as under:

"The Registry is directed to place the amount deposited by the petitioner in a fixed deposit receipt initially for a period of one year which shall be kept renewed till further orders of this court.

It is, however, made clear that the accrual on the fixed deposit receipt, in the event of the petitioner finally succeeding in the writ petition, shall be released in favour of the Delhi High Court Legal Services Authority at the time of final disposal of the writ petition."

35. Since the award of the Industrial Tribunal has been set aside and the petitioner had deposited an amount of Rs.9,16,000/- which is purported to have been kept in a fixed deposit, I am of the considered opinion that not only the principal amount but the accrual of interest thereon ought to be released to them notwithstanding the observation passed by this Court earlier that the accrual of interest on the principal amount shall be deposited by the petitioner with the Delhi High Court Legal services Committee. The reason for release of the interest to the

petitioner itself is being done on account of the fact that it will be unfair to the petitioner that although they succeed in the writ petition yet they must be made suffer financially by losing the interest on the capital amount, having been deposited by them in compliance to the order passed by this Court. I, therefore, direct that the entire amount of Rs.9,16,000/- along with the interest thereupon be released to the petitioner. So far as the benefit granted to the respondent nos. 5 to 8, 12, 14, 15 and 23 in terms of the order dated 17.11.2005 in pursuance to Section 17B of the Industrial Disputes Act, 1947 is concerned, I am of the view that the aforesaid benefit has been granted to the workmen for the purpose of sustenance and living during the pendency of the writ petition when the employer has challenged the award in the High Court and obtained stay against reinstatement. It may also be pertinent here to mention that in the order dated 17.11.05 this Court had directed that the last drawn wages or the statutory minimum wages whichever

is higher be paid to the respondent nos. 5 to 8, 12, 14, 15 and 23. I feel, if one reads the Section 17B of the Industrial Disputes Act, 1947, it only makes a provision for release of the 'last drawn wages', to the workman unlike the order dated 17.11.2005, passed by this Court regarding higher of the two amount. Since, the amount has been released to the respondent nos. 5 to 8, 12, 14, 15 and 23 only by way of subsistence allowance, the same cannot be ordered to be refunded. However, the interim order dated 17.11.2005 stands vacated. With these observations the writ petition bearing no. 80/2005 is allowed, while as the cross writ petition bearing no. 2610/1991 is dismissed.

V.K. SHALI, J.

JANUARY 25, 2012

'anb'/KP