

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

Date of decision: 23rd May, 2012

+ **LPA 379/2012**

AIR INDIA LTD

..... Appellant

Through: Mr. Laliet Bhasin, Nina Gupta, Ms.
Ratna Dhingra, Ms. Shreya S. Dabas
& Ms. Bhavna Dhami, Advs.

Versus

ADITYA BERI & ORS

..... Respondents

Through: Ms. Nandni Sahni with Mr. Gaurav
Mahajan, Advs.
Ms. Anjana Gosain, Adv. for UOI.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. This Letters Patent Appeal is filed against the interim order dated 30th April, 2012 passed by the learned Single Judge of this Court in W.P.(C) No.2511/2012. The said writ petition has been filed by the respondent no.1 challenging the order dated 23rd April, 2012 of the appellant terminating his services w.e.f. 30th April, 2012. As per the appellant, the respondent no.1 was employed as Co-Pilot and was put on probation; he was still on probation when the order terminating his services has been passed. The respondent no.1 filed the writ petition *inter alia* alleging that the order

terminating his service is totally arbitrary and in violation of principles of natural justice as before passing the order no show cause notice was given to the respondent no.1. On 30th April, 2012 the matter came up before the learned Single Judge for the first time when the counsel for the appellant also appeared on advance notice. The matter was argued at some length and whereafter notice of the writ petition was issued by the learned Single Judge and on the stay application filed by the respondent no.1 herein, following order has been passed:-

“Operation of the order dated 23.04. 2012 passed by the respondent no.1 (appellant in this appeal) shall remain stayed till the next date of hearing.”

2. It is stated that Capt. N.K. Beri is the father of the respondent no.1 who misused his position to get the respondent no.1 absorbed in the appellant. It is further stated that in the vigilance investigation conducted by the appellant it was found that induction of the respondent no.1 was not in accordance with the laid down procedures of the appellant and because of that reason the respondent no.1 who was still on probation, his services were terminated by an innocuous order. The order dated 23rd April, 2012 is of termination simplicitor and does not impose any stigma. Apart from the above, the main argument on which stress has been put by Mr. Bhasin

learned counsel for the appellant, is that at the stage when the appellant was yet to file the counter affidavit, such an order staying the operation of the termination order dated 23rd April, 2012 could not have been passed. In support of his submission the learned counsel for the appellant has referred to the judgment of the Supreme Court in *State of Haryana v. Suman Dutta* (2000) 10 SCC 311 wherein the Court had held as under:-

“2. This appeal by the State of Haryana is directed against an interim order passed by the High Court of Punjab & Haryana at Chandigarh in CWP No.10493 of 1998, staying the order of termination. The positive case of the State is that **the respondent did not pass the necessary examination in shorthand and typing**. We are not expressing any opinion as to whether the services of an employee could be terminated for not passing the shorthand and typewriting test, but we are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same. We, therefore, set aside the impugned order of the High Court staying the order of termination. Needless to mention, the High Court will decide the writ petition on its own merits without being in any way influenced by our interfering with the impugned order”.

3. He has also relied upon another judgment of the Apex Court in the case of *State of Uttar Pradesh v. Sandeep Kumar Balmiki* (2009) 17 SCC 555 where the court held that interim order staying the termination could not

be passed and giving such a relief would amount to allowing the writ petition itself. This was so stated in the following terms by the Apex Court in the said judgment:-

“In our view, the interim order granted by the High Court staying the order of termination could not be passed at this stage in view of the fact that if such relief is granted at this stage, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. In this case also, the appellants have not yet filed counter affidavit to the writ petition of the respondents.”

4. Another judgment to which reference is made is *State of U.P. v. Ram Sukhi Devi* (2005) 9 SCC 733 where the court denounced the practice of granting such interim orders in the following manner:-

“8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the government order dated 26-10-1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the **practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case having been made out, without being concerned about the balance of convenience,**

the public interest and a host of other considerations”.

5. Ms. Nandni Sahni, Advocate appearing for the respondent no.1 on the other hand has submitted that *ex facie* the order of termination is bad in law and the appellant has not been able to give any justification for the said order. It is argued that in these circumstances, the interim relief granted by the learned Single Judge has been correctly granted. She contends that the alleged inquiry conducted by the appellant pertains to the father of the respondent no.1 and on the basis of that inquiry the respondent no.1 could not be punished that too without even following the principles of natural justice. It is further submitted that the least that was required in such a case was to give a show cause notice to the respondent no.1 on the basis of which the respondent no.1 could have placed sufficient material before the appellant to show that his induction in the appellant was not contrary to any rules or laid down procedures. She even tried to make out a case that the CMD had the necessary powers to make such an appointment without inviting the applications from public at large. The learned counsel, on the basis of aforesaid averments, has referred to the following judgments in support of her plea that interim protection can be granted by the court:-

- (i) ***Deoraj v. State of Maharashtra*** (2004) 4 SCC 697 wherein it was held that:

“11. The Courts and Tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair-procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the Courts are also over burdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. **An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature.** Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any Judge to test.

12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case -- of a standard much higher than just prima facie case, the considerations of balance of convenience and **irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases.** The Court would grant such an interim relief only if satisfied that withholding of it

would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent;”

(ii) *Zenit Mataplast Pvt. Ltd. v. State of Maharashtra* (2009) 10 SCC 388 – “An interim order is passed on the basis of *prima facie* findings, which are tentative. **Such order is passed as a temporary arrangement to preserve the *status quo* till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.** The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial” (vide *Anand Prasad Agarwalla v. Tarkeshwar Prasad* (2001) 5 SCC 568 and *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (2009) 5 SCC 694).

“Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. **There may be a situation wherein the respondent- defendant may use the suit property in such a manner that the situation becomes irretrievable.** In such a fact situation, interim relief should be granted” (vide *M.Gurudas v. Rasaranjan* (2006) 8 SCC 367 and *Shridevi v. Muralidhar* (2007) 14 SCC 721). “Grant of temporary injunction is governed by three basic principles i.e. *prima facie* case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial

at the stage of grant of temporary injunction” [vide **S.M. Dychem Ltd. v. Cadbury (India) Ltd.** (2000) 5 SCC 573 and **Anand Prasad Agarwalla**, (2001) 5 SCC p. 570, para6];

(iii) **Harbanslal Sahnia v. Indian Corpn. Ltd.** (2003) 2 SCC 107 – “7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. (See **Whirlpool Corpn. V. Registrar of Trade Marks** (1998) 8 SCC 1). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners’ dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings”.

6. The last judgment cited is in response to the argument of the learned counsel for the appellant that there is an alternative efficacious remedy by way of raising industrial dispute within the meaning of Section 10 of the Industrial Disputes Act, 1947. It is submitted by Mr. Bhasin that in the counter affidavit to be filed, this point would be taken as to the

maintainability of the writ petition.

7. We have considered the aforesaid submission. It is not in dispute that the courts have power to grant interim relief. The Supreme Court in the case of ***Deoraj*** (supra) has discussed those cases where interim relief may also tantamount to the final relief and the circumstances in which such a relief can be granted. It is therefore, categorically observed that even while deciding such cases the triple tests i.e. strong *prima facie* case, balance of convenience and irreparable injury are the parameters which have to be kept in mind by the court. It is further observed that when the interim relief tantamounts to granting the final relief, a person claiming such a relief has to make out a very strong *prima facie* case and it should be done in rare and exceptional cases. Likewise in ***Zenit Mataplast Pvt. Ltd.*** (supra) cited by the learned counsel for the respondent no.1 herself, the court observed that such an order making temporary arrangement is to be made “to preserve the *status quo* till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing”. Again the three tests for grant of interim injunction are spelled out and it is observed that grant of an interim relief would depend upon the facts and circumstances of each case and no straightjacket formula can be laid down.

The court also made subsequent observations namely that interim relief of this nature should be granted only in those cases where “the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable”.

8. In view of the facts of the present case we are of the opinion that such an *ex parte* injunction was not called for. None of the aforesaid cases cited by the respondent no.1 pertains to service matter. On the other hand, the learned counsel for the appellant has referred to those judgments which are directly related to the case at hand where the services of a person are terminated and the question arises as to whether such termination should be stayed as an interim measure. In all these cases the consistent approach of the Supreme Court is that normally there should not be any stay of termination. As recorded above, the Supreme Court laid down that such a relief which tantamounts to final relief has to be granted in exceptional cases and where the situation becomes irretrievable and the subject matter of the petition would become infructuous or *fait accompli* before the final hearing that would depend on the position in the instant case. Even if the termination is held to be illegal and unjustified at the time of passing the final order the respondent no.1 can always be compensated by directing

payment of full salary during the period he remained out of employment. Therefore, it would not be a case where the situation would be irretrievable.

9. We may, in all fairness to counsel for the respondent no.1 record that our attention was also drawn to the provisions relating to “requirement for renewal of expired licences” wherein it is mentioned that the pilots are supposed to undergo normal refresher and extended refresher courses and also there have to be specific route checks. It was argued that if the respondent no.1 remains out of service and is not able to fly, the renewal of his licence may also be put in jeopardy. This aspect can be taken care of by ensuring that the petition is itself decided finally at an early date.

10. As mentioned above, the impugned order was passed on the very first date and there was no occasion to file counter affidavit. While issuing notice in the writ petition the learned Single Judge has granted four weeks’ time to the appellant herein, to file the counter affidavit; that shall be positively filed within four weeks from 30th April, 2012 as directed by the learned Single Judge. The respondent no.1 shall also adhere to schedule by filing rejoinder within two weeks thereafter as per the direction given in that order. In this manner the pleadings shall be completed by the end of June, 2012 and the learned Single Judge has fixed the matter on 9th July, 2012. It

is hoped and expected that on that date matter shall be finally heard by the learned Single Judge so that the judgment is also pronounced immediately thereafter. We further clarify that in case the termination is held to be illegal, the learned Single Judge may grant relief of not only reinstatement but full salary for the intervening period to the respondent no.1. It shall adequately take care of the interest of the respondent no.1.

11. This appeal is accordingly allowed and the order dated 30th April, 2012 passed by the learned Single Judge in the stay application is set aside.

Dasti under signature of Court Master.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 23, 2012
‘PP ’