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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) Nos. 317-19/2013

AIR INDIA LTD (EARLIER KNOWN AS
INDIAN AIRLINES LTD)

..... Petitioner

Through: Mr. Lalit Bhasin, Ms. Ratna D.
Dhingra, Ms. Bhavna Dhami &
Ms.Sneha Balakrishnan, Advocates.

versus

DELHI OFFICES AND ESTABLISHMENT EMPLOYEES
UNION THROUGH ITS PRESIDENT

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
21.01.2013

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1. The petitioner by way of the present writ petitions, under Article 226 of the Constitution of India, assails the Award dated 09.07.2012 passed by the Presiding Officer, Central Government Industrial Tribunal – I, New Delhi ('CGIT' for short).

2. Indian Airlines Ltd., which stands merged with the Petitioner used to engage casual employees in exigency of work or when sporadic absence of

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regular employees occurred. For the sake of convenience, the erstwhile employer is also referred to as the Petitioner.

3. In 1988-89 notifications were issued by the Petitioner for filling up vacancies on regular basis in the category of Helper (Engineering), Helper (Stores) and Helper (Commercial) etc. Requisitions were also made to the employment exchanges in accordance with the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. A separate notification was issued calling upon applications from persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in the last three years.

4. Applications so received were processed and applicants were interviewed. A select panel of 200 persons was prepared and approved on 20.11.1990, for appointment against regular vacancies, subject to availability of post.

5. Out of 200 candidates, persons whose names appeared up to serial No. 88 of the select panel could be offered regular appointment in order of merit against regular vacancies. The said select panel lapsed on 15.07.1994 after extension.

6. A group of casual workers who had been placed on the select panel, as aforesaid, filed C.W. No. 4113 of 1994 seeking their regularization in the service of the Airlines. An ad-interim order was passed on 07.12.1995 in the said proceedings directing the Airlines to prepare a panel of casual workers. The order dated 07.12.1995 passed in C.M. No. 6235/1995 reads as follows:

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“Guide lines for dealing with casual workers have already been elaborately given by the Supreme Court in well known case of ‘Piara Singh’ to some extent modified by certain guidelines given in the Horticulture case.

We have gone through the policy of the respondents placed on the record. We make it clear that there cannot be any fixed period for exhausting a particular panel of casual workers because the question of panel relapsing would only arise in respect of regular vacancies for which the panel is prepared. As far as casual workers are concerned in order to curb arbitrary method being adopted by public undertaking for engaging casual worker on their whims and choice and in order to avoid any favouritism with public employment the Supreme Court has already made it clear that casual worker engaged by a public undertaking must continue to work till regular posts are filled in by following recruitment rules. But in case there is no work available for casual workers principle of last to come first to go, has to be followed and the casual worker who have been working and for whom there is no work left the public undertaking concerned has to prepare a panel in which names of such casual workers are to be included in order of their seniority and whenever vacancy arises for engaging any casual worker the authority must offer the job in accordance with the seniority in the panel of casual workers. But in case any emergency arises the authority can engage any worker without considering the seniority for temporary emergent work but normally the casual workers must be engaged from the said panel if they are eligible for the post in accordance with the recruitment rules on the basis of their seniority in the particular panel. This application is thus disposed off.”

7. From the above order, the following salient points may be culled out:

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- (i) There cannot be a fixed period for the existence of a particular panel of casual workers. The question of the panel relapsing would only arise in respect of regular vacancies for which the panel is prepared;
 - (ii) In order to curb arbitrariness in engaging casual workers, as per the Supreme Court decision, a casual worker engaged by a public undertaking must continue to be engaged to work till regular posts are filled in by following the recruitment rules;
 - (iii) In case there is no work available for casual workers, principle of 'Last – come, First – go' has to be followed;
 - (iv) The panel of such casual workers who are disengaged, as aforesaid, should be prepared in order of their seniority so that whenever vacancy arises for engaging casual worker, the authority must offer the job in accordance with seniority of the casual workers in that panel;
 - (v) The authority may engage any worker from outside the said panel without considering seniority in case of emergency for temporary emergent work, but normally casual workers must be engaged from the said panel, if they are otherwise eligible for the post in accordance with recruitment rules on the basis of their seniority in the particular panel.

8. In compliance of the aforesaid direction dated 07.12.1995, the petitioner prepared a panel popularly known as, 'panel of 1995'. The

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respondent-workmen concerned in the present petitions were those who fell in the panel of 1995.

9. The aforesaid writ petition was disposed of vide judgment dated 07.05.1997. At that stage, the High Court directed the petitioner to treat the select panel prepared and approved on 20.11.1990, as the base and to offer employment on ad-hoc/casual basis to the workman according to their merit in the select panel. The workman on the select panel of 1990, if they were interested to work on casual basis on ad-hoc basis, were required to report to the petitioner within a period of 15 days. Persons so deployed from the select panel on casual basis or ad-hoc basis could be replaced only by regular employees employed on regular basis and not by any other casual worker. If those workmen, who were on the select panel, were not to exercise their option to join on casual/ad-hoc basis, the petitioner could *“engage persons from outside the panel”*.

10. After the aforesaid decision was rendered by the High Court on 09.05.1997, the petitioner disengaged casual workers whose names did not find place in the select panel. Being aggrieved by their disengagement, some of these workers – whose names were there on the panel of 1995, filed a batch of writ petitions including CWP No. 2623/1997 before this Court. The High Court, inter alia, directed the petitioner to adhere to the directions made on 09.05.1997 in CWP No. 4113/1994 in respect of the said workmen as well. It was directed that, *“the petitioners and others similarly placed persons (those included in the panel of 1995) who have continuously been engaged on casual basis, either by virtue of interim orders passed by this Court or otherwise and are still being deployed, be given an opportunity of*

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being considered for regular appointment, at the time, when the respondent would like to fill up regular vacancies and in view of the directions, which were issued in the case of Khagesh Kumar & Ors. Vs. Inspector General of Registration & Ors., JT 1995(7) SC 545 and Inspector General of Registration, U.P. & Ors. Vs. Avdhesh Kumar & Ors. 1996(9) SCC 217, persons getting age barred for selection for regular appointment be given relaxation of the age limit. Ordered accordingly.”

11. On 12.11.2002, the petitioner issued an employment notification addressed to the employment exchanges seeking names of casual labours to prepare a new panel for casual employment. This act of the petitioner made the casual labours, whose names appeared in the panel of 1995, to raise a demand to engage them against the jobs to be taken by casual labours. Eventually, this dispute was referred for adjudication CGIT, vide order dated 22.02.2004. This reference was challenged by the petitioner by filing CWP 13580/2004. The reference was quashed by the High Court with liberty to the appropriate government to take steps for issuance of a fresh reference order. Consequently, the appropriate government made a fresh reference to the CGIT for adjudication vide order dated 03.10.2005, which reads as follows:

“Whether the termination of the services of Shri Ravinder Chandra and 42 others (list enclosed) by the management of Indian Airlines Limited is legal and justified? If not, to what relief they are entitled?”

12. The workmen, except a few, filed their claims statements. The workmen claimed that they were engaged by the petitioner Airline in the capacity of casual labours in various departments for varying periods. The

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details of their engagement have been tabulated in the impugned award by the CGIT.

13. The assertion of the workmen was that they had completed more than 240 days of continuous service at the time of their disengagement. No notice or pay in lieu thereof was given, nor was retrenchment compensation paid to them. The mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 ('the Act') was not complied with. They asserted that despite the directions given by the High Court, as aforesaid, the petitioner had started to engage fresh casual hands arbitrarily in disregard of the panel of 1995 by issuing notification dated 12.11.2002 addressed to the employment exchanges. The workman also claimed that there existed 300 vacancies per day in the establishment of the petitioner for casual workers. They asserted that the petitioner's stand that it had disengaged the casual workers falling in the panel of 1995 to make appointments from the select panel (of 1990) was incorrect, and even if the said stand was assumed to be correct, the same would only justify the disengagement of 112 casual workers (since there were 112 workmen on the select panel of 1990 who were yet to be regularly appointed), but the petitioner had proceeded to disengage a large number of casual workers on the panel of 1995.

14. The petitioner claimed that the workmen on the panel of 1995 were engaged under the cover of the interim orders passed by the High Court. They had been disengaged as a result of the judgment of this Court dated 09.05.1997, wherein this Court had directed that the workmen on the select panel (of 1990) should first be offered casual engagement and, only if they were not willing to accept the same, casual labours from outside that panel



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could be engaged. The petitioner claimed that since the workmen on the panel of 1995 were engaged under interim protection from this Court, their removal would not tantamount to retrenchment within the meaning of Section 2(oo) of the Act. Consequently, these workmen were not entitled to notice or retrenchment compensation in terms of Section 25-F of the Act. They are also entitled to seek their reinstatement in service.

15. The CGIT did not agree with the respondent workmen in respect of their claim that they should be considered for filling up the casual vacancies which were existing on account of the workmen on the select panel of 1990 not opting to take up casual employment with the petitioner. The submission of the respondent workmen was that there were 263 casual posts still remaining after exhausting the select panel of 1990 and these posts should be filled from the panel of 1995 instead of recruiting fresh hands by the petitioner. The workmen also claimed that even if all the 200 panelists in the select panel of 1990 were to be adjusted against the casual vacancies, there would still be not less than 100 casual vacancies available for the respondent workmen who find place in the panel of 1995. The reasoning given by the CGIT for rejecting the said claim is found in para 22 of the impugned Award which reads as follows:

"22. As admitted by the claimants, they were engaged by the Airlines in pursuance of interim order dated 7.12.1995 passed by the High Court. The said interim order lost its efficacy and force when Writ Petition was disposed of on 9.5.1997. As pointed out above, the Airlines was commanded to engage only the persons, whose names appear in the select panel. Admittedly the names of the claimants do not appear in the select panel. Thus it is evident that the claimants lost their

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claim, when the High Court commanded the Airlines not to engage casuals from 1995 panel. The claimants cannot agitate continuance of their engagement."

16. The CGIT then considered the question whether the disengagement of the respondent workmen amounted to retrenchment and the said issue has been answered in favour of the respondent/workmen. The CGIT noticed that the workmen on the select panel of 1990 were to be granted a period of 15 days from the date of the order dated 09.05.1997 to join on casual basis, if they so opted, and that period came to an end by the end of May, 1997. Despite that being the position, the petitioner continued with the services of the respondent workmen (who were in the panel of 1995) and did not disengage them to accommodate those workmen from out of the select panel of 1990, who may have opted to join on casual basis. Except a handful of people whose services were disengaged until 1997, the services of the other respondent workmen were continued for varying periods. Since they had rendered more than 240 days of service during the period of 12 calendar months immediately preceding their retrenchment, they were held to be entitled to protection of Section 25-F of the Act and, consequently, their termination was held to be in violation of the said provision.

17. However, the CGIT concluded in para 33 of the impugned Award that the respondent workmen/claimants had no right to continue on casual jobs as they were engaged de hors the rules. Hence, no order for reinstatement of their service could be made since it would tantamount to allowing them to continue on the job where they were not lawfully recruited.

18. Once again, I may observe that this finding of the CGIT not having been assailed by the petitioner, I am not delving into the same in detail, except to observe that the same appears to be doubtful. What is not permissible in terms of the decision of the Supreme Court in *State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1*, is the regularization of persons appointed on ad-hoc basis de hors the recruitment rules. The issue before the CGIT was not with regard to regularisation of the respondent workmen. The issue was whether their termination was legal and if so to what relief they were entitled to.

19. The CGIT then proceeds to consider the issue that since the workmen were not entitled to be reinstated, should they be compensated. After referring to various decisions, the CGIT has concluded that the respondent workmen should be compensated. Accordingly, varying amount of compensation have been awarded to the workmen who have rendered service for different lengths of time.

20. The submission of Mr. Bhasin, learned counsel for the petitioner is that merely because the petitioner did not remove the respondent workmen soon after the passing of the judgment dated 09.05.1997, but continued with their services for some more time, it would not mean that they were not disengaged in compliance of the said judgment and as such could be treated as having been retrenched under Section 2(oo) of the Act. He submits that the engagement of the respondents in service was on account of interim directions passed by the Court on 07.12.1995.

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21. It appears that the respondent workmen were already engaged even before the orders of the High Court passed on 07.12.1995. By the said order, they were merely empanelled. Moreover, the judgment dated 09.05.1997 did not say that only the person, whose names appear in the select panel should be engaged. The judgment only prioritised the engagement of such of the workmen who were placed on the select panel *vis-a-vis* those not on the select panel. The words "from outside the panel" used in the judgment dated 09.05.1997 does not mean that the respondent workmen lost their rights, if any, that may have accrued in their favour on account of their casual service over the years. "Outside the panel" has been used to say outside the select panel. This did not give the Petitioner the licence to trample upon the rights of these workmen who fell in the panel of 1995.

22. Further, a perusal of the order dated 07.12.1995, which is reproduced above would show that the Court did not grant any undue protection to the workmen on the panel of 1995. All that the Court observed was that the petitioner could not act arbitrarily and ignore the claim of casual workers on the basis of their respective seniority. Consequently, the termination of the services of the respondent workmen, even if the same had taken place in pursuance of the judgment dated 09.05.1977, would not have taken away the rights of the said workmen (those falling in the panel of 1995) to seek priority for appointment above all others who were sought to be appointed through a fresh process initiated in November, 2012. The petitioner could not have terminated the services of the respondent workmen only to make fresh casual appointments.

23. Pertinently, the engagement of the respondent workmen for 240 days and beyond in the year preceding their termination is not in dispute. Therefore, termination of their employment, as so done, should have been in compliance with the provisions of the Act, more specifically Section 25-F. In my view, the respondent workmen were at least entitled to the relief granted by the CGIT, if not more.

24. Therefore, I find no merit in these petitions and dismiss the same with costs quantified at Rs. 10,000/- in each of these petitions to be paid to the "Juvenile Justice Account" within four weeks.



VIPIN SANGHI, J.

JANUARY 21, 2013

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Fresh RA 15/1/13 / Cm 3033/13
filed / delay in filing the RA