

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5106 OF 2000

The Chairman,
M/s.King Airways Ltd.
(formerly known as U.P Airways),
1897, 2nd floor, Uday Chand Marg,
Kotla Mubarkpur, New Delhi. ... Petitioner

v/s

- 1 Capt. S.K. Singh,
C/o. Dr. A.C. Singh,
Siddharth Nursing Home,
Chandrabali Apt., Chinchooli Bunder Rd.,
Malad (West), Mumbai – 400 064.
- 2 The Presiding Officer,
Office of the
Regional Labour Commissioner (Central)
Shram Raksha Bhavan, Shiv Srusti Road,
Sion, Mumbai – 400 022. ... Respondents

Mr.V.P. Sawant along with Mrs.N.R. Patankar and Prabhakar Jadhav
for the petitioner/applicant.

Mr.Nikhil Sakhardande along with Mr.Anil yadav i/by D.R. Shah for
Respondent No.1.

CORAM: N.M. JAMDAR, J.
DATED : 20TH AUGUST, 2015

ORAL JUDGMENT:

By this petition, the Petitioner challenges the order passed by

the Presiding Officer, Central Government Labour Court, Mumbai, dated 28 October 1999, rejecting the application for restoration of Application No.LC-2/599 of 1998, which was disposed of on 3 March 1999.

2. Respondent No.1 joined services of the Petitioner on 16 January 1996 in the capacity of the Commander to fly, administer, manage and supervise the aircrafts. Respondent No.1 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 on 22 September 1998. He contended that he was a workman of the Petitioner getting wages at ₹60,000/- per month and he was not paid wages from December 1997 to 23 May 1998. He accordingly sought arrears of wages at ₹3,44,516/-. He also claimed that his wages for the period from 5 August 1996 to 31 December 1996 when he was getting salary of ₹90,000/- per month was also not paid and the arrears were ₹4,38,000/-. He also claimed incentives as he had flown extra 244 hours after February 1998. The application was resisted by the Petitioner by filing their say.

3. The application filed by the Respondent No.1 came up for consideration before the Central Government Labour Court on 3 March 1999. At that time the petitioners were not present. The learned Presiding Officer, after considering the averments made in the application, allowed the same by order dated 3 March 1999 and directed the Petitioner to pay a sum of ₹10,50,916/-. The Petitioner thereafter filed an application for recalling the order

passed on 3 March 1999. It has been rejected by the impugned order dated 28 October 1999. The learned Presiding Officer found that an incorrect statement was made in the application that the Petitioner had engaged an advocate and certain fault was found in the authority letter of the Petitioner's representative. So also that, on the earlier occasion also the Petitioner was not present.

4. The petition was admitted on 25 September 2000 and interim relief was granted subject to deposit of ₹5,00,000/- in this Court. Accordingly the amount has been deposited.

5 The application under Section 33-C(2) was filed by the Respondent No.1 claiming certain reliefs at the first instance and it was not that the Respondent No.1 was seeking to enforce his claim raised on any judicial pronouncement or adjudication already made. Therefore, in that sense the entitlement of the Respondent No.1 was being adjudicated for the first time by the Labour Court. It is in this context that the opportunity of hearing to the Petitioner assumes importance.

6. The Petitioner, in the writ petition, has indicated various grounds on which the Petitioner could have contested the matter on merits before the learned Presiding Officer. All these arguments of the Petitioner now stand foreclosed in view of the refusal of the learned Presiding Officer to recall the ex-parte order. Assuming there were certain lapses on the part of the Petitioner, considering the relief claimed, the Petitioner could have been put to terms, such

as, imposition of costs, or deposit of the amount. It is not as if either allowing the application or rejecting it were the only options available. Equities could have been by imposition of costs or putting the Petitioner to terms. I find that, in the circumstances, not exploring any options and directly rejecting the application for setting aside the ex-parte order, has resulted in substantial injury to the Petitioner which needs to be corrected. In any case, the Petitioner has now deposited the amount in this Court pursuant to the orders of the Court.

7. Mr.Sakhardande, learned counsel for the Respondent No.1 defended the order of the learned Presiding Officer by contending that the Petitioners had made a statement that they had engaged advocate when they had not engaged any advocate and for making such incorrect statement they were rightly refused relief by the learned Presiding Officer. As stated earlier, considering the nature of the dispute, even this ground could have been dealt with by imposition of suitable costs. I am therefore of the opinion that the petition deserves to be allowed by granting an opportunity to the Petitioner to defend the application filed by the Respondent No.1 on merits.

8. Accordingly, the impugned orders dated 28 October 1999 and 3 March 1999 are quashed and set aside.

9. The application filed by the Respondent No.1 under Section 33-C(2) of the Industrial Disputes Act stands restored to the file to

be disposed of by the learned Presiding Officer, within a period of 12 weeks. This shall be however subject to the Petitioner paying the costs of ₹25,000/- to the Respondent No.1 within a period of four weeks from today.

10. All the contentions of the parties on merits are kept open.

11. Parties shall remain present before the learned Presiding Officer, on 14 September 2015. Thereupon the learned Presiding Officer will give further date. The period of 12 weeks will commence from the date the parties appear before the learned Presiding Officer.

12. The amount deposited by the Petitioner in this Court shall stand transferred to the Registrar of the Central Government Labour Court, Mumbai. Registry to take appropriate steps.

(N. M. JAMDAR, J.)