

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.NO. 179 of 2015

And

M.P.No.1 of 2015

Ms.Grace C Naulak ... Appellant/Petitioner

Vs.

1. The Management of Air India Limited
rep. by its Managing Director
Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi- 110 001.
2. Deputy General Manager (OPS)-IFS
Air India Limited Southern Region,
Chennai. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court in W.P.No.26989 of 2014 and M.P.No. 1 of 2014 pronounced on 22.01.2015 and praying to set aside the same.

Prayer in WP.No.26989/2014: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent in connection with the impugned communication dated 25 September 2014 bearing Ref.No.MAA/IFS/CC/DISC/518719/273 and quash the same and consequently direct the respondents to permit the petitioner to have assistance of Legal Practitioner in the proposed departmental Enquiry pursuant to the charge memo bearing Ref. No.MAA/IFS/CC/DISC./518719/299 dated 11.7.2014.

For Appellant

.. Mr.V.Prakash, Sr.Counsel for
Mr.K.Sudalaikannu

For Respondents

.. Mr.K.Srinivasamurthy representing
Mr.N.G.R.Prasad.

JUDGMENT

(Judgment of the Court was made by Justice V.Ramasubramanian)

The Writ Appeal arises out of an order of the learned Judge, upholding the stand taken by the Respondent-Management not to permit the appellant to have legal assistance in a departmental proceedings initiated against her.

2. We have heard Mr.V.Prakash, learned Senior Counsel for the appellant and Mr.K.Srinivasamurthy representing Mr.N.G.R.Prasad, learned counsel appearing for the respondents.

3. The appellant is a Senior Cabin Crew with the Air India Limited. She was placed under suspension on 2.6.2014 and a charge sheet was issued on 11.7.2014. The gravamen of the charge was that the appellant tested positive in the Alcoholic Breath Analyser Test, during the pre-flight medical check-up.

4. The appellant denied the charge and submitted the explanation. However, an enquiry was initiated and the appellant was summoned.

5. The appellant thereafter made a representation on 19.9.2014, seeking permission to engage a lawyer to defend her in the proceedings on the ground that she was only a graduate in Literature and that she never had any experience in the conduct of departmental proceedings. The said request was turned down by the respondent by an order dated 25.9.2014 on the ground that as per the Standing Order 32, no outside representation was permissible.

6. Challenging the said communication, the appellant filed a writ petition in W.P.No.26989 of 2014. The same was dismissed by a learned Judge by an order dated 22.1.2015. Aggrieved by the said order, the appellant is before us.

7. The order of rejection of the request of the appellant reads as follows:-

"Ref: MAA/IFS/CC/DISC/518719/273

25th September, 2014

Sub:Discipline Enquiry

This has reference to your letter dated nil received by us on 19.9.2014 in response to our letter Ref: No.MAA/IFS/CC/DISC/518719/265 of 12.9.2014 issued to you.

As per Standing Orders applicable to you, no outside representation is permissible to assist you during the proposed enquiry to be held. As already mentioned in our above quoted letter, you have the option of availing the assistance of a "friend" during the

enquiry under your own arrangements and such a "friend" must be a serving employee of the company. This is for your information and guidance.
(Capt S.Velraj)
DY.GENERAL MANAGER (OPS)-IFS."

8. The Standing Order No.32 reads as follows:-

"32. An employee may be permitted, if he so desires, to have under his own arrangements, the assistance of a "friend" during the course of the enquiry. Such a "friend" must be a serving employee of the Corporation. No outside representation shall be permitted in any circumstances."

9. Admittedly, the Enquiry Officer appointed by the respondent is not a legal professional. Even the Presenting Officer is not a legal professional. But according to the averments contained in the affidavit in support of the writ petition, the Presenting Officer has participated in training programmes conducted by the Management and he is well versed in conducting domestic enquiries. The said averment is made under Ground (e) in paragraph 6 of the affidavit in support of the writ petition which reads as follows:-

"(e). It is respectfully submitted that the 1st respondent is represented by the management namely the Presenting Officer Mr.Ivan R Jacob, Assistant Manager (IFS), Mr.Y.J.Manuel, the Enquiry Officer is also an employee of 1st respondent. Mr.Ivan R Jacob has the experience of having been the Presenting Officer and has been such Presenting Officer in other enquiries conducted. The petitioner has no experience whatsoever in Departmental Enquiry and no legal training, whereas the Presenting Officer Mr.Ivan R Jacob has participated in training programmes conducted by management and is well versed in conducting domestic enquiries consequent to such legal training. Therefore, the petitioner is pitted against an unequal and this violates Article 14 of Constitution of India."

10. The respondent filed a reply affidavit, pointing out that the Presenting Officer was not a legally trained person. It appears that he was only qualified with a Pre-University Course, while the appellant was a graduate.

11. Therefore, the contention that the appellant was pitted against an unequal, was rightly rejected by the learned Judge. We do not find anything wrong with the said finding.

12. However, it is contended by Mr.V.Prakash, learned Senior Counsel for the appellant that Standing Order 32 was only contractual and that therefore, it was always open to the respondent to consider her request, de hors the contract. In other words his contention is that there was no bar in the form of any statutory prescription, for permitting a person to engage a lawyer in the departmental proceedings. The learned Senior Counsel contends that there is a distinction between a statutory bar and a prescription contained in a contract. If it is a mere prescription in a contract, it was always open to the respondent to exercise the discretion in the light of the facts and circumstances of a case. But we do not think such a discretion can really be raised as a legal issue. As pointed out by the learned Judge, the Supreme Court considered the effect of the expression "may" and "shall" in Dinesh Chandra Pandey v.High Court of M.P.,[(2010) 11 SCC 500] and concluded that even in cases where the discretion is conferred statutorily, it was open to the disciplinary authority to refuse permission.

13. In the case on hand, there is no denial of the fact that the Standing Order 32 though in the realm of a contract was binding on the appellant. There were no circumstances for the exercise of any discretion for the respondent to grant permission to the appellant to seek the assistance of a lawyer. Therefore, we find no justification to interfere with the order of the learned Judge.

14. There is also no violation of any principles of natural justice and hence the writ appeal deserves to be dismissed.

15. However, it is stated that the enquiry stands posted tomorrow. Since the appellant will not have enough time even to engage a friend as per Standing Order 32, we are of the view that the appellant should be granted sufficient time at least to engage a next friend. Therefore, the writ appeal is disposed of, confirming the order of the learned Judge, but directing the enquiry officer to grant two weeks time to the appellant to engage the services of a friend. There will be no order as to costs. Consequently, M.P.No.1 of 2015 is closed.

gr.

-s/d-

Assistant Registrar(LA)

Dt:13/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Managing Director, Air India Limited, Airlines House,
113, Gurudwara Rakabganj Road, New Delhi - 110 001.

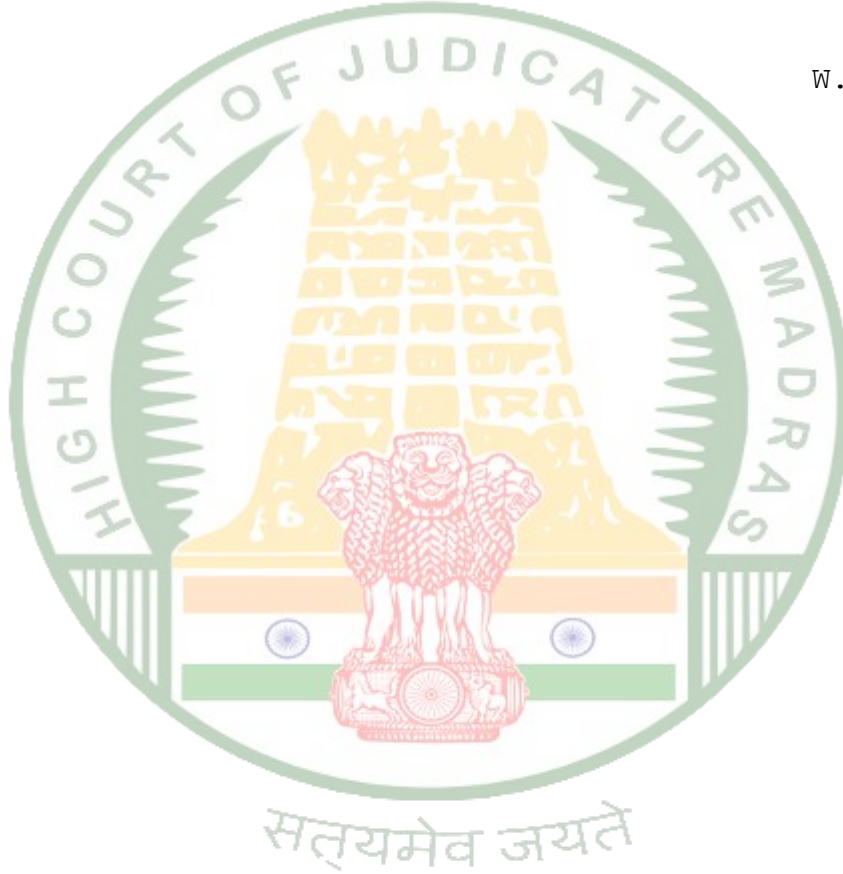
2. Deputy General Manager (OPS)-IFS, Air India Limited
Southern Region, Chennai.

+ 1 cc to Mr.K.Sudalaikannu, Advocate SR 7758

+ 1 cc to Mr.N.G.R.Prasad, Advocate SR 7752

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