

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 825 OF 2016****IN****WRIT PETITION NO. 6869 OF 2003**

Kuwait Airways Corporation

...Applicant / Petitioner

VS.

Kuwait Airways Corporation Employees Union

...Respondent

Mr.Yagnesh Kamdar with Ganesh Ambekar i/b. Fox Mandal Partners for
Petitioner.

Mr.Mahesh Londhe i/b. Sanjay Udeshi & Co. for Respondent.

CORAM : S.C. GUPTE, J.**4 MAY 2016****P.C. :**

Heard learned Counsel for the parties.

2 This application seeks modification of an order passed by this Court on 26 May 2009.

3 The dispute in the petition originally concerned 69 employees, who were retrenched by the Applicant herein (original Petitioner in the writ petition). The retrenchment order was challenged by the concerned employees before the Central Government Industrial Tribunal. By an order dated 30 December 2002, the Tribunal set aside the order of termination in the case of each of the 69 employees and directed the Applicant to reinstate all of them with continuity of service and full back wages. Being aggrieved by the order, the Applicant preferred the present writ petition. This Court, by an order dated 29 July 2003, directed the Petitioner to furnish a solvent surety in view of the award of back wages to be paid to the concerned employees. This order was subsequently modified by an order passed by this Court on 26 May 2009. Instead of furnishing a solvent surety for the amount of back wages ordered by the award, this court

directed the Applicant to furnish a bank guarantee to the extent of Rs.1 crore to secure the payment as per the order dated 29 July 2003. The Applicant, accordingly, furnished a bank guarantee for the sum of Rs.1 crore. It appears that during the pendency of this petition, as many as 41 employees of the Applicant settled their disputes with the Applicant. The present civil application seeks a modification of the order by an apportionate reduction of the bank guarantee amount on the basis of these settlements. During the pendency of this civil application, further 28 employees settled their disputes with the Applicant, leaving only 13 employees, whose claims are still outstanding and are the subject matter of challenge before this court in the present petition.

4 On these facts, the demand for modification of the original order of bank guarantee dated 26 May 2009 by an appropriate reduction in the guarantee amount, is just and proper on principle. The only question is, what should be the reduction. The Applicant has submitted a chart showing that for nine employees, who have not crossed their respective ages of superannuation, the back wages ordered by the Tribunal work out to Rs.76,605/- per month. Even if one takes into account the back wages payable to the remaining four employees, who have superannuated, the total amount of back wages ordered by the Industrial Court does not work out to over Rs.20 lakhs. It may be adequate, in the premises, to reduce the bank guarantee amount to Rs.25 lakhs so as to cover the claim of these 13 employees.

5 It is, however, contended on behalf of the Respondent, firstly, that the Respondent Union does not accept any settlement, as contended by the Applicant. In this behalf, the relevant memorandums of settlement and consent terms entered into individually with each of the 56 employees are already placed on record in the present petition. These memorandums leave no manner of doubt that, the stand of the Respondent Union notwithstanding, the disputes have been duly settled with 56 employees of the Applicant, leaving only 13 employees in the fray.

6 Learned Counsel for the Respondent Union also submits that the

current wages of these 13 employees far exceed the wages indicated in the chart. It is pertinent to note that the original order of deposit was on the basis of back wages payable with effect from 29 October 2001 and upto the date of the award. The court ordered payment of these back wages and directed regular payments of further compensation under Section 17B of the Act on a month to month basis to the concerned employees. It is clear from that order that the back wages covered were back wages between the date of retrenchment and the date of the award. It is only to cover those back wages, that firstly solvent surety was ordered, which was later on modified to bank guarantee of Rs.1 crore.

7 The bank guarantee of Rs.1 crore was given to cover the back wages of all 69 employees. If the Applicant has settled the dispute of reinstatement and back wages with 56 of those 69 employees, a suitable reduction of the amount of bank guarantee would certainly be in the interest of justice. There is no merit in any of the objections raised by the Respondent Union.

8 It is ordered that the bank guarantee of Rs.1 crore ordered by this Court, by its order dated 26 May 2009, shall hereinafter be restricted to Rs.25 lakhs. It is ordered accordingly.

9 The civil application is disposed of. No order as to costs.

10 It is clarified that the observations made in this order concerning the claim of back wages of the Respondent union are only in the context of the present application for reduction of the bank guarantee amount and these observations shall not come in the way of the Respondent Union insofar as its claim for back wages, which forms the subject matter of the present petition, is concerned.

(S.C. Gupte, J.)