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- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- + **LPA 465/2014, C.M. APPL.11259/2014, 11009/2014, 15754/2015**
M/S CAMBATA AVIATION PVT. LTD. Appellant
versus
ASST LABOUR COMMISSIONER (CENTRAL) & ORS
..... Respondents
- + **LPA 466/2014, C.M. APPL. 11011/2014, 3854/2015**
M/S CAMBATA AVIATION PVT. LTD. Appellant
versus
ASST LABOUR COMMISSIONER (CENTRAL) & ORS
..... Respondents
- Through : Sh. Davinder Singh, Sr. Advocate with
Ms. Astha Sharma and Sh. Arjun Bedi, Advocates,
for Item Nos. 11 and 12.
Sh. Anurag Ahluwalia, Advocate, for UOI, in Item
No.11.
Sh. Fidel, proxy counsel for Respondent No.3 in
Item No.11.
Ms. Monica Kapoor, Advocate, for Respondent
No.3 in Item No.12.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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12.01.2016

The present appeal is directed against the judgment and order of the learned Single Judge dated 21.04.2014, which had rejected the present appellant's writ petition. The appellant had contended that the order issued by the Assistant Labour Commissioner (Central) [hereafter referred to as "ALC"] under Section 33(4) of the *Industrial Disputes Act, 1947* [hereafter "the 1947 Act"] read with Rule 61(4) of the *Industrial Disputes (Central) Rules, 1957* [hereafter "the 1957

Rules”], determining the number of workmen listed in the said order as “protected” workmen for 2013-14 was erroneous and unjustified.

The ALC made the determination taking into consideration 1625 employees as workmen, after excluding 54 employees who did not, according to him, fall within that category. A total of 16 were declared as “protected workmen” from two unions [14 of them were recognized as “Office Bearers”].

It is evident from a reading of the impugned order of the ALC as well as the impugned judgment of the learned Single Judge that the dispute pertains to the list of protected workmen declared for the year 2013-14. It is a determination under Section 33(4) of the 1947 Act which is necessarily and entirely fact-dependent and turns on the materials and evidence led before the said official. It goes without saying that to decide who are protected workmen, the 1947 Act mandates that those who fall within the category of “workman” under Section 2(s) of the 1947 Act are to be considered. At the same time, the Union’s apprehensions expressed before the ALC in this case were that some employees were in reality workmen but designated with the nomenclature of “Supervisors” so as to reduce the number of workmen with the ultimate aim of reducing the number of protected workmen. This possibility cannot be ruled out.

In the circumstances, the appropriate course, according to this Court would be that the concerned authority – ALC/Labour Commissioner [hereafter “LC”], as the case may be, would have to consider the materials led before him or her as to the contentions urged with respect to the documents and the duties assigned to such

workmen apart from the mere designation and pay which such workmen/employees would be entitled to. At the same time, we emphasize that since the list is meant only for a year, the enquiry is not of a kind which decides a list but has to be conducted ordinarily in a summary manner.

Having considered the submissions of the parties, we are of the opinion that no infirmity can be found with the impugned judgment. In all future exercise under Section 33(4) of the 1947 Act, the ACC/LC shall adhere to the directions and observations made in the present order. LPA 465/2014 and LPA 466/2014 are disposed of in the above terms along with the pending applications.

Order dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 12, 2016
‘ajk’