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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1331 OF 2010

Krishnasis Pradhan

.. Petitioner

Vs.

National Aviation Company of India Ltd.

.. Respondent

Mr. Mohan Bir Singh a/w Mr. Rahul Jalan i/by MBS & Co. for petitioner.
Ms. Kavita Anchan i/by M. V. Kini & Co. for respondent.

CORAM: NARESH H. PATIL &
Z. A. HAQ, JJ.

AUGUST 08, 2017.

P.C.

1. The petitioner had joined the services of Air India Limited as a Graduate Trainee Engineer on 18/11/1991. After completion of training, the petitioner was appointed as an Assistant Aircraft Engineer w.e.f. 18/12/1992. The petitioner states that he tendered his resignation by communication dated 1/9/2006 while he was working as Deputy Chief Aircraft Engineer in the Major Maintenance Division, Engineering Department of the Air India Limited, which is now known as National Aviation Company of India Limited.

2. By communication dated 14th/15th September, 2006, the respondent – employer refused to accept the resignation of the petitioner and informed the petitioner that his services cannot be dispensed with at that stage.

3. Learned counsel appearing for the petitioner referred to the Standing Orders 17 and 18 of the Certified Standing Orders applicable to Workman of Air India Limited. Counsel submits that in accordance with the Standing Orders, on petitioner submitting resignation, there is no choice left with the employer to compel him to work with the employer and in case employer adopts such a stand that would go contrary to the constitutional spirit and will amount to forced employment. Such a situation cannot be contemplated under the terms of employment, according to the learned counsel. The petitioner, therefore prayed for following substantive relief:

- (a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order compelling and directing the respondent:

- (i) to treat the petitioner as having ceased to be an employee of the respondent with effect from 1/10/2006 upon the petitioner's resignation tendered on 1/9/2006;
 - (ii) to release to the petitioner his provident fund dues i.e. both the employee's and the employer's contributions along with accrued interest till the date of payment and the gratuity for the services rendered by the petitioner between 1992 and 30/9/2006 and to pay to him the difference in wages for the period 1/1/1997 to 30/9/2006 on account of the wage revision brought about with retrospective effect from 1/1/1997;
 - (iii) to issue the petitioner a Service certificate in accordance with Standing Order 28(B);
- (b) that this Hon'ble court be pleased to issue a writ of certiorari and / or a writ in the nature of certiorari or any other appropriate writ, direction or order and after calling for the records and satisfying itself about the illegality thereof to quash and set aside the letter dated 14/15th September, 2006 (Exh. "D" hereto) and the Charge Sheet dated 16th May, 2008 and the consequent enquiry proceedings and the enquiry report dated 16th December, 2009.

4. Learned counsel appearing for the respondent submitted that on the last occasion, a statement was made before this Court that an enquiry was initiated against the petitioner and after completion of enquiry, an order of removal is passed by the Competent Authority as the Enquiry Committee held the charges proved against the petitioner. The Enquiry Committee submitted its report to the Competent Authority vide letter dated 16/12/2009. The Competent Authority proposed to impose punishment of removal from service of the Company as per clause 20(e) of Certified Standing Orders.

The respondent filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947. By order dated 9/5/2013, the Presiding Officer allowed the application approving the action taken by the respondent herein in removing the petitioner from service. Learned counsel for the respondent placed copies of the application filed and the order, which are taken on record. Learned counsel for the respondent submitted that by order dated 6/6/2017 this Court had recorded the statement of the counsel for the petitioner. Said order dated 6/6/2017 reads as under :-

“ Learned counsel for respondents has pointed out that subsequent to the filing of the petition, the services of the petitioner have already been terminated. She submits that in the circumstances, this petition has rendered infructuous. Learned counsel for the petitioner seeks time to get instructions about this aspect of the matter. List on 13.06.2017.”

5. Learned counsel appearing for the petitioner submitted that today for the first time he has come to know about the Central Government Industrial Tribunal passing order on 9/5/2013. Even otherwise, the counsel submitted that petitioner is entitled to maintain this petition inspite of the order passed by the Tribunal. It was submitted by the learned counsel for the petitioner that the petitioner so far has preferred not to challenge the order passed by the Tribunal and the order of removal from service.

6. We have perused the record, considered the submissions advanced. The learned counsel appearing for the petitioner has also referred to order passed in the case of Sanjay Jain vs. National Aviation Company of India Ltd. in Writ Petition No. 1740 of 2010 by the Division

Bench of this Court on 7/9/2010. The counsel submits that a Special Leave Petition was preferred against the said order dated 7/9/2010 and the same is still pending. We have perused the order passed by the Division Bench of this Court and the order passed by the Apex Court, which are placed on record today.

7. In the facts of the case, we are of the view that the issue in respect of refusal to accept the resignation would get merged in the subsequent order passed by the Central Government Industrial Tribunal. It was informed that the petitioner participated in the enquiry. In the facts of the case, we are not inclined to entertain this petition as the petitioner would be entitled to raise all the available issues in case the petitioner chooses to challenge the report of the enquiry and the consequent order passed by the Central Government Industrial Tribunal, approving the punishment imposed by the respondent on the petitioner.

8. The petition is accordingly dismissed.

(Z. A. HAQ,J.)

(NARESH H. PATIL,J.)