

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No. 8970 of 2016

and

W.M.P. Nos. 7975 & 34923 of 2016

Indian Airports Kamgar Union
(Regd. No. 3950)
Represented by its General Secretary,
Qtr. No. B-140, Pocket - A,
INA Colony, New Delhi - 110 023. Petitioner

Vs.

1. The Airports Authority of India,
Represented by Regional Executive Director,
(Southern Region)
Chennai Airport, Meenambakkam,
Chennai - 600 027.
2. Airports Director,
Airports Authority of India,
Trivandrum International Airport,
Trivandrum 695 008.
3. Manager - HR,
Airports Authority of India,
Trivandrum International Airport,
Trivandrum 695 008.
4. The Presiding Officer,
Central Government Industrial Tribunal,
Cum Labour Court,
No.4, Haddows Road,
Shastri Bhavan, Chennai - 600 006. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing respondents 1 to 3 from giving effect to the order of transfer dated 27.05.2015 bearing AAI/SR/2-2(7)/EA issued by the 1st respondent in so far as N.Biju, Supervisor (FS) transferring him from Trivandrum to Vijayawada, the order of the 1st respondent dated 04.03.2016 bearing AAI/SR/2-2(7)/EA directing the 2nd respondent to relieve

the services of N.Biju, Supervisor (FS) and the order of the 3rd respondent dated 08.03.2016 bearing No.AAI/TV/HR/1002/02/2016/370 relieving the services of N.Biju from Trivandrum Airport with effect from 10.03.2016 (forenoon) without getting prior permission from the 4th respondent under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Disputes raised by the petitioner Union which is pending as I.D.No.19 of 2015 dated 24.03.2015.

For Petitioner : Mr.Balan Haridas

For Respondent : Dr.Fr. Xavier Arulraj
for Ms.A.Arul Mary (For R1 to R3)
R4 - Tribunal

O R D E R

The writ petitioner is filed with a prayer forbearing respondents 1 to 3 from giving effect to the order of transfer dated 27.05.2015 bearing AAI/SR/2-2(7)/EA issued by the 1st respondent in so far as N.Biju, Supervisor (FS) transferring him from Trivandrum to Vijayawada, the order of the 1st respondent dated 04.03.2016 bearing AAI/SR/2-2(7)/EA directing the 2nd respondent to relieve the services of N.Biju, Supervisor (FS) and the order of the 3rd respondent dated 08.03.2016 bearing No.AAI/TV/HR/1002/02/2016/370 relieving the services of N.Biju from Trivandrum Airport with effect from 10.03.2016 (forenoon) without getting prior permission from the 4th respondent under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Disputes raised by the petitioner Union which is pending as I.D.No.19 of 2015 dated 24.03.2015.

2. The learned counsel appearing for the respondents states that I.D.No. 19 of 2015 itself was disposed of on 25th July 2016 by the Central Government Industrial Tribunal cum Labour Court, Chennai. Thus, the present writ petition is to be rejected.

3. The learned counsel appearing for the writ petitioner contended that the writ petition was filed on 8th March 2016 seeking for compliance of Section 33 of the Industrial Disputes Act, 1947. Non-compliance of the provisions will vitiate the entire action taken by the respondent-Management, since the prior permission or approval was not obtained from the Tribunal by way of an application I.D.No. 19 of 2015. If any action initiated during the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before an Arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the

commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

4. The learned counsel appearing for the respondents contended that the transfer being an incidental to service and cannot be construed as a punishment. Transfer is a condition to the appointment and the workman has no option but to accept the order of administrative transfers. However, adjudication in this regard may not be necessary at this point of time, in view of the fact that the main I.D.No.19 of 2015 itself was disposed of by the Tribunal on 25th July 2016 and question of filing any application seeking for approval does not arise, at all.

5. On a plain reading of the Section 33, certainly an application seeking for approval is necessary if any action initiated against the workmen is in dispute.

6. Accordingly, the actions taken against the workman during the pendency of I.D.No. 19 of 2015 is in violation of Section 33 of the Industrial Disputes Act, 1947. Thus, the order impugned dated 27.05.2015 bearing AAI/SR/2-2(7)/EA issued by the 1st respondent is quashed. However, it is left open to the respondents to pass appropriate orders in accordance with rules.

7. Accordingly, the writ petition stands disposed of. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

may
To

1. The Regional Executive Director,
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+2 Ccs to Ms. A. Arulmary, advocate sr 57722.

+1 Cc to Mr.Balan Haridas, sr 57572.

W.P.No.8970 of 2016

SP(31/08/2017)



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