

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 2354/2004**

% **27th March, 2017**

NEETA KHUNGAR Petitioner

Through: Ms. Maninder Acharya, Sr.
Advocate with Ms. Ankita
Patnaik and Mr. Sahil Sood,
Advocates.

versus

AIR INDIA LIMITED Respondent

Through: Ms. Bhavana, Mr. Madan Lal
and Mr. Tejinder, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of her being granted promotions in terms of the promotion policy dated 5.6.1997 of the employer/respondent/Air India Limited. Petitioner who was appointed as Air Hostess on 4.1.1986 seeks first promotion of Senior Air Hostess as on 4.1.1991 and then of Check Air Hostess as on 4.1.1996. Petitioner thereafter seeks the third step promotion for Additional Senior Check Hostess with effect from 4.1.2000. I may note that in terms of the promotion policy dated 5.6.1997 the first promotion post

after Air Hostess is Senior Air Hostess, after the post of Senior Air Hostess the next promotion post is of Check Air Hostess and after the post of Check Air Hostess the next post is of Additional Senior Check Air Hostess. The first promotion from Air Hostess to Senior Air Hostess is after five years of service. The second promotion from Senior Air Hostess to Check Air Hostess is after serving five years at the post of Senior Air Hostess. After four years of working as Check Air Hostess, the next promotion is to the post of Additional Senior Check Air Hostess.

2. The aforesaid facts as regards the existence of the promotion policy dated 5.6.1997, entitlement of promotions to the post of Senior Air Hostess after five years, Check Air Hostess after total of ten years of service and Additional Senior Check Air Hostess after total of fourteen years of service is not disputed by the respondent as per its counter affidavit. It is also not disputed that original appointment of the petitioner with the respondent was on 4.1.1986 and therefore in terms of the promotion policy dated 5.6.1997 the petitioner's first promotion as Senior Air Hostess would become due as on 4.1.1991. Petitioner's second stage promotion to Check Air Hostess would become due on 4.1.1996. Petitioner's third promotion to the Additional Senior Check Air Hostess would become due on 4.1.2000.

3. It is undisputed that as against the petitioner a charge sheet was issued on 7.5.1997, however, the same ultimately only resulted in a stoppage of one annual increment w.e.f 1.1.1999 to the petitioner with cumulative effect in terms of the order dated 15.7.1998 of the appellate disciplinary authority. It may be noted that the original disciplinary authority had imposed the punishment of stoppage of two increments, but that punishment was reduced by the appellate disciplinary authority to stoppage of one secondary increment. Though, respondent in its counter affidavit has pleaded that the petitioner became entitled to promotion to the post of Senior Air Hostess only as on 4.1.2000, however, this contention is misconceived because admittedly as on 4.1.1996 not only there was no punishment imposed upon the petitioner, but in fact, even a charge sheet was not issued to the petitioner which was issued on 7.5.1997. I may note that charge sheet against the petitioner was for unauthorized absence of 117 days from 13.10.1996 till 6.2.1997. Accordingly, in terms of the promotion policy dated 5.6.1997 petitioner was entitled to the second promotion of Check Air Hostess as on 4.1.1996. Petitioner also became entitled to the third promotion of Additional Senior Check Air Hostess as on 4.1.2000. Since, however, petitioner was undergoing a punishment of reduction of the annual increment with effect from

1.1.1999 to 31.12.2000, this will have the effect of postponing the seniority, which was to be granted to the petitioner for promotion to the post of Additional Senior Check Air Hostess, from 4.1.2000 to 4.1.2001.

4. In conclusion therefore, the petitioner in terms of the promotion policy of the respondent dated 5.6.1997 became entitled to the first promotion on 4.1.1991. Second promotion was due on 4.1.1996 and the third promotion became due from 4.1.2001 instead of 4.1.2000, inasmuch as, there was to be a one year postponement of the promotion as petitioner was undergoing a punishment of reduction of annual increment from 1.1.1999 to 31.12.1999. I may also note that the admitted proposition is that on account of promotions being available prior to 1997 petitioner would not get any monetary benefits of higher/promotion post, and which monetary benefits would become available only from the commencement of the policy on 5.6.1997.

5. In the present case, actually entitlement of petitioner to the monetary emoluments would be only monetary emoluments of the post of Additional Senior Check Air Hostess with effect from 4.1.2001, but, since this writ petition is filed only on 9.2.2004 petitioner will get the monetary emoluments of an Additional Senior Check Air Hostess from 9.2.2001. I may note that principles of the Limitation Act, 1963 apply

to a writ petition for dismissing the writ petition on the ground of delay and *laches* in view of the ratio of the judgment of the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty (2011)*

3 SCC 436, and paras 52 to 54 of which judgment read as under:-

“52. In the very first appeal, the respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter.

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.”

6. Accordingly, this writ petition is allowed and disposed of by directing the respondent to grant monetary emoluments to the petitioner for the post of Additional Senior Check Air Hostess from 4.1.2001. Petitioner will also be entitled to all consequential monetary

benefits on the petitioner getting the benefit of notional promotion to Additional Senior Check Air Hostess from 4.1.2001 and accordingly monetary emoluments of the post of Additional Senior Check Air Hostess from 9.2.2001. Respondent will now settle the monetary payments of the petitioner payable in terms of the present judgment within a period of three months from today.

7. The writ petition is allowed in the above terms, leaving the parties to bear their own costs.

MARCH 27, 2017

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VALMIKI J. MEHTA, J