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

+ LPA 637/2017

INDIAN AIRLINES KAMGAR SANGTHAN Appellant

Through: Mr. Saket Sikri & Mr. Ajay Pal
Singh, Advocates.

versus

NATIONAL AVIATION COMPANY OF INDIA LTD

& ANR

..... Respondents

Through: Mr. Lalit Bhasin, Ms. Ratna Dwivedi
Dhingra & Ms. Bhavna Dhami,
Advocates for respondent No.1.
Ms. Anjana Gosain & Ms. Rabiya
Singh Thakur, Advocates for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

25.09.2017

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C.M. No. 35160/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No. 35163/2017 (for seeking condonation of delay in filing the appeal) and 35162/2017 (for seeking condonation of delay in re-filing the appeal)

For the reasons stated in the applications, the same are allowed.

The applications stand disposed of.

C.M. No. 35161/2017

The appellant seeks to place on record additional documents.

For the reasons stated in the application, the same is allowed.

LPA 637/2017

Issue notice. Mr. Bhasin puts in appearance on behalf of respondent No.1 and Ms. Gusain appears on behalf of respondent No.2.

With the consent of learned counsel, we have heard the appeal and proceed to dispose of the same.

The appellant is aggrieved by the order dated 12.05.2017 passed by the learned Single Judge in W.P. (C) No. 5202/2010.

By the impugned order, the learned Single Judge has disposed of the writ petition with a direction that the petitioner may make a representation to the respondents within four weeks, which should be considered by the respondents in the light of the order dated 21.08.1998 passed in W.P. (C) No. 4113/1994 and if there are any vacancies against which any of the member of the petitioner-Union can be absorbed after taking into consideration the vacancy position after January 2016 till date. The respondent No.1 was directed to pass a speaking order on the representation made by the petitioner's members within 12 weeks from the date of the representation received.

The learned Single Judge has passed the aforesaid order since he found that the petitioner association/ union, i.e. the Indian Airlines Kamgar Sangthan has not furnished particulars of its members and it has not been disclosed as to when they were initially appointed and for how long they have worked in the respondent No.1 company.

The submission of learned counsel for the appellant is that the appellant had obtained, under the Right to Information Act, the complete list of persons who were given casual appointments. According to learned counsel for the appellant, all the casual appointees are members of the

appellant association.

We are of the view that the said statement cannot be taken on record on its face value for the simple reason that under the constitution of the appellant union, the appellant union may admit ordinary members under clause 5, persons who are Engineering Helper, Canteen Helper, Commercial Helper, Catering Helper, Safaiwala, Peons and ½ grade employee working in Indian Airlines on payment of Rs.100/- as admission fees and Rs.50/- as monthly subscription per member. Therefore, merely because someone may have been engaged on casual basis falling in one of the aforesaid categories by respondent No.1, he/she does not automatically become a member of the appellant union. The appellant should have disclosed in the writ petition as to who are its enrolled members and produced evidence in support whereof such as its register of members, etc. Thus, the observation made by learned Single Judge in the impugned order, as taken note of hereinabove, cannot be questioned.

The submission of learned counsel for the appellant is that the writ petition had been pending since the year 2010 and the order passed by the learned Single Judge, as aforesaid, relegates the petitioner and its members to the same position in which they were at the time of filing of the writ petition.

He further submits that since the respondents have filed their counter-affidavit in the writ proceedings for contesting the claim made by the petitioner association, no useful purpose would be served in requiring the members of the appellant association to make their representations to the respondents.

Learned counsel, therefore, submits that the writ petition may be

revived with liberty to the petitioner to amend the writ petition so as to incorporate all the necessary particulars, which were found deficient by the learned Single Judge while passing the impugned order.

Learned counsel for the respondents fairly and without prejudice to the contentions of the appellant do not oppose the prayer of the appellant.

Accordingly, the impugned judgment dated 12.05.2017 passed in W.P. (C) No. 5202/2010 is set aside and the writ petition is revived. The appellant is given liberty to amend the writ petition to remove the deficiencies therein with respect of the particulars of the members of the petitioner association and the period for which its members have worked as casual employees of respondent No.1. The amended writ petition shall be filed within three weeks with advance copy to learned counsel for the respondents. The additional documents placed on record along with the present appeal are permitted to be placed in the record of the writ petition. The respondents may file their amended counter-affidavits within four weeks thereafter.

List the writ petition before learned Single Judge as per roster on 04.12.2017.

The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 25, 2017

B.S. Rohella