

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No. 5490/2017

Judgment reserved on : 9th August, 2018
Date of decision : 1st November, 2018.

AIRPORTS AUTHORITY OF INDIA Petitioner

Through: Mr.K.K.Rai, Sr. Advocate with
 Mr.Digvijay Rai,
 Mr.Chandrashekhar A.
 Chakalabbi, Advocates

Versus

INDIAN AIRPORTS KAMGAR UNION Respondent

Through: Mr.Maanav Kumar and
 Ms.Nupur, Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, the Airports Authority of India, vide the present writ petition W.P.(C) 5490/2017 has sought the setting aside of an award dated 8.12.2016 in ID No. 39/2014 of the Presiding Officer, CGIT stated to be *ex parte* and has also sought the setting aside of notification No. L-11011/19/2013-IR(M), dated 19.2.2014 issued by the Ministry of Labour and Employment, vide which in terms of Section 17 of the Industrial Disputes Act, 1947, the Central Government published the impugned award in reference No. 39/2014 of the CGIT/Labour Court-I/New Delhi between the employers in

relation to the Management of M/s Airports Authority of India and their workmen which award was received by the Central Government on 21.12.2016.

2. The respondent to the petition, i.e., the Indian Airports Kamgar Union was present as a caveator when the matter was taken up for hearing on 5.7.2017 and filed its counter affidavit to which the rejoinder was also submitted.

3. Vide order dated 5.7.2017, the petitioner was directed to submit the status of the implementation of the operation, if any, of the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003, and action taken after the impugned award dated 8.12.2016 and vide order dated 19.12.2017, the said status report which had been filed on the said date was directed to be submitted on an affidavit of the Authorized Representative of the petitioner. A submission was made on 19.12.2017 on behalf of the petitioner that no adverse action had been taken pursuant to the award dated 8.12.2016.

4. Vide order dated 19.12.2017 in CM No.46221/17, as the matter vide order dated 22.8.2017 had been reserved for judgment, and it was submitted by the petitioner that pursuant to the show cause notice dated 18.9.2017, the respondent was seeking to precipitate the matter, it was directed vide order dated 19.12.2017 that no coercive action in terms of the show cause notice No. ALC-HQSP/1(01)/2017-NK dated

18.9.2017 be taken by the Assistant Labour Commissioner till further orders.

5. The said affidavit of the petitioner in terms of order dated 5.7.2017 and 19.12.2017 was submitted on 9.1.2008.

6. On 17.1.2018, it was submitted on behalf of the respondent that there were certain other orders that had been passed by the petitioner after the impugned award and time was sought to place them on the record which chart of changes and new conditions between Regulations of 1980 and 2003 were submitted on behalf of the respondent on 9.8.2018 and submissions were made on behalf of either side.

7. The reference made by the Government of India, Ministry of Labour and Employment vide letter No. L-1101/19/2013-IR(M) dated 19.2.2014 under Clause (d) of Sub-Section (1) and Sub Section 2(A) of Section of the Industrial Disputes Act, 1947 was referred to the CGIT-cum-Labour Court, Karkardooma for adjudication with the terms:

“Whether the action of the management of Airport Authority of India in making compulsory retirement of employees on the basis of AAI Circular No.62/2012 dated 17.1.2012 on premature retirement is legal? If not, what relief the workman are entitled to?”

8. The corrigendum to the reference was to the effect:

“ In partial modification of this Ministry’s Order of even number dated 19.02.2014, in the second line of the schedule, the figure 62/2012 may be

treated as replaced with 02/2012 and in the third line the word 'workman' may be treated as replaced with 'workmen'."

9. The contention raised by the claimants i.e., the Indian Airports Kamgar Union arrayed as respondent to the present petitioner in the Statement of Claim as reflected vide the impugned award are to the effect:

"3. It is alleged by the claimants in the statement of claim that prior to 1972, all the airports both international as well as domestic, were maintained and managed by Government of India, Ministry of Civil Aviation through Director General of Civil Aviation. In the year 1971, International Airport Authority of India (in short IAAI) was carved out of the Civil Aviation Department and was constituted as such, vide International Airports Authority of India Act, 1971, to maintain and manage the International Airports in the country. It started functioning from 1972.

4. It is the case of the claimant that in the year 1985, National Airport Authority (in short (NAA)) was carved out of balance Civil Aviation department of the Government of India vide NAA Act 1985 to maintain and manage domestic airports throughout, the country. Upon constitution of IAAI and NAA, as stated above, employees who came from Ministry of Civil Aviation ceased to be Government servants on joining autonomous body/industrial organization in the year 1994, IAAI and NAA were merged into Airport Authority of India (in short AAI) which started functioning from 01.04,1985. Section 18 of the Airport Authority of India Act provides that officer and employees of IAAI and NAA became

employees of AAI created under the Act. Thus, workmen became employees of AAI. It is clearly provided under sub-section 2 of Section 18 of the above Act that every officer and employee of IAAI and NAA shall continue to be governed by the same terms and conditions as were applicable to them earlier under IAAI and NAA respectively. It is also provided under Section 18(7) of the Act after expiry of one year, or extended' period provided under Section 18 of the Act, Officer and employees of AAI shall be governed by rules and regulations made by the Authority in respect of their service conditions. Section 42 of the Act empowers the Authority to frame conditions of service and it further provides that regulation made by AAI under the Act shall have effect only if approval is given by the Central Government Further, Section 43 also provides that further rules and regulations made under the said Act shall be placed as soon as possible before each House of Parliament while it is in session. It is, thus, clear that under Section 42 and 43 of the Act, following conditions are to be fulfilled:

- (i) prior approval of the Central Government*
- (ii) Notification in the official Gazette*
- (iii) Laying of rules & regulations before each House of Parliament and agreement or disagreement of both the Houses of Parliament for making or not making the rules & regulations.*

5. It is also alleged by the claimant in Para 16 of the statement of claim that in the year 2003, after 8 years from constitution of AAI management of AAI prepared Airport Authority of India (General Conditions of Service and Remuneration of Employees) Regulation 2003 (hereinafter called the 2003 Regulation) and got them straightway notified in the official Gazette skipping the

necessary approval from either House of Parliament as well as prior approval of the Central Government,

6. It is also the case of the workman that no rule or regulation of IAAI and NAA contained any provision of pre-mature retirement of employee on attaining age of 50 years on the grounds of inefficiency or doubtful integrity or medical unfitness. Rather the Central Government provided for protection or service to his employees who came to NAA by incorporating a clause in para 5 of its letter dated 22.09.1989 to the effect that dismissal/removal of an employee for any misconduct from service of NAA would be subject to review by Government before taking final decision and copy of the said letter is Annexure A-7. In short provisions, compulsory retirement made in the new regulation was never, in existence previously which empowers the Authority to compulsorily retire an employee, being inefficient or of doubtful integrity or medically unfit etc. Claimants have quoted in extenso the various provisions/regulations made under IAAI Act,

7,-Claimant union has made a representation to the Chairman vide letter dated 27.1.2012 demanding immediate cancellation of circular of 2012 as is clear from Annexure A-9. Since the said Regulation of 2003 is legally invalid and having been made without proper approval of the Central Government and have not been laid before either House of Parliament, as such this provision regarding pre-mature retirement was also invalid under the law. There is also reference to Section 9A of the ID Act which requires notice to the workmen before making any change in their conditions of service. It is further alleged that no

opportunity of hearing was afforded to the claimant before making any new service condition for them or changing old service conditions. The new provision made by the management of AAI for pre-mature retirement of the workmen, that too without show cause notice amounts to termination of their service. Finally, prayer has been made for declaring the impugned 2003 regulation including the provision of premature retirement of employees as illegal and invalid under the law.

8. Notice served on the management and Shri Surender Kumar Junior Executive (HR) put up appearance on 06.0.2014 and 02.07.2014. Thereafter, none appeared on behalf of the management as such this Tribunal vide order dated 21.01.2015 proceeded ex parte against the management.”

10. The CGIT vide order dated 18.2.2015 framed the issue as:

(i) Whether action of the management of Airport Authority of India in making compulsory retirement of employees on the basis of AAI Circular No. 62/2012 dated 17.1.2012 on premature retirement is legal? If not, what relief the workmen are entitled to?

11. As indicated vide the impugned award, the claimant union i.e., the respondent herein in support of its stand examined Sh.G.A.Rudrappa as WW-1 who tendered in evidence the documents Ex.WW-1/1 to Ex.WW-1/9 and submissions were made by Kamlesh Kumar, the Authorized Representative of the claimant union. The impugned award reflects that vide paragraph 23 thereof that an official, Sh.Surender Singh appeared on behalf of the Management on two dates but later on for the reasons best known to the Management

none put in appearance on behalf of the Management as a result of which the Management was proceeded *ex parte*.

12. Vide the impugned award, the Presiding Officer-cum-CGIT-Labour Court adverted to the provisions of Section 18, 41 and 42 (1) & (2) of the Airports Authority of India Act, 1994 and observed as under:

“ 12. It is clear from pleadings of the claimant as well as perusal of affidavit EX.WW1/A that prior to 1972 all the airports in the country were maintained by Ministry of Civil Aviation and Government of India. It is further clear from pleading or the claimant as well as perusal of affidavit Ex.WW1/A that prior to 1972, international as well as domestic airports in the country were maintained by Ministry of civil Aviation and Government of India. It is also apparent from the evidence on record that IAAI was carved out of Civil Aviation Department of Government of India and as such IAAI was to maintain and manager (sic.) the international airports in the country. It started functioning in 198/72 (sic.). Further in the year 1995, NAA was carved out of the balance Civil Aviation Department of the Government of India vide National Airports Authority Act, 1985. The Act was to maintain and mange the domestic airports in the country. Consequent upon creation of these two bodies and upon constitution of IAAI and NAA, employees who came from Civil Aviation ministry ceased to be government servants on their joining the respective autonomous bodies and industrial organizations. It is further clear from record that in the year 1994, IAAI and NAA were merged to constitute Airport Authority of India under the Airport Authority of India Act,

1994. It started functioning on 01.01.1995.”

13. The petitioner contends that the only question before the Industrial Tribunal was the reference made to it:

“(i) Whether action of the management of Airport Authority of India in making compulsory retirement of employees on the basis of AAI Circular No. 62/2012 dated 17.1.2012 on premature retirement is legal? If not, what relief the workmen are entitled to?, ”

which was rectified vide the corrigendum dated 26.5.2014 that in place of the figure ‘62/2012’, it was replaced as ‘02/2012’ in the circular and the word ‘**workman**’ in the question as rectified to be read as ‘**workmen**’ and it was thus submitted by the petitioner that the Airports Authority India, Act (General Conditions of Service and Remuneration of Employees) Regulation, 2003 were not part of the reference to the CGIT-cum-Labour Court-I and that there was no issue framed by the Tribunal about the illegality of the said regulation and could thus not have been adjudicated upon by the Tribunal.

14. *Inter alia*, it was submitted by the appellant/petitioner that the learned Tribunal erred in holding that circular No. 2/2012 had not got the approval of the Central Government or that the Regulations were not taken up for consideration and approval by either House of the Parliament as required under law and it was rather submitted on behalf of the petitioner that the said Regulations were placed before the **Rajya Sabha on 19.8.2003** along with the Airports Authority of India

(Contract) Regulations, 2003, Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003, Airports Authority of India (Annual Report and Annual Statement of Account) Rules, 2003, Airports Authority of India (Leave) Regulations, 2003, Airports Authority of India (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail), Regulations, 2003, Airports Authority of India (Conditions of Service of the Chairman and Other Members), Rules, 2003, Airports Authority of India (Employees Medical Attendance and Treatment) Rules, 2003 and Airports Authority of India (Management of Airports) Regulations, 2003. Copy of the proceedings of the Rajya Sabha dated 19.08.2003 were annexed with the petition as Annexure P-4.

15. A perusal of the business conducted in the Rajya Sabha on 19.8.2003, at 12 noon indicates that Item (II) was as follows:

“II. A statement (in English and Hindi) regarding restructuring package of SIDBI

for State Financial Corporations.

Shri Rajiv Pratap Rudi (Minister of State (Independent charge) of the Ministry

of Civil Aviation) laid on the Table:-

I. A copy (in English and Hindi) of the Ministry of Civil Aviation Notification G.S.R. 246 (E) dated the 28th June, 2003, publishing the Aircraft (Second Amendment) Rules, 2003, under section 14-A of the Aircraft Act, 1934, together with an Explanatory Memorandum.

II. A copy each (in English and Hindi) of the following Notifications of the Ministry of Civil

Aviation, under section 43 of the Airport Authority of India Act, 1994, together with Explanatory Memoranda on the Notifications and Delay Statement:—

(1) F.No.AAI/PERS/EDPA/Reg/2002 dated the 1st April 2003, publishing the Airports Authority of India (Contract) Regulations, 2003.

(2) S.O.521 (E) dated the 9th May 2003, publishing the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003.

(3) F.No.AAI/PERS/EDPA/Reg/2002 dated the 23rd May, 2003, publishing the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003.

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(4) S.O.657 (E) dated the 6th June, 2003, publishing the Airports Authority of India (Annual Report and Annual Statement of Accounts) Rules, 2003.

(5) F.No.AAI/PERS/EDPA/REG/2002 dated the 13th June, 2003, publishing the Airports Authority of India (Leave) Regulations, 2003.

(6) No.Cargo/1351/9 dated the 13th June, 2003, publishing the Airports Authority of India (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

(7) S.O.718 (E) dated the 20th June, 2003, publishing the Airports Authority of India (Conditions of Service of the Chairman and Other Members) Rules, 2003.

(8) F.No.AAI/PERS/EDPA/Reg/2002 dated the 26th June, 2003, publishing the Airports Authority of India (Employees Medical Attendance and Treatment) Regulations, 2003.

(9) No.AAI/PERS/EDPA/Reg/2002 dated the 3rd July, 2003, publishing the Airports Authority of India (Management of Airports) Regulations, 2003.”,

and it was thus contended on behalf of the petitioner that the learned Tribunal had failed to appreciate that the said Regulations of 2003 were notified by the Government of India and could not be notified without being placed before the Parliament.

16. *Inter alia*, the petitioner contended that the learned Tribunal erroneously came to the conclusion that circular No. 02/2012 was to be notified and published in the Official Gazette and hence was in gross contravention of provisions of Section 42(4) and (5) of the Airports Authority India, Act, 1994 and that the learned Tribunal had not appreciated that Regulation 12(5) of the 2003 Regulations which was duly notified by the Central Government contained a provision of premature retirement and the circular No.02/2012 was issued under the said Regulation and only provided a procedure for the fair/impartial consideration of employees for premature retirement under the said Regulations of 2003.

17. *Inter alia*, the petitioner contended that the learned Tribunal erroneously came to the conclusion that no notice was issued to the workmen when the Regulations of 2003 were framed without appreciating that the said terms and conditions of the service of the

employees of the petitioner were approved by the Board of the Petitioner on 31.3.1997 and were being followed prior to its Notification in the year 2003, after the opinion of the Ministry of Law, Government of India which was evident from its letter dated 3.4.1997. *Inter alia*, the petitioner contended that the learned Tribunal had erroneously come to the conclusion that no notice under Section 9(A) of the Industrial Disputes Act, was given to the respondent prior to framing of the 2003 Regulations without any evidence on record. Moreover the said Regulations were framed in the year 1997 and notified in the year 2003 by the Respondent since the year 1997 or prior to 2003 had never raised any such objection in relation thereto and that the challenge of the respondent to the said Regulations after a period of twenty years or eleven years was badly hit by the principles of delay and laches and the respondent was not entitled to the same when they were availing of the benefits of the said Regulation since 1997 or at best from 2003.

18. *Inter alia*, it was contended by the petitioner that the reliance placed by the learned Tribunal on the verdict of the Hon'ble Supreme Court in ***U.P. State Electricity Board and Another Versus Hah Shankar Jain & Others*** : (1978) 4 SCO 16 which clearly stipulates that the Regulations made by the Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government in as much as in the instant case the Regulations 2003 were duly notified was misplaced.

19. It was also submitted on behalf of the petitioner that the learned Tribunal erroneously relied upon the verdict of the Supreme Court in ***M/s Tata Iron and Steel Co. Ltd. Versus The Workmen and Others:*** (1972) 2 SCO 383 wherein it has been clearly laid down that the real object and purpose of enacting Section 9-A seems to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal and contended that in the instant case there was no change in the service conditions on framing the 2003 regulations in as much as the International Airports Authority of India Act, 1972 stood repealed on formation of the Airports Authority India, Act, 1994 and also the Regulations framed under the Act of 1972 stood redundant.

20. The petitioner submitted that the reliance placed by the learned Tribunal on the verdict of the Supreme Court in ***The Karnal Co-operative Sugar Mills Ltd. Versus The Labour Court and Others:*** (2003) 134 PLR 233 was erroneous as it stated that notice should be given if there is a change of the Terms and Conditions of Service of an employee, whereas in the instant case the Regulations when approved by the Board of the petitioner were in the public domain and same were notified in the year 2003 and no objection was ever raised by the respondent at the relevant point.

21. The petitioner through the affidavit of Sh. Vijay Kumar Tanwar, Joint Manager (HR) to the Airports Authority of India, which was submitted in terms of order dated 22.7.2012 and 19.12.2017 in the instant petition has *inter alia* submitted that after the passing of the

impugned award in ID No.39/14, no employee of the petitioner had been given pre-mature retirement as per the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003.

22. The respondent Union through affidavit dated 18.7.2017 Mr.G.A.Rudrappa, General Secretary of the Indian Airports Kamgar Union, submitted that the *mala fide*, vexatious Writ Petition ought to be dismissed and submitted that the Writ Petition was also misconceived in both fact and law as it relied upon erroneous factual assertions and was contrary to the settled position of law. It was submitted on behalf of the respondent that the learned Tribunal held that the 2003 Regulations, including provisions of pre-mature retirement of employees of Airports Authority of India are illegal and not binding on the workmen and were in contravention of the provisions of the Industrial Disputes Act, 1947 and the Airports Authority of India Act, 1994 i.e. Section 9A of the ID Act, 1947 and Sections 18(7), 42 and 43 of the AAI Act, 1994 which prescribe mandatory steps that the Petitioner was required to take prior to enacting the 2003 Regulations, which it failed to do so.

23. *Inter alia*, the respondent has submitted that the petitioner's sole objective in filing the present writ is to circumvent the steps and procedures it is statutorily mandated to follow under the ID Act, 1947 and the AAI Act, 1994 prior to passing of the 2003 Regulations and that it was evident from the present writ that the Petitioner had no intention of following the compulsory procedure enshrined in the

statute in as much as from the date of the Award, 08.12.2016, the Petitioner has not taken any of the requisite steps or obtained approvals required under law.

24. The respondent has further contended that the Tribunal was fully was fully competent and well within its jurisdiction to pass the impugned award, as it related to the terms of the reference itself as in the Reference, the learned Tribunal had been asked to :

- (a) *adjudicate upon the legality of the Petitioner's action regarding compulsory retirement of employees, on premature retirement (on the basis of AAI Circular No.02/2012), and*
- (b) *grant/prescribe a relief to the workmen if the action was found to be illegal.*

25. It was submitted thus on behalf of the respondent that the Award falls squarely within the scope of the Reference, and therefore, the learned Tribunal had not exceeded its jurisdiction.

26. The respondent reiterated that the learned Tribunal having been required to adjudicate upon the legality of the compulsory retirement of employees based on AAI Circular No.02/2012 and it being an admitted position of the petitioner in the Writ Petition, that this Circular was issued under Regulation 12(5) of the 2003 Regulations and Regulation 12(5) of the 2003 Regulations contained a provision of premature retirement and Circular No.02/2012 was issued under this regulation and thus Circular No.02/2012 derived its authority and legitimacy from the 2003 Regulations.

27. *Inter alia*, the respondent submitted that for the learned Tribunal to decide on the legality of Circular No.02/2012, it had to consider whether the parent instrument Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 was legal and it is evident that unless the learned Tribunal considered the legality of the said 2003 Regulations, it could not have decided the Reference. It was thus submitted that the learned Tribunal therefore, acted within its jurisdiction deciding that the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 were illegal and not binding.

28. It has thus been submitted on behalf of the respondent that in the light of the reference, the legality of the 2003 Regulations had to be adjudicated upon by the learned Tribunal, as this constituted a question implicit within the reference and that Circular No.02/2012 had been issued under the 2003 Regulations and derives its authority entirely from the 2003 Regulations and that the learned Tribunal had to decide on the legality of 2003 Regulations in order to decide the reference as this was the only way by which the learned Tribunal could have adjudicated the reference with regard to the Circular No.2/2012 and that was by examining the legality of the 2003 Regulations itself. It was submitted by the respondent that the question of legality of the 2003 Regulations was implicit and inherent within the reference inasmuch as the legality of the Circular No.02/2012 was dependent in terms of the legality of the 2003 Regulations and thus the jurisdiction of the learned Tribunal extended to the reference, which

included questions inherent or implicit within it and that if the reference required the learned Tribunal's consideration and adjudication on a question implicit within it, the learned Tribunal was well within its jurisdiction to pass the award.

29. *Inter alia* the respondent placed reliance on the verdict of the Hon'ble Supreme Court in **Syndicate Bank v. Workmen, (1966) 2 LLJ 194** on observations in para-6 which reads to the effect that:

"6. The first question that has been raised on behalf of the appellant is that there was no reference on the question of the status of C rank officers and the tribunal went beyond the terms of reference when it decided that C rank officers were workmen...We are of the opinion that the first term of reference had implicit in it the question whether C rank officers were workmen or not... We are therefore of the opinion that the first term of reference when it posed the question whether the appellant was justified in imposing the condition that the workmen promoted as C rank officers were governed by the rules of the bank as applicable to such officers had impliedly raised the question whether C rank officers were workmen or not, for only on that basis could the reference be made."

30. The respondent further submitted that in the present case an identical situation as in Syndicate Bank (Supra) had occurred. It was further submitted on behalf of the respondent that the learned Tribunal was fully competent to hear even such matters in which the *vires* of statutory provisions were to be decided.

31. Reliance was also placed on behalf of the respondent on the provision of Section 10(4) of the Industrial Disputes Act, 1947 which reads to the effect that:

*“ (4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication,⁵ the Labour Court or the Tribunal or the National Tribunal, as the case may be] shall confine its adjudication to those points and matters **incidental thereto.**”*

32. It was submitted on behalf of the respondent that assuming without conceding that the reference did not directly or implicitly require the legality of the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 to be considered, nevertheless this was a question incidental to the ascertainment of the legality of Circular No. 2/2012 and that the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003, were inextricably linked with the Circular No.02/2012. The respondent thus submitted that the learned Tribunal had not exceeded its jurisdiction in any manner and that there was no error in its findings and that it had rather passed a very reasoned order detailing the manner in which the petitioner had failed to comply with Section 9 (A) of the ID Act, 1947 as well as the Section 42 and 43 of the Airport Authority of India Act. *Inter alia* the respondent denied that the 2003 Regulations were notified after following the due process of law. It is submitted by the respondent that in terms of Section 18(7) of the Airport Authority of India Act, 1994 which reads to the effect that:

“(7) After the expiry of the period of one year, or the extended period, as referred to in sub-section (2), all the officers and other employees transferred and appointed to the Authority, other than those opting not to be the officers or employees of the Authority within such period, shall be governed by the rules and regulations made by the Authority in respect of the service conditions of the officers and other employees of the said Authority.”

after the expiry of the period of one year or the extended period provided in Section 18 (2) of the Act, the officials and other employees of the petitioner were to be governed by the rules and regulations to be made by the petitioner in respect of their service but no such rules and regulations were framed by the petitioner till the year 2003 and the petitioner issued an office order dated 31.03.1997 which is also annexed to the writ petition as Annexure -3 which states as under:

“...every officer or other employee of the Authority shall hold his office or service therein by the same tenure at the same remuneration upon the same terms and conditions, with the same obligations, rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he/she had held in the National and International Airports Authority Division of Airports Authority of India..”

33. It was thus submitted by the respondent that as per the office order dated 31.03.1997 referred to hereinabove, the officers and other employees were to be governed by the same conditions of service as

they were governed by when they were a part of International Airports Authority Division and National Airports Authority Division and that these conditions include provisions regarding the retirement and retirement benefits and therefore any change in the retirement provisions would mean a change in conditions of service and that the petitioner was bound to follow the due procedure of law for the formulation of any such conditions of service.

34. It was submitted further by the respondent through its counter affidavit that Section 42 (2)(b) of the Airport Authority of India Act, 1994 empowers the petitioner to make regulations providing for conditions of service and remuneration of officers and other employees of the petitioner and that Section 42(4) of the said enactment states that the regulations made by the petitioner under the Act shall have effect only after their approval by the Central Government and their publication in the Official Gazette. It was thus submitted by the respondent that the 2003 Regulations did not receive the approval of the Central Government at any stage and that the petitioner had failed to produce a single document to show that the 2003 Regulations were approved by the Central Government. The respondent further submitted that in terms of Section 43 of the Airports Authority of India Act, 1994, the regulation made under the Act is required to be laid before each House of Parliament for approval.

35. Section 42(2)(b), Section 42 (4) and Section 43 of the Airport Authority of India Act, 1994 provide as follows:

“Section 42. Power to make regulations.- (1) The Authority may make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provisions is necessary or expedient for the purpose of giving effect to the provisions of this Act.

Section 42(2)- Without prejudice to the generality of the foregoing power, such regulations may provide for-

(a).....

(b)- the conditions of service and the remuneration of officers and other employees to be appointed by the Authority under sub-section (2) of section 10.

(c)....

(d)....

(e)....

(f)....

(g)....

(h)....

(i)....

(j)....

(k)....

(l)....

(m)....

(n)....

(o)....

Section 42(3)

Section 42(4)- No regulation made by the Authority under this section shall have effect until it has been approved by the Central Government and published in the Official Gazette.

Section 42(5)

Section 42(6) ”

“Section 43- Rules and regulations to be laid before Parliament.—Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

36. It was further submitted on behalf of the respondent that the 2003 Regulations were not tabled before each House of Parliament

which was a mandatory condition and that this provision was expressly inserted into the Airports Authority of India Act, 1994 in order to ensure that there are checks and balances in place to review any regulation made by the petitioner before its adoption so that no such regulations suffer from infirmities such as being detrimental, unfair, arbitrary, discriminatory, to the employees of the petitioner. The respondent has further submitted that the Airports Authority of India management did not formulate the regulations stipulated in Section 18(7) of the Airports Authority of India Act and issued an Office Order dated 31.03.1997 referred to hereinabove that every officer and other employee shall be governed by the same conditions of service as they were when they were employees of the National Airports Division and International Airports Division and that vide its letter dated 03.04.1997, the Ministry of Civil Aviation stated that this adoption of service conditions by the Board was in the nature of regulations of service and that the Airports Authority of India may initiate action on preparing a draft/ Gazette Notification for the same which would have to be vetted by the Ministry of Law before being notified. The said letter dated 03.04.1997 of the Under Secretary to the Government of India reads to the effect that:

“To

*The Executive Director (P&A)
Airport Authority of India, (National Airports Division)
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi-110008*

*Subject:-Framing the terms & conditions of service of the
employees of erstwhile IAAI/NAA.*

Sir,

I am directed to refer to this provisions contained in Section 42(2)(b) of the Airports Authority of India Act, 1994 which empowers the Authority to frame the conditions of service and remuneration of officers and other employees to be appointed by the Authority under Sub Section 2 of Section 10.

2. The Ministry of Law; while examining the recent question regarding the interpretation of Section 18(2) and 18(7) of the Act have given an opinion that the service conditions adopted by the Board of AAI on 31st March, 1997 are in the nature of regulations of service providing the conditions of the service of the employees and officers of the Authority (extract of the relevant note is enclosed).

3. Under the circumstances, AAI may initiate action immediately for preparing a draft Gazette Notification to be issued by the Central Government in this regard which has to be got vetted by the Ministry of Law before it is notified in the Gazette.”

37. The respondent has further submitted that the petitioner prepared the 2003 Regulations and straight away got it published in the Official Gazette without taking the requisite approval from the Central Government and without tabling the Regulations before **each** House of Parliament and that the petitioner did not follow the mandatory procedure laid down by the Airports Authority of India Act, 1994 while formulating the 2003 Regulations and therefore, the 2003 Regulations were legally invalid and it was reiterated by the respondent that as per the Airports Authority of India Act, the

approval by the Central Government and laying the regulations before each House of Parliament are mandatory conditions stipulated for the formulation of any regulation and that if these conditions were not fulfilled by formulating the regulations, they are not legally valid.

38. The respondent further submitted that the International Airports Authority of India (General Conditions of Service) Regulations, 1980 contained no provision regarding the premature retirement of employees as provided in Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 nor the International Airport Authority Act nor the National Airport Authority Act contained any such provision. The respondent further submitted that the Central Government provided for protection of service to its employees, who came to National Airports Authority by incorporating the stated clause in para 5 of its letter dated 22.09.1989 and therefore, an additional measure of protection was provided to the employees who were transferred from the Civil Aviation Department to National Airports Authority. The respondent thus submitted that the provisions regarding premature retirement under Rule 12(5) of the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 were tantamount to imposing new/additional conditions of service on the employees of the petitioner and that there was no provision regarding the premature retirement in the conditions of service of the employees before 2003 Regulations and thus by the inclusion thereof, there was a change in the conditions of service.

39. The respondent further submitted that the petitioner issued the Corporate HRM Circular No. 02/2012 dated 17.01.2012 constituting a Review Committee for different employees in the establishment of the petitioner, wherein the procedure was laid down for the Review Committee for taking a decision on premature retirement of employees under Regulation 12(5) of the 2003 Regulations and that the Circular No.02/2012 merely provided for a procedure for the Review Committee to take decisions as per Regulation 12(5) of the 2003 Regulations and thereafter, Circular No.02/2012 derives its power and authority entirely and exclusively from the 2003 Regulations. Apart from reiterating that the approval of the Central Government and placing of the 2003 Regulations before the Parliament were the essential and mandatory conditions prescribed under the Airport Authority of India Act for the formulation of any regulations by the petitioner, which had not been complied with and it was also submitted on behalf of the respondent that in framing the 2003 Regulations the requisite notice under Section 9A of the ID Act, 1947 was required to be served on the workmen as a mandatory condition since the same amounted to a change in service conditions and thus, the regulations formulated without the due procedure laid down by Airports Authority of India Act, 1994 and the ID Act, 1947 were bad in law and therefore legally invalid.

40. *Inter alia* the respondent submitted that the petitioner had violated the terms of Section 4 and 5 of the Industrial Employment (Standing Orders) Act, 1946 which were applicable to the petitioner. The respondent further submitted that no opportunity of hearing was

given to the Union or the workmen before formulation of the provision of the premature retirement or the change in conditions of service which apart from violating the mandatory provisions of the Airports Authority of India Act, 1994 and the ID Act, 1947 also violated the principles of natural justice and fair play. It was further submitted on behalf of the respondent that the premature retirement is certainly a condition of service that is detrimental to the fate of service of the workmen and before introducing any such condition of service, the petitioner was required to have afforded an opportunity of hearing to the workmen. The respondent has further submitted that the petitioner appeared only twice before the learned Tribunal and therefore stopped pursuing its case and thus the petitioner cannot be allowed to take benefit from its own lack of representation in ID No. 39/2014.

41. *Inter alia* the respondent has further submitted that the learned Tribunal had rightly observed that there was no document on record to show that the 2003 Regulations were approved by the Central Government and that the 2003 Regulations were tabled before **each** House of Parliament and further submitted that even now in the present petition the petitioner has still not placed any document on record to show that the 2003 Regulations were in fact approved by the Central Government and were laid before each House of Parliament and that the petitioner had made only made bald averments regarding the approval by the Central Government and the placing of the 2003 Regulations before each House of the Parliament.

42. It was further submitted on behalf of the respondent that even if it was accepted that the petitioner had placed the 2003 Regulations before the Rajya Sabha, the same does not fulfill the requirement of law of placing of the Regulations before each House of Parliament and thus the petitioner has sought to circumvent the system of checks and balances provided in law in passing of the 2003 Regulations and had violated the due process and procedure of law and thus the learned Tribunal had correctly held that the 2003 Regulations were illegal and not binding on the workmen.

43. The respondent further submitted that the averments made in the petition that the terms and conditions of the service of employees of the petitioner as per the 2003 Regulations were approved by the Board of the petitioner on 31.03.1997 were erroneous and false and that the office order dated 31.03.1997 itself indicated that no Regulations were formulated in the year 1997 and that the petitioner had declared that the employees would be governed by the same terms and conditions of the service as they were governed by when they were employees of the International Airports Authority of India and National Airports Authority. The respondent has further submitted that the Ministry of Law has never referred to the 2003 Regulations in the letter dated 03.04.1997 and that the respondent and its workmen had no access to the 2003 Regulations to enable them to raise any objection and no notice of the change in service conditions as mandatory in the Industrial Disputes Act, 1947 was issued to them. The respondent has further submitted that the reliance was rightly

placed by the learned Tribunal on the verdicts *U.P. State Electricity Board & Another Vs. Hari Shankar Jain & Others*, *M/s Tata Iron & Steel Co Ltd. v. the Workmen and the Karnal Co-operative Sugar Mills Ltd. v. the Labour Court & Others* and the respondent thus sought the dismissal of the writ petition and sought that the impugned award dated 08.12.2016 of the learned Tribunal in ID No.39/2014 be upheld.

44. The petitioner through its rejoinder to the counter affidavit of the respondent reiterated the averments made in the petition and submitted that the learned Tribunal vide the impugned award had exceeded its jurisdiction and that it ought to have been confined itself to the reference made and ought not to have travelled beyond the same as laid down in *National Engineering Industry Vs. State of Rajasthan*, AIR 2000SC 469, and as the petitioner submitted that the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003, were notified after following the due procedure of law and submitted that there was no violation of the provision of the Industrial Disputes Act, 1947 and the contention of the respondent that the 2003 Regulations were not notified or tabled before the Parliament was a wrong statement and further submitted that the respondent is not a recognized union at present. It was submitted by the petitioner that the 2003 Regulations were tabled in Parliament and got the approval of the Central Government and evidence in this regard was placed on record and that the Gazette notification was prepared as per the instruction of the Ministry of Civil Aviation and further submitted that without taking

the approval from the Central Government or without being tabled before the Parliament, the Regulations could not have been notified.

45. *Inter alia* through the written synopsis submitted by the respondent it was contended that the submissions made through the counter affidavit submitted on behalf of the respondent were reiterated with it having already been submitted that ID Act did not prescribe any period of limitation for workmen to raise any dispute and that the principle of delay and laches cannot be used to sustain manifest illegality and that the petitioner's non-compliance with the mandatory requirements under the Industrial Disputes Act, 1947 and Airport Authority of India Act, 1994 clearly constituted such manifest illegality.

46. Written submissions have been submitted on behalf of either side and oral arguments were advanced.

47. The petitioner through its written submissions reiterates the contention raised that the learned Tribunal could not have declared the Regulations of 2003, to be illegal as the same was not within its province in terms of the verdict of this Court in ***D.T.C. Mazdoor Congress (Regd.) and Ors. V. Union of India & Anr.***: ILR (1986) 1 DEL-158, and it is submitted that the word incident and "incidental issue" can never be a substantive issue like validity of a statute and reliance in relation thereto was placed on the verdict of the Hon'ble Supreme Court in ***Delhi Cloth & General Mills Co Ltd vs Workmen***: AIR 1967 SC 469, it was thus contended on behalf of the petitioner to the effect:

“21. ...the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto.

The word 'incidental' means according to Webster's New World

Dictionary:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated."

"Something incidental to a dispute" must therefore mean something happening as a result of or; in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct."

48. Reliance was also placed on behalf of the respondent through its written submissions on the verdict of the Hon'ble Supreme Court in ***L. Chandrakumar v. Union of India & Others*** : (1997) 3 SCO 261 with observations in para 99 thereof which reads to the effect:

"99...The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules... It will not, therefore, be open for litigants to directly approach the High Courts even in cases

where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

(Emphasis supplied)

49. On behalf of the respondent, it has also been contended that the Industrial Disputes Act, 1947 does not prescribe any period of limitation for the workman to raise a labour dispute and that the principle of delay and laches cannot be used to sustain manifest illegality and that the petitioner's non-compliance with mandatory requirements under the Industrial Disputes Act and Airports Authority India, Act, 1994 constitutes such manifest illegality concealing atleast three such office orders. It has thus been submitted on behalf of the respondent that despite there being no stay of the operation of the impugned award, such orders passed by the petitioner were apparent to bring forth that the petitioner had not come to the Court with clean hands and reliance was thus placed on behalf respondent on the verdict of the Supreme Court in Ramjas of Division Bench of this Court in *Sripal v. South Delhi Municipal Corporation & Ors.*: 242 (2017) DLT 482, wherein it is observed to the effect:-

“ 14. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32,226, and 136 but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any

respect for truth and who try to pollute the stream of justice by restoring to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of issue(s) arising in the case.”

50. On a consideration of the entire available record and rival submissions made on behalf of either side, it is apparent that Section 9A of the Industrial Disputes Act, 1947 has not been complied with in the instant case by the petitioner before bringing in the condition of compulsory pre-mature retirement on attaining the age of 50 years in the event an employee was considered to be:

- a) Inefficient or;
- b) On doubtful integrity or on
- c) Was medically unfit,

even if they were to be so retired following the due process of law.

51. Thus the impugned award dated 8.12.2016 passed by the CGIT-cum-Labour Court, Karkardooma has correctly answered the reference to the effect that as no notice was given in terms of Section 9-A of the Industrial Disputes Act, 1947, the change in service conditions by incorporation of the term of compulsory retirement of employees on the basis of the Airports Authority of India's circular No.02/2012 was illegal and that it was not legally binding on the workmen in as much as read with Section 18(7) of the Airports Authority India, Act, 1994.

52. As regards the contention that has been raised on behalf of the petitioner that the impugned award held the Airports Authority India

(General Conditions of Service and Remuneration of Employees) Regulations, 2003 illegal and that it was not within the province of the learned Tribunal to so determine the *vires* of the same, it is essential to observe that the Clause 12 of the said document i.e. Airports Authority India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 had to be analyzed by the learned Tribunal in as much as it dealt with the superannuation and retirement of employees and formed part and parcel of the Airports Authority India (General Conditions of Service and Remuneration of Employees) Regulations, 2003. Thus the legality of the said Regulations of 2003 had essentially and incidentally in terms of Section 10 (4) of the Industrial Disputes Act, 1947 to be looked into by the learned Tribunal concerned and it could thus not be contended on behalf of the petitioner that it was not within the jurisdiction of the learned Tribunal to adjudicate thus on the legality of the said Regulations of 2003.

53. As regards the contention that has been raised on behalf of the petitioner that the findings of the learned Tribunal to the effect that the circular No.02/2012 was directly published in the Official Gazette in contravention of the provisions of Section 42(4) of Airports Authority India, Act, 1994 without obtaining approval from the Central Government was erroneous, it is essential to observe that Section 42(4) of the Airports Authority of India, Act, 1994 already reproduced elsewhere hereinabove categorically provides that no regulation made by the Airports Authority of India in terms of the said enactment could have any effect unless it had been approved by the Central

Government and published in Official Gazette. The said regulations of the Airports Authority of India are indicated to have been published in the Gazette (Extraordinary) on 23.05.2003 vide notification F. No.AAI/PERS/EDPA/Reg./2002 as issued by the Ministry of Civil Aviation and as per Clause 2 thereof were to come into force on the date of their publication in the official Gazette i.e. 23.05.2003.

54. However, Section 43 of the said enactment i.e. Airports Authority India, Act, 1994, is also categorical that every rule and regulation made under the said enactment is to be mandatorily laid, as soon as it may be made after it is made, before **each** House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be but that, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

55. The contention that was raised on behalf of the respondent was categorical to the effect that these regulations were not placed before the **each** House of the Parliament and did not get its approval and thus has not appropriately been framed and published in the Official Gazette in terms of Section 44(4) of the Airports Authority India, Act, 1994.

56. Undoubtedly, the petitioner has sought to contend that there has been no violation of any mandatory provisions of the Airports Authority of India, Act, 1994 and has chosen to put forth that the said rules had been taken up by the Rajya Sabha on 19.8.2003, but as rightly contended on behalf of the respondent, there is not an *iota* of a document placed on record to show that the said Regulations were placed before the Lok Sabha for its approval. Thus the mere contention raised on behalf of the respondent that the said Regulations had been so placed in the Lok Sabha and had got the approval of the Lok Sabha cannot be accepted.

57. The Court has taken into consideration the verdict of the Hon'ble Supreme Court in ***Veneet Agarwal Vs. Union of India & Ors.*** in Appeal (Civil) No. 2565/2005, a judgment dated 31.10.2007, where Section 31 of the Securities and Exchange Board of India Act, 1992 was under consideration and the observations therein that the said Section 31 thereof which reads to the effect that:

“31. Rules and regulations to be laid before Parliament.--- Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in

such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”,

was directory.

58. It is however essential to observe that in the instant case, by the Airports Authority of India (General Conditions of Service And Remuneration of Employees) Regulations, 2003, there is a fundamental change in the service condition of the employees of the petitioner, without compliance of Section 9A of the ID Act, 1947, and in these terms where fundamental changes affecting rights and duties of employees are concerned and affected the non-compliance of Section 43 of the AAI Act, 1994 cannot be overlooked, and so that such compliance of Section 9A of the ID Act, 1947 is made, the requirement of Section 43 of the AAI Act, 1994 has to be considered to be mandatory.

59. Furthermore, it is essential to observe that the chart of changes and new conditions between the Regulations of 1980 i.e. the International Airports Authority of India (General Conditions of Service) Regulations, 1980 and the Regulations of 2003 i.e. the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 bring forth significant changes in the scope and ambit of the Regulations which apparently necessitate the requisite compliance of Section 43 of the Airports Authority of India Act, 1994 which apparently having not been done

in the instant case has caused grave prejudice to the respondent. The said chart of changes and conditions submitted on behalf of the respondent is to the effect:

S. No.	SUBJECT/SERVICE CONDITION	INTERNATIONAL AIRPORTS AUTHORITY OF INDIA (GENERAL CONDITIONS OF SERVICE) REGULATIONS, 1980	AIRPORTS AUTHORITY OF INDIA (GENERAL CONDITIONS OF SERVICE AND REMUNERATION OF EMPLOYEES) REGULATIONS, 2003	COMMENTS
1.	Title	<i>“in exercise of the powers conferred by clause (b) of the sub-regulation (2) of Section 37 of International Airports Authority Act, 1971 (43 of 1971) read with sub-section (2) of section 38 of the Act and all other powers hereunto enabling and with the <u>previous approval of the Central Government</u> the International Airports Authority of India, hereby makes the following regulations;</i>	<i>“In exercise of the powers conferred by clause (b) of the sub-section (2) of Section 42 of the Airports Authority of India Act, 1994 (55 of 1994), the Airport Authority of India hereby makes the following regulations, namely;-“</i>	2003 regulations omit the words “with the previous approval of the Central Government”

		<i>namely:- “</i>		
2.	Scope and Application	These Regulations are applicable only to employees of the International Airports Authority of India.	These Regulations are applicable to employees of the AAI, after the merger of the National and International Divisions.	
3.	Division between Non-Executive and Executive		Reg. 4: “ <i>The employees are further categorized as Executive and Non-Executives</i> ”. Designations and pay scales are divided on this basis.	This division was introduced by the 2003 Regulations.
4.	Medical Test	Reg. 5(d): “.....fire service personnel shall be subject to annual/ periodical medical examination to ensure their fitness to discharge their functions”	Reg. 6(b): Employees in fire services continue to be governed by this. Reg. 6(a): “....the opinion of the medical officer or medical board....in this regard shall be final....an employee shall be medically examined <u>any time during the period of his/her employment with the authority</u> ”	As per the 2003 Regulations, any and all employees are now time.
5.	Annual Return of Assets and Liabilities		Reg. 10(d): “Every employee shall, on his first appointment in the Authority, <u>furnish an annual return of assets and liabilities in the form</u>	This requirement was introduced by the 2003 regulations.

			prescribed as specified by the Authority from time to time giving the full particulars.	
6.	Transfers	Reg. 15: Although 1980 Regulations state that an employee shall be liable to be transferred anywhere in India or abroad, it also states that “Group C & D employees, will however, not normally be transferred to another station against their will.”	Reg. 7: Every employee in the service of the Authority shall be liable to be transferred in any part of the country or abroad.	The distinction between the Group C & D employees from the other employees has been removed, and all employees have been made subject to this requirement.
7.	Deputation	Reg. 21: “ <i>Employees may be sent on deputation...with the prior approval of the Chairman. The Deputation of such employee shall be governed by the terms to be mutually agreed upon between the Authority and the borrowing organization.</i> ”	Reg. 8 states that any employee sent on deputation shall be governed by the 2003 Regulations and shall be given benefits under 2003 Regulations.	No benefits are specified under the 2003 Regulations, leaving the Authority with the discretion to determine the same.
8.	Discharge during probation	Reg. 12(2): “ <i>During the period of probation an employee directly recruited shall be liable to be</i>	Reg. 10(2): “ <i>During the period of probation, an employee directly recruited shall be liable to be</i>	2003 Regulations specified that the employee under probation shall be

		<i>discharged if his performance is not found satisfactory or upto standard”</i>	<i>discharged from service without notice if his/ her performance is not found satisfactory or upto standard”</i>	discharged without any requirement of receiving notice.
9.	Discharge & Termination of Service	Reg. 23(b): Any employee on probation shall be given <u>7 days notice</u> before termination. Reg. 23(c): Appointment of a temporary employee shall be terminated by giving him/her <u>24 hours notice</u> in writing or pay in lieu of notice. Reg. 23 (c): The power of ‘discharge simplicitor’ will be exercised <u>only by the Chairman.</u>	Reg. 10(2): <u>No notice</u> before the termination of employee on probation. Reg. 11(b): Appointment of an employee against temporary post shall be <u>terminated automatically on the expiry of the specific period</u> for which the post was sanctioned or he/she was appointed. Reg. 11(3): The power of ‘discharge simplicitor’ shall be exercised by <u>Chairperson or Appointing Authority.</u>	Termination and discharge of service under each category has been made much easier, by vesting the Authority with wider powers.
10.	Compulsory Retirement	No provision of compulsory premature retirement for workmen.	Reg. 12(5): “Any employee, who has attained the age of 50 years and is considered to be – (i) inefficient, or (ii) doubtful integrity, or (iii) medically unfit, may be prematurely retired by the competent authority...”	The 2003 Regulations introduced this provision for compulsory retirement of workmen.
11.	Hours of Work & Attendance	-	Reg. 19: “(1) Every employee shall	The new Regulation

			<i>comply with <u>all instruction issued from time to time relating to attendance, arrival and departure, the period and hours of work for different categories of employees or to an employee and every employee shall be at work at the time fixed and specified by the Authority from time to time.</u></i>	does not mention any procedure/guidelines, etc. Instead, it vests the Authority with a blanket, discretionary power to issue any instructions whatsoever regarding hours of work and attendance.
12.	Attendance		Reg. 20: "Attendance shall be marked daily <u>according to the method and procedure as may be specified by the authority from time to time.</u>"	The new Regulation does not mention any procedure/guidelines, etc. Instead, it vests the Authority with a blanket, discretionary power to decide any procedure at any time.
13.	Miscellaneous Items	Appointments, Methods of Recruitment, Types of Recruitment, Creation of Posts, Seniority, Fixation of Seniority, Reservation, Direct Recruitment, Liability for Defence Service, Departmental Promotion, Joining Time, Allowances and Advances, Pay on First	Reg. 24: "<i>Compliance of other instructions issued by the Authority-</i> Every employee shall comply with <u>such other instructions as may be issued by the Authority from time to time.</u>	This Regulation removes a number of specified rules and procedures under the 1980 Regulations, and replaces them with the widest possible blanket, discretionary power to issue any instruction at any time.

		Appointment, Pay on Promotion, Pay in case of Deputationist from Central or State Department or PSUs, Pay in case of Superannuated Government Servants re-employed in the Authority, Increments, Ex. Gratia Grant.		
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60. Thus as the requisite mandatory procedure of checks and balances incorporated under Section 43 of the Airports Authority India, Act, 1994 had not been complied with by the petitioner and it is apparent that there is no merit in the petition and that there is no merit in the prayer made by the petitioner.

61. The petition and the accompanying applications CM Appl. Nos. 23073/2017, 46221/2017 and 12940/2018 are thus dismissed.

ANU MALHOTRA, J.

NOVEMBER 01, 2018
SV/vm/NC