

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11976 of 2018

and WMP.No.13962 of 2018

A.Thangavelu

... Petitioner

-Vs-

- 1.Union of India,
rep. By its Secretary,
Ministry of Civil Aviations,
Government of India,
New Delhi.
 - 2.The Executive Director,
Air India Ltd.,
National Aviation Company of India Ltd.,
NAC II (1)
Airline House, Meenambakkam,
Chennai-600 027.
 - 3.The General Manager-Personnel,
Air India Ltd.,
National Aviation Company of India Ltd.,
Airline House, Meenambakkam,
Chennai-600 027.
 - 4.The Deputy General Manager-Personal
Air India Ltd.,
Air Lines House, Meenambakkam,
Chennai-600 027.
 - 5.Manager-HR,
Air India Air Transport Services Ltd.,
Air India Unity Complex,
Pallavaram Cantonment,
Chennai-600 043.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorariified Mandamus, to call for the records of the 4th respondent dated 17.04.2018 in Ref. MAA/IR/CL quash the same and consequently direct the respondents to absorb the petitioner with all other attendance benefits.

For petitioner : Mr.S.Gunaseelan

For respondents : M/s.N.G.R.Prasad
and K.Srinivasamurthy for R2 to R5

ORDER

This writ petition is filed praying for Writ of Certiorarified Mandamus, to call for the records of the 4th respondent order dated 17.04.2018 in Ref. MAA/IA/CL and quash the same and consequently direct the respondents to absorb the petitioner with all other attendance benefits.

2.The learned counsel for the writ petitioner states that the writ petitioner is similarly placed casual labourer working under the service of the 2nd respondent. The writ petitioner is assisting as Helpers in all ground handling services in the Airport. In view of the fact that the writ petitioner is working for a considerable length of time, they are claiming regularization and permanent absorption in the establishment of the respondent.

3.The learned counsel for the respondents states that the regularization or permanent absorption at this point of time cannot be granted and the writ petitioner is allowed to work on certain terms and conditions as casual labourer. His service was temporary and he was not initially appointed in accordance with the recruitment rules in force. The writ petitioner is being engaged, as and when his service was required for handling the Airport Services. In view of the fact that there is a change of control in Administration regarding the handling of the Airport ground works, the 2nd respondent cannot even consider the claim of the writ petitioner for grant of regularization.

4.It is brought to the notice of this Court that the similarly placed casual labourers earlier filed W.P.Nos.17513, 22212 & 29796 of 2010 and this Court passed an order on 28.03.2018 and the relevant paragraphs are extracted hereunder:-

"16. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the materials and pleadings placed on record.

17. As rightly contended by the learned counsel appearing for the respondents 2 and 3 that in view of drastic changes in Aviation industry over a period of time due to open sky policy adopted by the Government of India, the monopoly

of the respondent Airlines had ended. In view of global competition in the Aviation industry, the Airlines had also suffered huge financial loss and eventually even unable to pay salaries due to the permanent employees regularly. Moreover, when the ground handling activity has been outsourced in all Airports in the country and these petitioners having been employed only in such activity, they cannot be ordered to be absorbed permanently in the respondent Airlines. As stated by the learned counsel for the respondents that the respondent Airlines was not recruiting any permanent Helpers for the last many years after the exist of permanent employees from employment. That being the case, the question of consideration of the original prayer by this Court as sought for in the writ petitions, does not arise.

18. In view of the inevitable changes which took place in the Aviation industry, this Court has to take practical and pragmatic view to find just and equitable solution to the employment crisis faced by the petitioners. As contended by the learned counsel for the petitioners that atleast the present state of employment of the petitioners with the 7th respondent has to be protected, since they cannot be made to work under constant fear of termination at any time, particularly, in the teeth of the fact that these petitioners had been employed as Helpers for more than two decades. That is why, probably the learned counsel appearing for the petitioners had pleaded only for limited protection in order to atleast protect the present nature of employment of the petitioners, instead of seeking for absorption of their services with the respondent Airlines.

19. Considering the submissions made on behalf of the petitioners that their nature of present employment as indicated in the contract of appointment entered into by the 7th respondent with the individual workman as reflected in specimen copy enclosed in additional typed set of papers, dated 19.5.2016, which pertains to one of the workmen, namely, Thiru.S.Venkatesan, on the same terms and conditions and such employment shall be continued in respect of other petitioners who were offered such appointment till they attain the age of superannuation. As rightly contended by the learned counsel for the respondents 2 and 3

that the requirement of man power may change from time to time due to fluctuating market trends as the ground handling activity may increase or decrease depending upon the client-Airlines patronage. Therefore, considering the said submissions, this Court is of the view that as long as man power requirement is there by the second respondent, the services of the petitioners ought to be utilized and the petitioners at no point of time should be replaced by any other casual arrangement by resorting to employ other persons. It is made clear that on the basis of genuine man power requirement, it is always open to the 7th respondent to downsize or rightsize the employment as and when the situation demands and depending on such contingencies, these petitioners shall be continued in service with the terms and conditions of services as stipulated by the 7th respondent. In any case, the petitioners' employment cannot be brought to end by adopting any unfair mean or unfair labour practice by bringing other casual workers from the open market in order to displace the petitioners herein."

5. In view of the above judgment of this Court, the writ petitioner is also entitled to get the same benefit of their continuance in the present position as per the existing terms and conditions of service. As per the terms and conditions stipulated by the 5th respondent, the writ petitioner is entitled to get the benefit, provided they joined duty within a period of 10 days from the date of receipt of a copy of this order. In other words, the writ petitioner is at liberty to join duty, provided he is ready to accept the terms and conditions to be imposed by the 5th respondent for the continuance of their service in Airport.

6. It is made clear that in the event of not joining with the services of the 5th respondent by the writ petitioner within a period of 10 days from the date of receipt of a copy of this order, then the respondents are at liberty to engage the other persons in order to run the Administration in the Airport peacefully.

7.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions is closed.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

- 1.Union of India,
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Air India Air Transport Services Ltd.,
Air India Unity Complex,
Pallavaram Cantonment,
Chennai-600 043.

+1CC to Mr.S.Gunaseelan Advocate SR.NO.41183

+1CC to Advocate M/S.RAW & REDDY SR.NO.41458

W.P.No.11976 of 2018
and WMP.No.13962 of 2018

MP (CO)
MK:08/06/2019