

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: **13.06.2019**

DATED: **24.06.2019**

CORAM

**THE HON'BLE DR.JUSTICE VINEET KOTHARI**  
AND  
**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN**

**W.A.No. 2262 of 2018**  
**And**  
**C.M.P.No. 18059 of 2018**  
**And**  
**C.M.P.No. 7950 of 2019**  
**IN**  
**W.A.SR.No. 37831 of 2019**

**W.A.No. 2262 of 2018:**

A.G.Ravikumar

Appellant/Respondent

**Vs.**

1. The Central Government Industrial Tribunal cum Labour Court,  
Rep. by its Presiding Officer  
I Floor, B-Wing  
No.26, Haddows Road  
Shastri Bhavan, Chennai – 600 006.

Respondent/Respondent

2. The Country Manager  
Gulf Air,  
Maker Chamber V  
Ground Floor,  
Nariman Point  
Mumbai – 400 021.

Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 28.08.2018 passed by the learned Single Judge in W.M.P.No. 17881 of 2017 in W.P.No. 22310 of 2016.

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**W.A.Sr.No.37831 of 2019:**

A.G.Ravikumar ... Appellant/Respondent

**Vs.**

1. Presiding Officer  
The Central Government Industrial Tribunal  
cum Labour Court  
1<sup>st</sup> Floor, B-Wing  
No.26, Haddows Road  
Shastri Bhavan, Chennai – 600 006.

...Respondent/Respondent

2. Gulf Air,  
Maker Chamber V  
Ground Floor,  
Nariman Point  
Mumbai – 400 021  
Rep. by its Country Manager Mir Jabir Ali

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 28.08.2018 passed by the learned Single Judge in W.M.P.No. 17882 of 2017 in W.P.No. 22310 of 2016 and prays that the order may be set aside.

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For Appellant in  
both Appeals : Mr. N.G.R.Prasad,  
for M/s. Row and Reddy

For R2 in both  
Appeals : M/s. Gupta and Ravi

### **COMMON JUDGMENT**

(Delivered by **C.V.KARTHIKEYAN, J**)

W.A.No. 2262 of 2018 had been filed by A.G.Ravikumar challenging the order dated 28.08.2018 of the learned Single Judge in W.M.P.No. 17881 of 2017 in W.P.No. 22310 of 2016.

2. W.A.Sr.No. 37831 of 2019 had been filed by the same appellant challenging the Order dated 28.08.2018 in W.M.P.No. 17882 of 2017 in the same Writ Petition.

3. The learned Single Judge was concerned with two Writ Petitions in W.P.No. 22310 of 2016 filed by A.G.Ravikumar and W.P.No. 22311 of 2016 filed by M.Sivaraman respectively. The Writ Petitions were filed by the workmen challenging two awards in I.D.Nos. 94 & 95 of 2014 dated 15.09.2015 passed by the Central Government Industrial Tribunal cum Labour Court, Chennai. Both the workmen, A.G.Ravikumar and N.Sivaraman were working as Security

Personnel under the same Management, Gulf Air at Chennai Airport. Their services were terminated on the ground that the Bureau of Civil Aviation, Government of India prohibited manning of Security Personnel by foreign Airlines. Industrial disputes were raised and by the award, though the terminations were upheld, a relief was granted under Section 25(H) of the Industrial Disputes Act 1947, directing the Management to offer preference of re-employment to the said two workmen if any suitable vacancy arose with respect to their qualification and experience, without any delay. The workmen filed separate Writ Petitions questioning upholding termination of service. During the pendency of the two Writ Petitions, several Writ Miscellaneous Petitions were filed. During the pendency of the Writ Petitions, the workmen were also paid Rs.35,000/- and Rs.49,000/- per month each under Section 17(B) of the Industrial Dispute Act 1947. The Management then took a stand that one vacancy was available and they offered re-employment to A.G.Ravikumar and further stated on his attaining the age of superannuation, the second workman N.Sivaraman could be provided with re-employment.

4. W.M.P.No. 17881 of 2017 had been filed by A.G.Ravikumar to direct the Management to re-employ him forthwith. The Order passed in the said Miscellaneous Petition is the subject matter of challenge in W.A.No. 2262 of 2018. Simultaneously,

A.G.Ravikumar also filed W.M.P.No. 17882 of 2017 seeking a direction against the Management to pay the last drawn salary of Rs.1,20,000/-. The finding in the said Miscellaneous Petition is the subject matter in W.A.SR.No. 37831 of 2019. That Writ Appeal had been filed with a delay of 173 days and C.M.P.No. 7950 of 2019 had been filed seeking to condone the delay.

5. A common order in both the Writ Petitions and pending Miscellaneous Petitions was passed by the learned Single Judge. In his order, he held as follows:-

*"9. It is not in dispute that Section 17-B of the ID Act has no application to the present dispute inasmuch it is not an award of reinstatement which has been challenged and stayed at the instance of the management. Eventhough the workmen claim that they have a good case to challenge the award for not holding their termination to be illegal and directing the reinstatement, but no statutory provision is there to grant the relief sought for tot he workmen. However, even if no such statutory provisions are there, this Court is not bereft of jurisdiction pending disposal of this Writ Petition challenging the award, on the ground of equity as held by this court in*

*the reported case of **Management of Lakshmi Vilas Bank, Limited., Karur** cited supra. But for grant of such relief equitable ground under Section 17-B of the Industrial Dispute Act the Court must be satisfied of the fact that the petitioner are not adequately remunerated to maintain them in spite of an order in their favour for immediate re-employment though the same is challenged by the management. It appears that the first workman is getting nearly Rs.49,000/-. No doubt he was getting much more than what he is getting now while in the employment of the management, but for that it cannot be said that he is not adequately remunerated entitling him to grant the relief of the last wages drawn as he has been denied with the benefit of the award of re-employment in view of the order of stay. No post is presently available for his re-employment also with the management as one of the post recently created as indicated in the affidavit shall go to A.G.Ravikumar, the second workman who is senior to the first workman. So far as the other workman is concerned, he has been offered with an employment, but his scale of pay has not been indicated in such affidavit filed. However, the first respondent has directed to give such re-employment commensurate to their qualification and*

*earlier experience, therefore this Court directs that the management shall employ him immediately with the remuneration of the last drawn salary drawn by him before termination. But, he shall continue to remain in such employment till he reach the age of superannuation in the service provided to him.*

**10.** *With the aforesaid order all the miscellaneous petitions filed by the first workman, Mr.N.Sivaraman in W.M.P.Nos. 17883, 17884 and 17885 of 2016 stands dismissed and so far the Miscellaneous Petitions filed by A.G.Ravikumar in W.M.P.Nos. 17880, 17881 & 17882 of 2016 in view of the offer of employment to him, his miscellaneous Petitions also have become infructuous. However, the aforesaid order passed is without prejudice to the claim of the parties in the respective writ petitions.*

**11.** *The contention of the counsel for the workman that is lastly advanced that in the even of A.G.Ravikumar vacate the post now offered on superannuation the management be directed to employ the first workman in his place, I am of the view that such a prayer is pre-mature one. However, the petitioner on appropriate time may renew*

*such a prayer and in that event notwithstanding the dismissal of his prayer for re-employment in the present facts and situations, the said order shall not be a bar to agitate the same before this Court. So also, the management should not construe the order of rejection of his prayer for re-employment presently to be a clog to offer him re-employment in case of vacancy to accommodated him during the pendency of the writ petition. So far as the writ petitions are concerned, the same may be placed before the appropriate Court. "*

5. Mr.N.G.R.Prasad, learned counsel for the appellant stated that the workman had attained the age of superannuation and faulted the Management for not having complied with the directions of the learned Tribunal to re-employ the workmen without any delay in case a vacancy arose. He stated that the Management had deliberately avoided to provide re-employment to the appellant herein, and by the time they offered re-employment, he had attained the age of superannuation. The learned counsel urged that vacancies were actually available even as on 16.05.2013 and further stated that this was evidenced by a letter addressed to the Manager Security, Gulf Airways, Mumbai Airport, by the Bureau of Civil Aviation stating that there was shortage of Security Officers at Mumbai Airport. Pointing

out the communication, the learned counsel stated that even though there was a vacancy, the second respondent had deliberately not taken any steps to re-employ either one of the two workmen. The learned counsel therefore justified the relief sought in the Writ Miscellaneous Petition seeking to extend the age of superannuation of the workman A.G.Ravikumar, who had admittedly attained the age of superannuation. It was also pointed out by the learned counsel that the last drawn wages was Rs.1,20,000/-; whereas a sum of Rs.35,000/- alone was paid per month in compliance of Section 17-B of the Industrial Dispute Act and stated that it was under those circumstances that W.A.Sr.No. 37831 of 2019 came to be filed challenging denial by the learned Single Judge of such payment.

6. Mr.Ravi, learned counsel appearing for the Management, Gulf Air, on the other hand stated that there was no provision to extend the age of superannuation. There was also no vacancy during the relevant period and immediately when a vacancy arose, an affidavit was filed offering re-employment to the writ appellant A.G.Ravikumar. Learned counsel also stated that A.G.Ravikumar was gainfully employed during the interregnum period and hence the difference of Rs.35,000/- between the wages, he was earning in his present employment and his last drawn wages had been paid every month. The learned counsel supported the order under challenge.

7. Having heard the learned counsels, we are of the opinion that W.A.No. 2262 of 2018 is devoid of merits and has to be dismissed.

8. Admittedly, the writ appellant A.G.Ravikumar had attained the age of superannuation. The Court cannot thrust any employee after he had attained the age of superannuation and also cannot frame rules and direct the Management to provide employment even after attaining the age of superannuation by any workmen. It is an admitted case by both the sides that A.G.Ravikumar was also profitably employed during the interregnum period and the difference of the wages amounting to Rs.35,000/- was also paid by the Management. The reasoning given by the learned Single Judge that the relief has become infructuous is in our considered opinion, correct and we hold it does not warrant any interference.

9. Accordingly, W.A.No. 2262 of 2018 is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10. C.M.P.No. 7950 of 2019 seeking to condone delay of 173 days in filing W.A.SR.No. 37831 of 2019 had been listed in the cause list independently of W.A.No. 2262 of 2018. When the Civil Miscellaneous Petition came up for consideration, we directed notice. However in view of the fact that final orders have been passed in

W.A.No. 2262 of 2018 observing that the writ appellant A.G.Ravikumar cannot be provided with re-employment since he had attained the age of superannuation and also the fact that he had been paid the difference between the wages he was earning during the pendency of the Writ Petition owing to his employment and his last drawn wages, the order directing notice to be issued in C.M.P.No. 7950 of 2019 is recalled and the said Civil Miscellaneous Petition is also dismissed. Consequently, W.A.SR.No. 37831 of 2019 is rejected. No costs.

(V.K., J.) (C.V.K., J.)  
24.06.2019

Index : Yes/No  
Internet : Yes/No

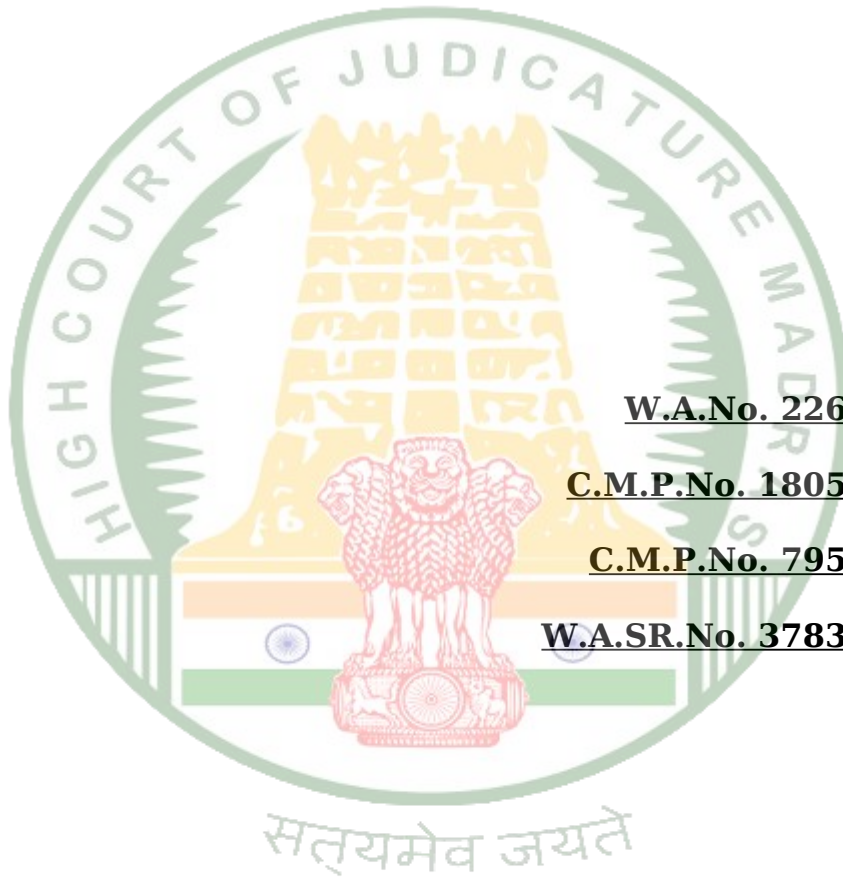
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To

1. The Presiding Officer  
The Central Government Industrial  
Tribunal cum Labour Court,  
I Floor, B-Wing  
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Shastri Bhavan, Chennai – 600 006.
2. The Country Manager  
Gulf Air,  
Maker Chamber V  
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**Dr.VINEET KOTHARI, J.**  
**and**  
**C.V.KARTHIKEYAN, J.**

**vsg**



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