

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2019

Delivered on : 11.07.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.28932 and 23266 of 2018

W.M.P.NOs.33815 & 33817 of 2018

1. R.M.Purushothaman
2. R.Annadurai
3. S.Anbu
4. J.Murali
5. G.Mohan .. Petitioners in
WP 28329 of 2018

Air India Employees progressive Union,
by its General Secretary,
P.Raja .. Petitioner in
WP No.23266 of 2018

versus

1. Government of India, rep. by
Secretary,
Ministry of Civil Aviation,
New Delhi.

2. The Secretary,
Government of India,
Ministry of Labour and Employment,
Sharam Sakthi Bhavan,
Rafi Marg,
New Delhi-110 001.

3. AIR India Ltd., rep. by
Chief Executive Director,
AUC Building,
Contentment Pallavaram,
Chennai-600 043.

4. Chairman and Managing Director,
AIR India Limited,
Hansalaya Building, V Floor,
No.15, Barakamba Road,
New Delhi-100 001.

5. AIR India AIR Transport Services Limited,
(wholly owned subsidiary of AIR India Limited)
rep. by Nodal Officer,
AIR India Unity Complex,
Pallavaram Cantonment,
Chennai-600 043.

6. General Manager -GH (Co.ord),
Southern Region,
Air India Airport Service,
AIR India Unity Complex,
Pallavaram Contonment,
Chennai-600 043.

7. General Manager - Personnel,
AIR India Limited, Airlines House,
No.113, Gurudwara Rakabganj Road,
New Delhi-100 001.

... Respondents in
both Writ Petitions

Prayer in WP 28932 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the order in Ref.No.MAA/IR/CL/dated 28.08.2018 issued by the 7th respondent as illegal, null and void, unconstitutional and forbear the 3rd respondent from altering the status and conditions of service of employment and from reducing the wages or from denying or refusing to provide the same work and in the same manner to the petitioners which they have been doing prior to 28.08.2018 in the 3rd respondent's establishment, till the relief for absorption claimed in W.P.No.4603 of 2016 is finally decided by this Court on merits.

Prayer in WP 23266 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the impugned order in Ref.No.AIATSL/MAA/HM/460 dated 23.08.2018 issued by the 6th respondent and the order in Ref.No.MAA/IR/CL/dated 28.08.2018 issued by the 7th respondent as illegal, null and void, unconstitutional and forbear the 3rd respondent from altering the status and conditions of service of employment and from reducing the wages or from denying or refusing to provide the same work and in the same manner to 29 members of our Union, which they have been doing prior to 23.08.2018 and 28.08.2018 in the 3rd respondent's establishment, till the relief for absorption claimed in W.P.No.4603 of 2016 is finally decided by this Court on merits.

For Petitioners : Mr.M.Gnanasekar
in WP 28932/18

For Petitioners : Mr.D.Gopal
in WP 23266/18

For Respondents: Mr.V.Ashok Kumar, CGSC
for R1 R2 in both WPs
Mr.N.G.R.Prasad for
for R3 to R7 in both WPs

COMMON ORDER

These Writ Petitions have been filed by the respective writ petitioners, seeking to challenge the impugned orders, viz., in Ref.No.AIATSL/MAA/HM/460 dated 23.08.2018 issued by the 6th respondent as well as the order in Ref.No.MAA/IR/CL/dated 28.08.2018 issued by the 7th respondent, respectively and with consequential prayer to forbear the 3rd respondent from altering the status and conditions of service of employment and also from reducing the wages or denying or refusing to provide the same work and in the same manner to the petitioners in WP 28932 of 2018 and 29 members of the petitioner Union in WP 23266 of 2018, which they have been doing prior to 23.08.2018 and 28.08.2018 in the 3rd respondent's establishment respectively, till the relief for absorption claimed in W.P.No.4603 of 2016 is finally decided by this Court on merits.

2. Similar issues and grounds raised in the present Writ Petitions, came to up for consideration before this Court in W.P.Nos.17513 and 29796 of 2010 and this Court passed a detailed order on 28.3.2018.

3. When this was pointed out to the learned counsel for the petitioners, he would submit that similar direction may be issued covering the present writ petitioners as well.

4. The learned counsel appearing for the respondents have reported no objection for passing the similar direction.

5. It is relevant to extract the direction passed by this Court and the reasons stated thereof, which found in paragraphs 14 to 19 of the order dated 28.3.2018 in W.P.Nos.17513 & 29796 of 2010 and the same is extracted hereunder:

"14. The apprehension of the petitioners is that there should not be unjust termination from service and they should not be replaced by another set of casual employees. In fact, the learned counsel would rely on a decision of the Hon'ble Supreme Court of India, reported in "2007(13)SCC 292 (Hargurpratap Singh versus State of Punjab and others)". He would draw the attention of this Court to para 3 of the judgment which extracted below:

"3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly."

15. Therefore, the learned counsel for the petitioners would submit that the petitioners would only want a limited direction to continue the existing nature of employment of the petitioners in which they were employed at present.

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."

6. In view of the above observation and findings of this Court and also the ultimate decision contained in paragraph 19, this Court is of the considered view that the present Writ petition can also be disposed of on the basis of the above order, particularly, the direction as contained in paragraph 19 which will hold good in respect of the present petitioners' claim as well.

7. Accordingly, the present Writ Petitions are disposed of on the above terms. No costs. Consequently, connected WMPs are closed.

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Sd/-
Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Government of India,
Ministry of Civil Aviation,
New Delhi.

2. The Secretary,
Government of India,
Ministry of Labour and Employment,
Sharam Sakthi Bhavan,
Rafi Marg,
New Delhi-110 001.

3.The Chief Executive Director,
AIR India Ltd.,
AUC Building,
Contentment Pallavaram,
Chennai-600 043.

4. Chairman and Managing Director,
AIR India Limited,
Hansalaya Building, V Floor,
No.15, Barakamba Road,
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5.The Nodal Officer,
AIR India AIR Transport Services Limited,
(wholly owned subsidiary of AIR India Limited)
AIR India Unity Complex,
Pallavaram Cantonment,
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6. General Manager -GH (Co.ord),
Southern Region,
Air India Airport Service,
AIR India Unity Complex,
Pallavaram Contonment,
Chennai-600 043.

7. General Manager - Personnel,
AIR India Limited, Airlines House,
No.113, Gurudwara Rakabganj Road,
New Delhi-100 001.

+1cc to Mr.N.G.R.Prasad , Advocate SR.No. 58748

W.P.Nos.28932 &
23266 of 2018

A.SK(07/08/2019)

A.SK(30/08/2019)