

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.41825 of 2018

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the order issued by the 2nd respondent dated 07.11.2018 terminating the services of petitioner as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India apart from being violative of principles of natural justice and consequently declare that the petitioner is entitled to be continued in service.

2. Heard Sri Ravi Kondaveeti, counsel for petitioner and Smt.V.Uma Devi, Standing Counsel for respondents.

3. It has been contended by the petitioner that he was initially appointed as Security Guard in Indian Airlines during November 1990 and later on he was promoted as Security Assistant and further promoted as Assistant Security Officer. Since then, the petitioner has been discharging his duties to the best satisfaction of his superiors and everyone concerned. Petitioner further submits that Indian Airlines was merged into Air India during 2007 and the petitioner was also transferred along with the post to Air India. The petitioner submits that while he was discharging his duties, the respondents have terminated his services vide orders dated 07.11.2018, without assigning any reasons and without giving any opportunity. The petitioner further submits that his services were terminated under Regulation 13-A of Service Regulations, namely, Indian Airlines

Employees (Other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations. The learned Counsel for petitioner submits that the said Regulation 13-A has been repealed on 24.11.2010, after merger of Indian Airlines with Air India and new Regulations, namely, Air India Employees' Service Regulations have come into effect from 1st of April, 2013. Petitioner further submits that the Air India Employees' Service Regulations have been framed consequent to the Board Resolution passed by Air India Ltd., in its 52nd meeting held on 7th of May, 2013, with retrospective effect from 1st of April, 2013. Regulation No.5 of these Air India Employees' Service Regulations deals with repeal and saving clause, which reads as follows :

"5. REPEAL AND SAVING :

On and from the date of coming into force of these Regulations, the following Service Regulations and Standing orders will stand repealed:-

- a) *Air India Employees Service Regulations,*
- b) *Air India Certified Standing Orders,*
- c) *Indian Airlines (Flying Crew) Service Regulations,*
- d) *Indian Airlines Employees (Aircraft Engineering Department) Service Regulations and*
- e) *Indian Airlines Employees (other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations.*
- f) *Standing Orders for Factory Workers of erstwhile Indian Airlines Limited.*
- g) *Standing Orders (Regulations) concerning Discipline and Appeals of erstwhile Indian Airlines Limited.*

Notwithstanding the above, any action, whether completed or in progress, which were initiated under the above

Regulations/Standing Orders shall be deemed to have been done or taken under the provisions of these Regulations.”

4. Regulation 13-A, which was forming part of earlier Regulations i.e. Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations, reads as under :

“The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the following grounds not amounting to misconduct under the Standing Orders, namely:-

- (i) If he/she is, in the opinion of the Company (the Board of Directors) incompetent and unsuitable for continued employment with the Corporation (now Company) and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the Corporation (now Company); OR*
- (ii) If his/her continuance in employment constitutes, in the opinion of the Company, a grave security risk making his/her continuance in service detrimental to the interest of the Corporation (now Company);*
- (iii) If in the opinion of the Company (the Board of Directors) there is such a justifiable lack of confidence which having regard to the nature of duties performed, would make it necessary in the interest of the Corporation (now Company), to immediately terminate his/her services.”*

5. A perusal of the above Regulation would disclose that an employee can be terminated without assigning any reasons to him/her and without any prior notice but only on the grounds not amounting to misconduct under the Standing Orders, namely, if he/she is, in the

opinion of the Company (the Board of Directors), incompetent and unsuitable for continued employment with the Corporation (now Company) and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the Corporation (now Company); or if his/her continuance in employment constitutes, in the opinion of the Company, a grave security risk making his/her continuance in service detrimental to the interest of the Corporation (now Company); or if, in the opinion of the Company (the Board of Directors), there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary in the interest of the Corporation (now Company), to immediately terminate his/her services.

6. Admittedly, the above said Regulation could not have been invoked in case of misconduct. The learned counsel for petitioner submits that the events which led to termination are that the respondents have alleged stigma against the petitioner and the respondents have also clearly stated in the counter that owing to misconduct, the services of petitioner were terminated by invoking Regulation 13-A of old Regulations. It has been contended by the petitioner that the Revenue Intelligence, Hyderabad had filed a false criminal case against the petitioner alleging that he was involved in gold smuggling and the petitioner was arrested on 09.10.2018 and he was granted bail by the Court of Special Judge for Economic Offences, Hyderabad in Criminal M.P.No.4265 of 2018, dated

01.11.2018 and the petitioner has informed about his arrest to the respondents on 05.11.2018. After registering the criminal case, the respondents have terminated the services of petitioner by invoking Regulation 13-A of the old Regulations which are already repealed with the advent of Air India Employees' Service Regulations on 01.04.2013. The petitioner submits that he is a regular employee, therefore, the respondents cannot simply terminate his services as in the case of a temporary employee without conducting regular inquiry as per the Air India Employees' Service Regulations, which came into effect from 01.04.2013, more so, when the cause for termination of petitioner is for his involvement in a criminal case, and the respondents could not have invoked Regulation 13-A of the old Regulations. Therefore, counsel for petitioner contends that appropriate orders be passed in the writ petition by setting aside the impugned termination orders dated 07.11.2018 and direct the respondents to give an opportunity to the petitioner before passing any punitive orders as the petitioner was terminated only on the sole ground of his involvement in a criminal case.

7. The respondents have filed counter affidavit, wherein, at page No.3, a series of misconducts of the petitioner have been mentioned, indicating that even on earlier occasions, the petitioner was either placed under suspension or warned by the respondents. In the counter affidavit, it is stated that the petitioner was discharging his duties in night shifts at Rajiv Gandhi International Airport, Shamshabad and

was on duty from 21.00 hours on 08.10.2018 to 07.00 hours on 09.10.2018. At around 08.15 hours on 09.10.2018, the Directorate of Revenue Intelligence (DRI) officials telephonically informed the Security Department of Air India that the petitioner had been detained at Cargo Complex of Rajiv Gandhi International Airport, Shamshabad. As the petitioner has confessed his misdeeds, a follow-up search was conducted on 09.10.2018 at his residence by the officials of Directorate of Revenue Intelligence and an amount of Rs.1,80,000/- received by the petitioner from one Sri Syed Majid Hussaini towards consideration for smuggling of gold on 08.10.2018 from Air India Flight AI 952, was recovered under a panchanama dated 09.10.2018. The respondents have further stated that the said incident was also reported on the media on 9th and 10th of October, 2018, tarnishing the image of the respondent-organisation, therefore, the respondents have rightly invoked Regulation 13-A of Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations and terminated the services of petitioner.

8. Learned counsel appearing for respondents has further contended that Regulation 6 of Air India Employees' Service Regulations would make it abundantly clear that the Air India Ltd. reserves to itself the right to add, amend, cancel, suspend and/or modify any or all of those Regulations or Orders issued thereunder from time to time and to give effect thereto from any date which Air

India Ltd. may deem fit and that those Regulations may be modified or substituted as a result of the decision of the Hon'ble Supreme Court in Civil Appeal No.5921 of 2006 between **Indian Airlines Ltd., (now Air India Ltd.,) v. Union of India and others**, pending decision of the Court.

9. The learned counsel for petitioner submits that the employees of erstwhile Air India Ltd. were governed by two sets of Service Regulations/Standing Orders, namely, (i) Certified Standing Orders applicable to Workmen and (ii) Air India Employees' Service Regulations applicable to non-workmen categories. The employees of erstwhile Indian Airlines Ltd. were governed by three sets of Service Regulations, namely, (i) Service Regulations for Flying Crew, (ii) Service Regulations for the Aircraft Engineering Department and (iii) the Service Regulations for the employees other than the Flying Crew and those in the Aircraft Engineering Department. The Board of Directors of the respondent-Company, in its 52nd Meeting held on 7th of May 2018, approved the Harmonized Air India Employees' Service Regulations for certain categories, namely; (i) Officers at the level of Assistant Manager and above, in all departments of Air India Limited (including Instructors, Flight Despatchers, Ground Operations Officers etc.), (ii) Executive Pilots and (iii) Executive Cabin Crew. However, the Harmonized Air India Employees' Service Regulations have not been implemented till today and contends that since the Air India Employees' Service Regulations have not been implemented to

the workmen category as on today, the earlier Regulations alone will hold the field, and hence, the respondents have rightly invoked Regulation 13-A of Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

10. This Court, having considered the rival submissions made by the parties, is of the considered view that when new Regulations have been framed by the respondents in the 52nd meeting of Board of Directors held on 07.05.2013 making it clear that those Regulations will come into effect from 1st of April 2013 and further making clear in the said meeting that the earlier Regulations which were holding the field including the Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations stands repealed, the respondents could not have invoked Regulation 13-A of Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations by relying on Regulation No.6 of Air India Employees' Service Regulations. Regulation No.6 of Air India Employees' Service Regulations merely says that the Air India Ltd. reserves to itself the right to add, amend, cancel, suspend and/or modify any or all of those Regulations or Orders issued thereunder from time to time and to give effect thereto from any date which Air India Ltd. may deem fit, which doesn't mean that the respondents can

fall back on old Service Regulations. The power available under Regulation No.6 is to add, amend, cancel, suspend and/or modify any or all the Regulations, which would come into force with effect from 1st April 2013 and it was decided in its 52nd Meeting of Board of Directors, held on 07.05.2013. But, no mention was made in the repeal and savings clause that as long as the new Service Regulations are not implemented, the old Service Regulations shall be in force, and on that count, the respondents could not have invoked Regulation 13-A of Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations. If the new Regulations i.e. Air India Employees' Service Regulations are not implemented in respect of workmen category, the same is a lacuna in the Rules. A contention is raised in the counter that the new Air India Employees' Service Regulations have not been implemented in respect of workmen, therefore, this Court is not able to understand as to how the Regulations, which are yet to be implemented in respect of workmen will have any effect on the petitioner, who is working as Assistant Security Officer. Admittedly, the petitioner is not working in the category of workman so as to contend that new Air India Employees' Service Regulations have not been implemented in respect of Workmen category. Therefore, this Court is not inclined to accept the contention of respondents that they have power to invoke Regulation 13-A of Indian Airlines (Employees other than the Flying Crew and those in the Aircraft Engineering Department) Service Regulations, which have been repealed with the advent of Air India

Employees' Service Regulations with effect from 01.04.2013.

Therefore, the impugned termination order is liable to be set aside.

11. Accordingly, the writ petition is allowed and the impugned termination order dated 07.11.2018 is set aside. The petitioner be reinstated into service with all consequential benefits. However, liberty is given to the respondents to initiate disciplinary action against the petitioner in accordance with the Regulations, if they so intend. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

28th June, 2019

ajr

