



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 9217 of 2005 and W.P. No. 30930 of 2008
and
W.M.P. Nos. 9992 & 9993 of 2005, W.M.P. No. 1011 of 2009
and
W.M.P. Nos. 435 and 436 of 2010

W.P. No. 9217 of 2005:

P.Chandran
Junior Operator (removed from service)
Employee No. 520080,
Indian Airlines Limited,
Chennai - 600 027.

... Petitioner

-vs-

1. The Deputy General Manager (GS)
Indian Airlines Limited,
Meenambakkam,
Chennai - 600 027.
2. The Manager (CE) / Enquiry Officer,
Indian Airlines Limited,
Meenambakkam,
Chennai - 600 027.

... Respondents

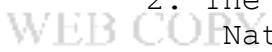
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for records relating to the order No.MGS-11 dated 03.03.2005 passed by the first respondent herein, quash the same and consequently direct the respondents to re-instate the petitioner in service with immediate effect.

W.P. No. 30930 of 2008:

P.Chandran
Driver E.M. No. 52116,
(Nacial Indian Air Lines (GSD),
Meenambakam, Chennai - 27.

... Petitioner

-vs-



For Petitioner
in both W.Ps : Mr.S.Saravanakumar

For Respondents
in both W.Ps : Mr.K.Srinivasamurthy
for Mr.N.G.R.Prasad
Standing counsel

C O M M O N O R D E R

The prayer sought for in the first Writ Petition in W.P. No. 9217 of 2005 is for a Writ of Certiorarified Mandamus calling for records relating to the order No.MGS-11 dated 03.03.2005



passed by the first respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner in service with immediate effect.

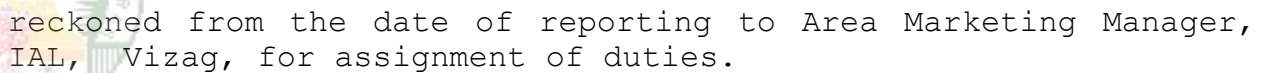
2. The prayer sought for in the second Writ Petition in W.P. No. 30930 of 2008 is for a Writ of Certiorarified Mandamus calling for records relevant to the order in Ref.No.HPE/RECT/Jr.Oprtr/002/ 7082 Establishment Order No.41/2008 dated 05.12.2008 passed by the second respondent and quash in respect of the promotion of Mr.V.D.Gopinathan, fifth respondent herein as Junior Operator as illegal, improper, unreasonable, arbitrary and against the rule of law and against the notification of the respondents 1 and 2 and thereby direct the respondents 1 and 2 to promote this petitioner as Junior Operator in the respondents 1 and 2 Indian Airlines Limited from 05.12.2008 and pay all the service benefits.

3. Since both the Writ Petitions are interconnected filed by the same petitioner against the same respondents, with the consent of the learned counsel appearing for the petitioner as well as the learned Standing counsel appearing for the respondents, both the Writ Petitions were heard together and being disposed of by this common order.

4. The petitioner was appointed as an employee at the respondents Company on 30.03.1994. Originally, the respondents Company was in the name of "Indian Airlines Limited", subsequently, it got merged with "Air India Limited". Therefore, for the sake of convenience, the respondents are hereby called as respondents Company.

5. While he was working, there was a disciplinary proceedings against him, where, after completing the enquiry, by giving opportunity to the petitioner including a second show cause notice, since the charges framed against the petitioner were proved through the said enquiry, with which, the Disciplinary Authority concurred, accordingly, by order dated 03.03.2005, the Disciplinary Authority i.e., respondents have inflicted the punishment of removal of service against the petitioner. Aggrieved over the said order of punishment dated 03.03.2005, the Writ Petition in W.P. No. 9217 of 2005 was filed.

6. It is to be noted that, during the pendency of the Writ Petition, the petitioner preferred an appeal against the said order dated 03.03.2005 and the said appeal was decided by the Appellate Authority, by order dated 29.04.2005, wherein the Appellate Authority mainly on sympathetic ground, allowed the appeal, by thus, the petitioner was directed to be reinstated, however only as a fresh entrant and accordingly, he was posted at Vizag, with the condition that, his appointment would be



duty a

9. Insofar as the second Writ Petition i.e., W.P. No. 30930 of 2008 is concerned, it is an admitted fact that, the Appellate Authority's order dated 29.04.2005 directed the respondents to reinstate the petitioner as a fresh entrant at Vizag has not been challenged. In fact the petitioner, having accepted the said Appellate Authority's order dated 29.04.2005, joined in the new post as fresh entrant on 09.05.2005, where he had been working for three years and only thereafter in the year 2008, the second Writ Petition has been filed with the aforesaid prayer, challenging the order for promotion given to a co-employee, who is the fifth respondent in the said second Writ Petition.

10. In this context, it is to be noted that, in the Appellate Authority's order dated 29.04.2005, the following conditions has been imposed:

"Your above appeal has been examined and the Competent Authority has approved your re-appointment in Indian Airlines. You are hereby offered the post of DRIVER



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with place of posting at VIZAG, as a fresh entrant in IAL purely on humanitarian grounds, subject to the following terms and conditions:

1. That your appointment as Driver in Indian Airlines Ltd., Vizag will be reckoned from the date of your reporting to Area Marketing Manager, IAL, Vizag, for assignment of duties.
 2. That you will get a starting basic pay of Rs.3140/- in the scale of pay of Rs. 3140-60-3620-80-4180-100-4480 and your seniority will be at the bottom of cadre of Driver.
 3. That you will be on probation for a period of six months.
 4. That your conduct, attendance and performance will be monitored for a period of six months from the date of your appointment and if, during this period, the same are not found satisfactory at any stage, the appointment will be terminated forthwith.
 5. That during the period of probation, your services are terminable with seven days notice or basic pay in lieu thereof.
 6. That this will be a fresh appointment for all purposes and you will have no claim whatsoever upon or arising out of your previous services in IAL. The fresh date of joining will be reckoned for all purposes including for PF / Gratuity, etc.
 7. That during the tenure of your services in Indian Airlines Ltd., you will be governed by Indian Airlines Service Regulations, applicable to employees other than Flying Crew and those in the Aircraft Engineering Department, and Standing Orders (Regulations) concerning discipline and appeals as framed and amended by Indian Airlines Ltd from time to time.
 8. That you are liable to be transferred to any place / department / Station as may be required by the Management.
 9. That your appointment will be subject to your being found medically fit by the Medical Officer of IAL. You are advised to report to the undersigned, on or before 06.05.2005, for completing medical and other formalities.
- If the above terms and conditions are acceptable to you, please return the duplicate copy of this letter duly signed in token of your acceptance."

11. On reading of the said order of the Appellate Authority dated 29.04.2005, it could be ascertained that, the petitioner was reinstated only as a fresh entrant purely on humanitarian grounds. Accordingly, he was appointed as Driver at the respondents Company at Vizag and his service will be reckoned



only from the date he reports duty to the concerned Area Marketing Manager, Vizag. Accepting these conditions, the petitioner rejoined the service, of course as a fresh entrant i.e., on 09.05.2005 and had been working there for some years and only thereafter, all of sudden in the year 2008, he had come out with a second Writ Petition, challenging the promotion given to a co-employee i.e., fifth respondent.

12. It is to be noted that, insofar as the fifth respondent is concerned, his seniority can be reckoned only from the date of original appointment or its regularization of service, whereas, the petitioner even though assuming, has been appointed prior to fifth respondent, he cannot seek any seniority for comparing with the fifth respondent, in view of the Appellate Authority's order dated 29.04.2005, where he was reinstated only as fresh entrant and his service was only reckoned with from the date he joined in service as a fresh entrant.

13. Having those conditions as has been quoted above, by order dated 29.04.2005 of the Appellate Authority, since the petitioner joined service and working for several years, he cannot turn around and say, no one is appointed prior to him to surpass him in service seniority, even though they have been appointed and continuously working. However, it is to be noted that, the petitioner has not chosen to challenge the order of the Appellate Authority dated 29.04.2005, even assuming that the petitioner has got grievances with the said order treating him as a fresh entrant.

14. Without challenging the order dated 29.04.2005, the petitioner cannot seek any consequential benefits as has been sought in the second Writ Petition.

15. Moreover, in respect of the Appellate Authority's order dated 29.04.2005, whether, the petitioner can have any valid or legally sustainable grounds to challenge the same itself is a question, because, the petitioner having accepted the order, joined in the service as a fresh entrant on 09.05.2005 and had peacefully worked there for next three years i.e., up to 2008, however, suddenly, he woke up and filed the second Writ Petition.

16. Therefore, in the second Writ Petition also, the petitioner cannot successfully challenge the order impugned, which relates to a promotion or seniority relates to the co-employee, who is the fifth respondent therein, as the petitioner does not have valid ground to challenge the said order.

17. Mr.S.Saravanakumar, learned counsel appearing for the petitioner in the first Writ Petition has fairly submitted that, insofar as the first Writ Petition is concerned, the prayer



sought for by the petitioner has become infructuous in view of the subsequent developments discussed above.

18. Mr.K.Srinivasamurthy, learned Standing counsel appearing for the respondents Company would submit that, in fact, the Indian Air Lines has got merged with the Air India Limited, therefore, as of now, if at all Writ Petition is disposed off either way, the Air India Limited should be impleaded as a respondent by way of making amendment instead of existing respondents, namely Indian Airlines Limited.

19. Be that as it may, in view of the decision going to be made in these Writ Petitions, this Court feels that, the present order being passed by this Court can be forwarded to the Air India Limited, with whom the Indian Airlines Limited has got merged, for whom, there is no representation by the learned Standing counsel and therefore, the said technicality would not stand in the way in disposing these Writ Petitions.

20. Insofar the merits of the case is concerned as has been discussed above, the first Writ Petition has become infructuous, therefore it is liable to be dismissed, accordingly, it is dismissed.

21. Insofar as the second Writ Petition i.e., W.P. No. 30930 of 2008 is concerned, for the reasons discussed above, the petitioner has not made out a case to challenge the impugned order pertaining to the fifth respondent's promotion or seniority, as admittedly the petitioner had been reinstated only as a fresh entrant by order of the Appellate Authority dated 29.04.2005 and having accepted the same, he rejoined duty on 09.05.2005 and worked for three years, thereafter, suddenly he again turn around and say, he claims seniority. Moreover, the Appellate Authority's order dated 29.04.2005 has not been challenged. Though the learned counsel appearing for the petitioner in the second Writ Petition made a request that, a liberty can be given to the petitioner to challenge the Appellate Authority order dated 29.04.2005, this Court is not impressed with the said submission, because, long years have gone by and moreover, the Appellate Authority order dated 29.04.2005, in fact was acted upon by both sides and he joined service and worked for three years, even before filing the second Writ Petition, hence, the said plea of the liberty to the petitioner to challenge the Appellate Authority's order dated 29.04.2005 at this distance of time is not available to the petitioner, therefore, such request has to be rejected. In view of the above, the second Writ Petition is liable to be dismissed, accordingly it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.



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22. The copy of this order shall be forwarded to the Air India Limited at the same address of the respondents.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy General Manager (GS)
Indian Airlines Limited,
Meenambakkam, Chennai - 600 027.
2. The Manager (CE) / Enquiry Officer,
Indian Airlines Limited,
Meenambakkam, Chennai - 600 027.
3. The Chairman and Managing Director,
National Aviation Company of India Limited,
Indian Air Lines, New Delhi.
4. The Deputy Manager (PERS),
National Aviation Company of India Limited,
Southern Region, Personal Department,
Hydrabad, Andhra Pradesh.
5. The Regional Executive Director (Personal),
NACIAL Indian Airlines,
Airlines House, Meenambakkam,
Chennai - 27.
6. The General Manager (PERS),
Nacial Indian Airlines,
Airlines House, Mennambakkam, Chennai - 27.
7. The Air India Limited,
Meenambakkam, Chennai - 600 027.

+1cc to Mr.NGP.Prasad, Advocate, S.R.No. 4069

W.P. No. 9217 of 2005 and
W.P. No. 30930 of 2008
and W.M.P. Nos. 9992 & 9993 of 2005,
W.M.P. No. 1011 of 2009 and
W.M.P. Nos. 435 and 436 of 2010

LN(CO)
GN(15/07/2021)