

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3228 OF 2022**

Wing Cdr. T. S. Mahadev (Retired) ...Petitioner

V/s.

United Helicharters Pvt. Ltd. & Anr. ...Respondents

Mr. Angsuman Ojha with Ms. Arshita Kohli for the petitioner.

Mr. Bhavesh Parmar with Mr. Rahul Gaikwad, Mr. Aman Jhawar and Mr. Vivekanand Akshali i/by Gravitas Legal for respondent no.1.

Ms. Anu C. Kaladharan with Ms. Anjali N. Helekar and Mr. A. R. Gole for respondent nos.2 and 3.

**CORAM: DIPANKAR DATTA, CJ &  
M. S. KARNIK, J.**

**DATE: JULY 20, 2022**

**P.C.:**

**1.** The petitioner was appointed by United Helicharters Pvt. Ltd., the respondent no.1, as a pilot vide appointment order dated 16<sup>th</sup> July, 2018. By a communication dated 5<sup>th</sup> July, 2021, the respondent no.1 conveyed to the petitioner the decision of its Board to bring about a cessation of service upon giving three (3) months' notice. The petitioner has challenged not only the communication dated 5<sup>th</sup> July, 2021 but also the appointment order dated 16<sup>th</sup> July, 2018 and has prayed for the following relief:

(A) That the Hon'ble Court may be pleased to issue a Writ of Certiorari and/or any other writ/order/direction in the nature of Certiorari and upon examining the legality, propriety and validity of the Impugned Orders [Exhibit-A & B], and be pleased to set aside the same.

(B) That the Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other writ/order/direction in the nature of Mandamus, directing the Respondents acting through its servants/agents/subordinates to refrain from taking any coercive steps against the Petitioner, including maintaining the status quo of Petitioners present job.

(C) That the Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other writ/order/direction in the nature of Mandamus, directing the Respondents No.2 and 3 acting through its servants/agents/subordinates to direct Respondent No.1 to issue Petitioner six months NOTICE w.e.f. 05 July 2021 and NOC, along with all due salary of six months, overtime payment and remuneration as per Aircraft Rule and CAR/Civil Aviation Requirement.

**2.** We are inclined to believe that the challenge to the appointment order is by way of a mistake. However, we record our disagreement with Mr. Ojha, learned advocate for the petitioner, that a writ petition would be maintainable against the respondent no.1, which is a private company.

**3.** Mr. Ojha argues that despite being a private company, the respondent no.1 is required to follow the norms and guidelines prescribed by the Directorate General of Civil Aviation (hereafter "DGCA", for short) for aviation purposes; and by reason thereof, the respondent no.1 should be regarded as a company engaged in the discharge of public duty. He also argues that pilots like the petitioner employed with private companies had moved various High Courts and obtained relief; hence, the petitioner should not be denied the

same.

**4.** We find no substance in such argument. The relationship between the respondent no.1 and the petitioner is purely contractual and the respondent no.1 does not owe any public duty to the petitioner. At best, the respondent no.1 owes such duty to the flyers who avail of its services which must, of course, be operated in terms of the norms and guidelines of the DGCA as well as the Aircraft Rules.

**5.** Since the respondent no.1 has neither taken any action against the petitioner in exercise of its statutory duty nor is he seeking enforcement of any statutory duty by it, the decision of the Supreme Court reported in (2003) 10 SCC 733 (**Federal Bank Vs. Sagar Thomas**) stares at our face.

**6.** That apart, what the petitioner essentially seeks vide prayer (c) is a reinstatement in service. Having regard to the decision of the Supreme Court reported in (1976) 2 SCC 58 (**Executive Committee of Vaish Degree College vs Lakshmi Narain**), a contract of personal service cannot ordinarily be enforced. No such relief, as claimed by the petitioner, can be granted since neither is the petitioner a Government servant nor is he an employee of a statutory authority, and of course not an industrial workman.

**7.** Mr. Ojha heavily relies on the decision of the Supreme Court dated 22<sup>nd</sup> August 2019 in Civil Appeal No. 6567 of 2019 (**Air India Express Ltd. & Ors. Vs. Capt. Gurdarshan Kaur Sandhu**), the Bench decision of the Punjab and Haryana High Court dated 24<sup>th</sup> September 2013 in L.P.A. No. 604 of 2011 (**Director General of Civil Aviation,**

**Government of India, New Delhi Vs. Lakhbir Singh & Ors.)** and the decision of a learned Single Judge of the Delhi High Court dated 1<sup>st</sup> June 2021 in Writ Petition (C) No. 4203 of 2020 (**Arjun Ahluwalia Vs. Air India Ltd.**) and batch writ petitions.

**8.** In **Capt. Gurdarshan Kaur Sandhu** (supra), the question which the Supreme Court was called upon to decide was whether the resignation tendered by the respondent could have been withdrawn. Such question was answered in the negative. We find on reading of the said decision that before the Kerala High Court, where the writ petition was instituted, an objection to the territorial jurisdiction of the Court was raised but no objection had been raised to the maintainability of the writ petition on the ground that a writ petition under Article 226 of the Constitution of India would not lie against the appellant. Therefore, the Supreme Court had no occasion to decide the issue as to whether a private company, engaged in the business of aviation, could be brought within the purview of the writ jurisdiction of this Court. We have failed to find the materiality of such decision in the present context.

**9.** In **Lakhbir Singh** (supra), relief was claimed against the DGCA which is not the case here. The decision is, therefore, distinguishable on facts.

**10.** Finally, the decision in **Arjun Ahluwalia** (supra) was rendered by the Delhi High Court on a batch of writ petitions where Air India Limited was the common respondent. We have failed to comprehend as to how the present case could

be equated with the fact situation obtaining in **Arjun Ahluwalia** (supra).

**11.** Having regard to the decision of the Supreme Court in **Sagar Thomas** (supra), we hold that this writ petition against the respondent no.1 is not maintainable.

**12.** The writ petition stands dismissed. No costs.

**13.** This order shall not preclude the petitioner to explore his remedy in accordance with law.

ATUL  
GANESH  
KULKARNI

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**(M. S. KARNIK, J.)**

**(CHIEF JUSTICE)**