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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.17424 of 2010

T.S.D. Gabrial ... Petitioner

Vs.

1.National Aviation Company of India Ltd.,
Rep by it's Chairman and Managing Division,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

2. General Manager - Finance,
National Aviation Company of India Ltd.,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

3. Chief Manager - Finance,
Finance Department, Air India
National Aviation Company of India Ltd.,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to consider the petitioner as a senior grade Flight Engineer reverted to Engineering Department and fix its applicable salary for period from 01.04.2008 to 31.03.2009 and pay the arrears of salary and pass orders.

For Petitioner : Mr.V. Jeeva Giridharan

For Respondents : Mr.K. Srinivasamurthy

ORDER

The writ petition is filed in the year 2010 wherein the first respondent was shown as National Aviation Company of India Ltd. A memo dated 16.03.2020 was filed on behalf of the

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respondent wherein it was submitted that there was a scheme of amalgamation by Ministry of Corporate Affairs vide order dated 22.08.2007, consequent to which Air India Limited stood resolved without being wound up resulting in consolidation of two companies and a new entity viz., National Aviation Company of India Limited was formed. Further the name of the National Aviation Company was changed to Air India Ltd., vide proceedings dated 24.11.2010.

2. In view of the above the respondents submitted that cause title may be amended as Air India Limited instead of National Aviation Company Limited.

3. The learned counsel for the petitioner did not have any objections to the said prayer. Therefore in the cause title the name of the first respondent would stand amended and read as Air India Limited formerly known as National Aviation Company Limited.

4. Today the learned counsel for the respondents submitted a memo which has been circulated to the petitioner's wherein it is brought to the notice of this Court that pursuant to the policy decision taken by the Government of India to disinvest 100% share holding of the Government in Air India Limited, M/s Talace Pvt Ltd was declared as successful bidder to buy 100% shares held by it in Air India Limited.

5. The shares held by Government of India in Air India Limited stood transferred to M/sTalace Private Limited and its nominees on 27.01.2022. Consequent to which Air India Limited ceases to be a Government company and is a Private Limited Company. It is the submission of the learned counsel for the respondents that in view of the above change in constitution Air India Limited may no longer qualify as a "State" within the meaning of Article 12 of the Constitution for a writ petition to lie.

6. In support of the same reliance was sought to be placed in the decision of Hindustan teleprinters ltd., wherein this Court in the case of P. Subban vs Hindustan Teleprinters Ltd., reported in 2003 (3) L.L.N. 1078 and the relevant portion of which reads as under:

> "Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition

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No.14425 of 1995 dated 19 July 202 (the entire order in this case is given in Para. 8 Supra) and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to work out his remedy before the appropriate forum. No costs."

(emphasis supplied)

7. The learned counsel for the petitioner also agrees to the above position and further submits liberty may be granted to the petitioner's to work out its remedy and also prays that the time spent in this writ petition may be excluded in reckoning the period of limitation, if the petitioner chooses to enforce its right before an appropriate forum. The learned counsel for the respondent also does not have any serious objection to the same. Consequently liberty is granted to the petitioner to work out its remedy before the appropriate forum, in which case the time spent in pursuing the writ petition shall stand excluded in reckoning the period of limitation if any.

8. We also make it clear that it will be open to the respondents to raise any grounds/objection in any such proceedings. With the above observation, the writ petition stands closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

smn

To

1.National Aviation Company of India Ltd.,
Rep by it's Chairman and Managing Division,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

2. General Manager - Finance,
National Aviation Company of India Ltd.,
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3. Chief Manager - Finance,
   Finance Department, Air India
   National Aviation Company of India Ltd.,
   113, Gurudwara Rakabganj Road,
   New Delhi - 110 001.

+1cc to Mr.G.v.Prasad, Advocate SR.No.20703

NK(CO)
CB(06/04/2022)

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