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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 24th May 2023

+ W.P.(C) 13614/2022 & CM APPL. 27699/2023

CAPT. DHIRENDRA KUMAR Petitioner
Through: Mr. Tushar Ranjan Mohanty,
Advocate with Ms. Payal Mohanty and
Ms. Soumya Punnia, Advocates

versus

AIR INDIA LIMITED AND ORS. Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

- “(i) issue rule nisi to the Respondents;*
(ii) quash and set aside the impugned Order of Penalty dated 29.04.2022 [Annexure : P-1] as being bad and non-est in law;
(ii) quash and set aside the impugned Inquiry Report dated 15.09.2021 [Annexure : P-2] as being bad and non-est in law;
(iv) quash and set aside the impugned Major Penalty Charge Sheet dated 24.06.2021 [Annexure : P-3] as being bad and non-est in law;
(v) consequently, direct reinstatement of the Petitioner into service with effect from 29.04.2022;
(iv) consequently, direct the Respondent to pay full salary and allowances to the Petitioner for the Period from 29.04.2022 onwards;
(v) direct Respondent to pay compound interest @18% per annum, compounded monthly, on all monies that is payable to the Petitioner;
(vi) allow exemplary costs of the present Writ Petition to the Petitioner against the Respondents; and
(vii) pass such other and further order/(s) as may be deemed just and appropriate in the facts, circumstances and premises of the present case.”

2. Notice was issued in the writ petition on 20.09.2022. However, notice could not be issued for want of process fee on behalf of the Petitioner. In the meantime, Co-ordinate Bench of this Court in ***Naresh Kumar Beri and Others v. Union of India and Others, 2022 SCC OnLine Del 3585*** has ruled that writ petition will not lie against Air India Limited ('AIL') on account of its 100% disinvestment. In this view the writ petition is taken up for consideration on maintainability.

3. As a result of disinvestment process initiated by the Government of India, AIL has ceased to be a public body and therefore, no writ can lie against AIL in the circumstances that exist today. It is submitted that originally AIL was a statutory body constituted under the Air Corporations Act, 1953, however, post its repeal and in terms of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, it had become a wholly owned company of the Government of India. It is at that stage that the present writ petition was filed, however, in light of the position that obtains today, where AIL has been privatized and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd., (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.), no writ petition can lie under Article 226 of the Constitution of India as AIL is no longer a public body or Authority within the meaning of Article 12 of the Constitution of India. Reliance can be placed on a judgment of this Court in ***Naresh Kumar Beri (supra)***, relevant para of which is as under:

"23. The Court also finds merit in the second objection which was addressed on behalf of the respondents who had contended that since AIL had ceased to be a government company by virtue of the exercise of privatization noted above, the writ petition itself would cease to be maintainable. This Court notes that High Courts of the country appear to have consistently taken this position as would be manifest from a reading of the decision rendered in R.S. Madireddy by the Bombay High Court and Tarun Kumar Banerjee

by the Karnataka High Court. The said position has also been duly reiterated in the judgments rendered by our Court in Asulal Loya, Ladley Mohan and Satya Sagar. The writ petition would thus warrant dismissal on this score also."

4. Mr. Mohanty, learned counsel appearing on behalf of the Petitioner expresses an apprehension that if the writ petition is disposed of at this stage and Petitioner is left to resort to other remedies, AIL may, in future, disown its liability towards the Petitioner on the ground that it is privatized.

5. Having heard the counsel for the Petitioner, the question that pronouncedly emanates is whether the writ petition is liable to be dismissed on ground of maintainability, in wake of the admitted position that during the pendency of this petition, on 27.01.2022, 100% shareholding of Air India has been acquired by M/s. Talace Pvt. Ltd. and Air India has ceased to be a Government controlled company. A Co-ordinate Bench of this Court in ***Naresh Kumar Beri (supra)*** has already examined this issue and held that writ petition ceases to be maintainable. The judgement squarely covers the present case and this Court is not persuaded to take a different view. It is true that when the writ petition was filed, it was maintainable as AIL was amenable to the writ jurisdiction, however, under the changed scenario, this Court is precluded from issuing a writ of mandamus against AIL.

6. Having said that, I may also pen down that Mr. Mohanty is not wrong in questioning as to who would bear the liability in case the Petitioner was to take recourse to other remedies in a different Forum and succeed. This concern or disquiet, can be put to rest since AIL has given an assurance in all other writ petitions which were filed in this Court and have been dismissed as not maintainable that in the event the Petitioners in the respective writ petitions succeed in establishing their claims, the liability shall be owned and borne by AIL. There is

no reason to apply a different yardstick to the Petitioner who had filed the present writ petition when it was maintainable and therefore it is held that in case the Petitioner approaches an Appropriate Forum to agitate his grievances and succeeds, the liability shall be borne by AIL.

7. In view of the aforesaid, writ petition along with pending application is dismissed, granting liberty to the Petitioner to take recourse to remedies available to him in law, in an appropriate Forum. It is made clear that the time period, for which the writ petition has been pending in this Court, will be excluded for the purpose of computation of limitation, should the Petitioner seek any remedy by instituting fresh proceedings in a Forum, where question of limitation will be relevant and may arise.

8. Date of 28.08.2023 stands cancelled.

JYOTI SINGH, J

MAY 24, 2023/shivam/kks