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

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*Date of Decision: 17<sup>th</sup> February, 2023*

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W.P.(C) 5621/2016 & CM APPL. 6596/2022, 24395/2022

CAPT. MAHINDER PAL SINGH PUJJI ..... Petitioner

Through: Mr. Asutosh Lohia, Mr. Varun Rashaan, Mr. Gaurav Anand, Mr. Rohit Saraswat and Ms. Shraddha Bhargava, Advocates.

versus

AIR INDIA LTD AND ORS. .... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Amit Kumar Mishra, Mr. Azeem Samuel, Ms. A. Barman, Ms. Rukmini B., Mr. Shivam Chanana and Mr. Sidhant Bajaj, Advocates.

**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:-

*"a) Issue an appropriate Writ, Order or Direction to direct the Respondent Nos.1-3 to grant Privileged Leave to the Petitioner for at least 15 days from the quota of F.Y. 2015-2016;*

*b) Issue an appropriate Writ, Order or Direction to direct the Respondent Nos.1-3 to immediately expunge the remarks of "absent without leave" from the career records of the Petitioner w.e.f. 10.03.2016;*

*c) Issue an appropriate Writ, Order or Direction to direct the Respondent Nos.1-3 to immediately release arrears of Petitioner's Salary and 72 hours flying allowance from March, 2016 till date;*

*d) Issue an appropriate Writ, Order or Direction to direct the Respondent Nos.1-3 to take the Petitioner on regular flying roster after availing the Privileged Leave so granted to him;*

*e) Issue an appropriate Writ, Order or Direction to direct the Respondent Nos. 4 and 5 to immediately take appropriate*

*disciplinary actions against the Respondent Nos.1-3 for their arbitrary, illegal and mala fide actions against the Petitioner;*

*f) Issue an appropriate Writ, Order or Direction to direct the Respondent to not to follow this kind of victimisation of the pilots in future;”*

2. Appearing on behalf of AIL, Mr. Rajiv Nayyar, learned Senior Counsel, raises an objection to the maintainability of the writ petition against AIL, owing to the disinvestment process initiated by the Government of India. 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 this stage that the present writ petition was filed and rightly entertained. However, now AIL has been privatised 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.) and thus having ceased to be a Public Body or Authority within the meaning of Article 12 of the Constitution of India, AIL is no longer amenable to writ jurisdiction of this Court under Article 226 of the Constitution. In support of the objection, reliance is placed on the judgment of a Co-ordinate Bench of this Court in ***Naresh Kumar Beri & Ors. v. Union of India & Ors., 2022 SCC OnLine Del 3585***, where this issue was examined and after deliberating on the stands of the respective parties, writ petition was dismissed. Operative para of the judgement is as follows:

*“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."*

3. Mr. Ashutosh Lohia, learned counsel for the Petitioner submits that the judgment passed by the Bombay High Court in ***R.S. Madireddy & Anr. v. Union of India & Ors., 2022 SCC OnLine Bom 2657*** dismissing the writ petition on account of disinvestment of AIL has been challenged before the Supreme Court and notice has been issued on 16.01.2023. Learned counsel also expresses an apprehension that if the writ petition is disposed of 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.

4. Mr. Nayyar, in response, submits that *albeit* notice has been issued by the Supreme Court, as rightly contended by the counsel for the Petitioner, however there is no stay. He further submits that the apprehension expressed on behalf of the Petitioner is wholly misplaced inasmuch as, if the Petitioner was to succeed before the Appropriate Forum, the liability shall rest entirely on AIL.

5. Having heard the learned Senior Counsel for AIL and 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 cases 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. Lohia, 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, is put to rest by the assurance given on behalf of AIL, that in the event of the Petitioner succeeding in establishing his claims, the liability shall be borne by AIL. The assurance given on behalf of AIL is taken on record and needless to state shall bind the said Respondent.

7. In view of the aforesaid, writ petition along with pending applications 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.

**JYOTI SINGH, J**

**FEBRUARY 17, 2023/yo/shivam**