

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2674 OF 2019

Air India Ltd. Kamgar Sangh (Mumbai)

... Petitioner

V/s.

Air India Limited through its Managing
Director and Ors.

... Respondents

Ms. Gayatri Singh, Senior Advocate and Mr. Hamza Lakdawala i/b.
Ms. Mini Matthew for the Petitioner

Mr. Lancy D'souza with Ms. Deepika Agarwal i/b. V.M. Parkar for
Respondent No.1

Mr. Ravi Rattesar for Respondent Nos. 2 and 3

Mr. Bhavesh Wadhvani i/b. M.V. Kini & Co. for the Respondent
Nos. 4 and 8

Mr. Shailesh S. Pathak i/b. P.M. Palshikar for Respondent Nos. 5 to 7

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 23 APRIL 2024

P.C. :-

This Petition is filed by Air India Kamgar Sangh espousing the cause of the workers listed at Exhibits A, B and C to the Petition. Exhibit A is the list of workers who are below the age of retirement, Exhibit B is the list of workers who have crossed the age of retirement and Exhibit C is the list of workers who have expired.

2. By the Petition filed in the year 2019, the Petitioner has raised various claims against Air India Limited – Employer. The Ministry of Civil Aviation and Provident Fund Authority are joined as party Respondents. During the pendency of the Petition, the legal character of the Employer has undergone a change. When the Petition came up on board on 6 February 2024, the following order came to be passed :-

“Learned counsel for Respondent No.1 points out that the relief sought in this Petition, which is filed in March 2019, before status of Respondent No. 1 undergoing change, is now almost an industrial dispute.

2. Learned counsel for Respondent No. 1 also points out that a Union of some of the employees have already approached the Industrial Adjudicator.

3. Learned counsel for Petitioner seeks time to examine the position to make a statement, whether the Petitioner would approach the Industrial Adjudicator as regard relief sought for in this Petition.

4. Stand over to 21 February 2024 under the caption “For Directions”.

Thereafter, the matter was listed on 28 February 2024. Further order came to be passed as under :-

“On 6 February 2024, the following order came to be passed :

“Learned counsel for Respondent No.1 points out that the relief sought in this Petition, which is filed in March

2019, before status of Respondent No.1 undergoing change, is now in nature of an industrial dispute.

2. Learned counsel for Respondent No. 1 also points out that a Union of some of the employees have already approached the Industrial Adjudicator.

3. Learned counsel for Petitioner seeks time to examine the position to make a statement, whether the Petitioner would approach the Industrial Adjudicator as regard relief sought for in this Petition.

4. Stand over to 21 February 2024 under the caption "For Directions."

Thereafter, again the time was sought by the learned Senior Advocate for the Petitioner.

2. Today, we are informed that reference which is pending before the concerned Tribunal/ Court is by another Union and it does not cover the issue raised in this Petition.

3. As to a query to the learned Counsel appearing for Respondent Nos. 5 to 7 whether any reference can be made in respect of the dispute raised in this Petition or corrigendum to the reference already made, the learned Counsel for Respondent Nos. 5 to 7 seeks time to examine and revert.

4. Stand over to 26 March 2024, to be listed under the caption "For Directions".

On 26 March 2024, after hearing the parties, we had passed a detailed order as under :-

“This Writ Petition is filed by the Air India Limited Kamgar Sangh seeking various prayers such as directions to the Respondent No. 1-Air India Limited to implement the scheme dated 12 April 2002 to provide work to the casual workers on rotational basis, to renew and issue passes to the casual workers and quash and set aside the advertisement for walk-in interview. Further directions to the Respondent No. 1-Air India Limited and Respondent No. 4-Air India Air Transport Services Limited to comply with the orders of the Court regarding services of workers. The directions are also sought in respect of the Employees Provident Fund and Miscellaneous Provisions Act 1952.

2. By an order dated 23 June 2023 in Interim Application (L) No. 3874 of 2023, Air India Assets Holding Limited was joined as a party Respondent. It was pointed out that the Respondent No. 1-Air India Limited is now a private entity and the Petition, which was filed in the year 2019, therefore has undergone a change as regards the status of the Respondent.

3. On 6 February 2024, learned Counsel for the Respondent No. 1 had pointed out that what is raised, is an industrial dispute and that some of the employees have already approached the Industrial Adjudicator. Thereafter, the Petition has been adjourned from time to time. On 28 February 2024, a query was made to learned Counsel for the Respondent Nos. 5 to 7-Union of India regarding the reference, as it was pointed out that the reference, which is pending in the Tribunal / Court is by another Union and it does not cover all the issues raised in the Petition. Learned Counsel for the Respondent Nos. 5 to 7 had taken time to examine and revert.

4. *Learned Counsel for the Respondent Nos. 5 to 7-Union of India states that the Court can pass suitable order for making a reference. As regards the relief regarding Provident Fund is concerned, as pointed out by learned Counsel for the Respondent Nos. 5 to 7-Union of India that the Petitioner has a statutory remedy. Therefore, for the substantial part of the Petitioner's relief forum of the Industrial Adjudicator is available, more particularly since the status of the Respondent has undergone a change and for the remaining i.e. Provident Fund, the remedy under the governing statute is available.*

5. *The Petition could have been disposed of today by relegating the Petitioner to these remedies. However, before we pass the order directing the Respondent Nos. 5 to 7-Union of India to make a reference, it would be appropriate that the terms of the reference are determined by consensus, so as to avoid any further complications.*

6. *Learned Counsel for the Petitioner states that terms of the reference drafted by the Petitioner would be circulated with the learned Counsel for the the Respondent Nos. 1, 4 and 8. If the Respondent Nos. 1, 4 and 8 have any suggestions, they will exchange the same with the learned Counsel for the Petitioner so that as far as possible on terms of reference, there is an agreement. If no response is received from the Respondent Nos. 1, 4 and 8, the Court may consider proceedings on the draft tendered by the Petitioner.*

7. *Stand over to 15 April 2024 under the caption "for directions".*

8. The draft be exchanged before the next date. As regards the issues relating to Provident Fund are concerned, it is open to the Petitioner to invoke remedy under the Act and the Petition will now continue for the above purpose of finalizing the terms of reference.”

3. The matter was then adjourned as the learned Counsel for the parties had taken time to exchange the draft schedule of reference.

4. All the parties have given their suggestions as to what should be the terms of reference. As pointed out by the learned Counsel for the Respondent – Employer, it would be appropriate and beneficial to all the parties that instead of too many details in terms of reference, it should be broad based to cover all the issues. The dispute would be between the Petitioner – Union in respect of workers at Exhibits ‘A’, ‘B’ and ‘C’ and Air India Limited, Air India Assets Holding Ltd., Air India Transport Service Ltd. and Air India Engineering Services Ltd.

5. Since the learned Counsel for the Union of India had left it to the Court to frame the terms of reference, by consent of the learned Counsel for the parties, we direct that the appropriate Government under Section 10 of the Industrial Disputes Act, 1947 will refer the dispute to the concerned Court/Tribunal “as regards the demands of the Petitioner – Union regarding the workers listed at Exhibits ‘A’, ‘B’ and ‘C’ in respect of clauses of permanency and non-

employment to the concerned employees listed above and all associated claims arising from these demands including the demands regarding the retiral benefits and benefits for those workers who have expired as listed above”.

6. As to the claim of the Petitioner – Union towards the Provident Fund is concerned, it is open to the Petitioner – Union to adopt such appropriate proceedings as advised.

7. It is pointed out to us that there is already a reference made by another set of workers pending at Central Government Industrial Tribunal and there would likely overlap in the workers in the reference. We grant leave to make an application for deletion of the names from either of these reference and it will be for the Court/ Tribunal to decide as from which reference the names are to be deleted.

8. The Writ Petition is disposed of in above terms.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date: 2024.05.02
15:29:29 +0530