



2024:DHC:447



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.01.2024

+ W.P.(C) 483/2024

SUBHOJIT CHATTERJEE

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Gautam Das and Mr. K. B. Rao,
Advocates, alongwith Petitioner In Person.

For the Respondents : Mr. Jagdish Chandra Solanki, SPC with
Mr. Francis Fernandes and Ms. Saakshi
Yadav, Advocate and Mr. Gokul Sharma,
G.P. for R-1 and R-2.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****(The proceeding has been conducted through Hybrid Mode)****CM APPL. 2141/2024 (for exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 483/2024 & CM APPL. 2140/2024 (for direction)

3. This is a petition under Article 226 of the Constitution of India, 1950 seeking the following reliefs :-



“a) Issue a writ of certiorari/mandamus or any other Writ or direction in the like nature, summoning the record and to quash the termination letter dated 3.5.2023 issued by the respondent no.3 being non-est and bad in the eyes of law;

b) Issue a writ of certiorari/mandamus or any other writ order or direction directing the respondent no. 1 and 2 to consider and dispose off the representations dated 10.7.2023 & 1.7.2023 in accordance with law at the earliest;

c) Issue a writ of mandamus or any other writ, order or direction, awarding compensation in favour of the petitioner for mental and physical distress, agony, loss of seniority, negative impact on the service and reputational damage etc. endured due to actions taken by respondent no.3;”

4. Learned counsel appearing for the petitioner submits that the respondent No.3 – Interglobe Aviation Ltd. (commonly known as INDIGO AIRLINES) terminated the services of the petitioner by the letter dated 03.05.2023.

5. Learned counsel submits that the termination of the petitioner by virtue of the impugned letter is contrary to the Director General of Civil Aviation (hereinafter referred to as “DGCA”) Regulations and as such, ought to be quashed by this Court.

6. Learned counsel also further submits that the petitioner on the issue had also submitted a representation to the respondent No.1 – Union of India and respondent No.2 – DGCA, on the basis that the DGCA is a Controlling/ Regulatory Authority to all the airlines.

7. He submits that despite the representation dated 01.07.2023 submitted to the DGCA and Union of India, there has been no response thereto by either of the respondents.



8. He submits that by way of the representation, the petitioner had submitted that the termination by respondent No.3 was unlawful on reporting fatigue on the 5th sector for a Six Sector plan.

9. Learned counsel submits that in the representation, the petitioner had specifically submitted that his fatigue reporting was strictly in accordance with the provisions outlined under DGCA, Civil Aviation Requirements (CAR), 2007, Section 7, Series J, Part 3, Issue 3, Para 4.10.2, which also states that punishing individuals for reporting fatigue is unlawful.

10. Learned counsel also invites attention of this Court to the grounds taken in the representation, which is at page No. 196 and are extracted hereunder :-

“4. Indigo's Forceful Imposition of Fatigued Crew Members on Six-Sector Pattern is a violation of Safety Guidelines as per “Aircraft rules 1937 part iii (214) General Safety “obstruct or distract the functioning of any person entrusted with any responsibility towards ensuring safe and secure operation of aircraft”.

5.

Aircraft Rules 1937 part iii (29)

“Acts likely to imperil the safety of aircraft- No person shall interfere with the pilot or with a member of the operating crew of an aircraft, or tamper with the aircraft or its equipment or conduct himself in a disorderly manner in an aircraft or commit any act likely to imperil the safety of an aircraft or its passengers or crew”.

11. Learned counsel also submits that reporting the fatigue is not a part of the Contract and strictly within the purview of the DGCA. On the issue of maintainability of the present writ petition, learned counsel submits that since the termination itself was illegal and contrary to the aforesaid CAR issued by the DGCA, the representation



which was submitted to the DGCA ought to have been considered and disposed of in accordance with the rules.

12. This Court has considered the submissions made by the learned counsel for the petitioner at the outset itself.

13. Issue of termination which has occurred between the petitioner as also the respondent No.3, is based on the Contract between the parties and the DGCA is not a Regulatory Authority so far as the terms and conditions of the Contract are concerned.

14. This Court has also perused the Contract document, which is placed at page No. 67 as Annexure P-2. Nothing in the said document points out to the fact that the respondent No.3 would fall within the ambit of State or its instrumentality, as defined under Article 12 of the Constitution of India. This appears to be a purely personal contract and executed between the petitioner and the respondent No.3, the impugned order cannot be challenged by way of a writ petition under Article 226 of the Constitution of India, 1950.

15. The view taken by this Court is fortified by the judgment of the learned Co-ordinate Bench of this Court passed in the W.P.(C) 9224/2018 captioned as ***Naresh Kumar and Others versus Union of India through Secretary, Ministry of Civil Aviation and Others*** reported as **2023 SCC OnLine Del 4919**, while considering the catena of judgments in ***Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology*** reported in **(2002) 5 SCC 111** ; ***Zee Telefilms Ltd. vs. Union of India*** reported in **(2005) 4 SCC 649** ; ***BALCO Employees' Union (Regd.) vs. Union of India*** reported in **(2002) 2 SCC 333**, on the issue whether petition under Article 226 of the



Constitution of India is maintainable against private entities held as under :-

“34. It is, therefore, concluded, that the court will proceed to determine the disputed matters only after conducting a thorough examination, first, during the admission of the writ petition, and second, during the final hearing. This examination is necessary to establish whether the respondent, who is accused of violating the petitioner's legal or fundamental rights, falls within the jurisdiction of the writ court.

35. The aforementioned discussion leads to the conclusion that the Court, upon being approached by the aggrieved party, must possess the authority to issue a writ, order, or direction to the party against whom such relief is being sought for breaching of a legal or a fundamental right. The party against whom the writ is to be issued, must fall within the ambit of the Article 12 i.e. it should be a 'State' or 'other authority'.

36. This Court is of the view that under Article 226 of the Constitution of India, a writ cannot be issued against a Government entity which has been subsequently privatized and is presently a private entity which is not performing a public duty anymore. The Government entity which has been privatized is not amenable to the writ jurisdiction under Article 226 of the Constitution of India and does not fall within the ambit of Article 12 of the Constitution of India. The guiding factor, therefore, is the nature of duty imposed on such a body namely, the public duty to make any authority amenable to the writ jurisdiction.

37. Under Article 226 of the Constitution of India, the phrase "for any other purpose" has to be given a narrower meaning to exclude private entities performing their private and commercial duties from the ambit of writ jurisdiction. Furthermore, a private entity does not fall within the ambit of Article 226 as there is an alternate remedy available against such private entity.”

16. Merely because the petitioner has challenged or sent a representation to the DGCA on his alleged illegal termination, cannot be construed to mean, as if the petitioner's termination would become a subject matter of a petition under Article 226 of the Constitution of



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India. The major or the original action of termination ought to be by an Authority, which falls within the definition as ascribed under Article 12 of the Constitution of India, to be assailable under Article 226 of the Constitution of India. Similar action of termination by any other Authority unless they are performing a public duty, would not fall within the purview of Article 226 of the Constitution of India.

17. Keeping in view the aforesaid, and the fact that the termination is on the basis of a private Contract between the parties, this Court considers that the petition is not maintainable and the same along with pending applications is dismissed.

TUSHAR RAO GEDELA, J

JANUARY 18, 2024

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