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

+ **W.P.(C) 957/2005, CM APPLs. 693/2005 and 55987/2022**

CAPT.MAYUR MISRAPetitioner

Through: None.

versus

UOI & ANR.Respondents

Through: Mr. Attin Shankar Rastogi, Mr. Pratyush Singh and Mr. Rajesh Ranjan, Advocates for Air India.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

06.08.2024

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1. The matter was listed on 02.08.2024 and was called twice but there was no appearance on behalf of the Petitioner. Even today, none appears on behalf of the Petitioner. It appears that the Petitioner is not interested in prosecuting the petition.
2. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(i) a writ, order or direction in the nature of mandamus or any other writ of like nature quashing the impugned Draft Seniority List of First Officers, dated 14 July 2004 and directing the respondent to treat STP-01 batch, including the petitioner, separate and independent from their counterparts of the Trainee Pilot lineage for all purposes including promotion to the rank of Commander subject to eligibility;

or

(ii) a writ, order or direction in the nature of mandamus quashing the impugned Draft Seniority List of First Officers, dated 14 July 2004 and directing the respondents to place his batch, including the petitioner, above all those of Trainee Pilots lineage, including 50th, 51st and 52nd



batches of Trainee Pilots that completed their training and absorbed as a batch in the regular cadre of Pilots of Indian airlines after the publication of their notification in press on 13th August 2001 adopting the Scheme of Sr. Trainee Pilots against which the petitioner was enrolled as a Sr. Trainee Pilot and to give consequential benefits to the petitioner;

or

(iii) a writ, order or direction in the nature of mandamus or any other writ of like nature quashing the impugned Draft Seniority List of First Officers, dated 14 July 2004, and directing the respondents that pending finalization of the rules governing seniority of Pilots of STP lineage vis-a-vis those of Trainee Pilot lineage, the inter se seniority of the STP-01 batch, including the petitioner, be fixed for all purposes as per the chronology of Establishment Orders No: 96/2002, 192/2002, 08/2003, 92/2003 issued by the Personnel Deptt, of the respondent no: 2, that is above 51st and 52nd batches, and to give consequential benefits to the petitioner;

or

(iv) a writ, order or direction in the nature of certiorari or an appropriate writ of like nature quashing the impugned Draft Seniority List of First Officers, dated 14 July 2004 and for directing the respondents to restore for all purposes with consequential benefits the seniority of the petitioner as it existed on 1st August 2002 after calling the original records, and against transferring or promoting in the meantime any batch of Trainee Pilot lineage or anyone else appointed to the regular cadre of Pilots of Indian Airlines on or after 1st August 2002;

or

(v) a writ, order or direction in the nature of certiorari or an appropriate writ of like nature quashing the impugned Draft Seniority List of First Officers, dated 14 July 2004 and for declaring that the impugned action of the respondents in fixing the seniority of the petitioner in an illegal, arbitrary, irrational and unjustified manner is void ab- initio and to redraw the correct seniority as per the orders of this Hon'ble Court and to give consequential benefits to the petitioner;

or

(v) a writ, order or direction in the nature of mandamus directing the respondents to compensate the petitioner by way of monetary benefit as may be fixed by the Hon'ble Court for gross violation of his fundamental rights, afflicting serious mental tension, agony and humiliation to the petitioner in all walks of his official career by malafide fixation of his seniority and for denying his transfer to Delhi despite it being on extreme compassionate grounds;



(vi) any other writ, order or direction which this Hon'ble Court deems just, fit and proper in the circumstances of the case;

(viii) ALLOW THIS PETITION WITH COSTS."

3. Learned counsel for the Respondent No.2 raises an objection to the maintainability of the writ petition on the ground that as a result of the disinvestment process initiated by the Government of India, Air India Limited ('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 this stage that the present writ petition was filed, however, in light of the position that obtains today, where 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.), 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.

4. Reliance is placed on the judgment of the Supreme Court in ***R.S. Madireddy and Another v. Union of India and Others***, 2024 SCC OnLine SC 965, wherein the Supreme Court has held as follows:

"32. There is no dispute that the Government of India having transferred its 100% share to the company Talace India Pvt Ltd., ceased to have any administrative control or deep pervasive control over the private entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company. Thus, unquestionably, the respondent No. 3(AIL) after its disinvestment ceased to be a State or its instrumentality within the



meaning of Article 12 of the Constitution of India.

33. *Once the respondent No. 3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India.*

34. *A plain reading of Article 226 of the Constitution of India would make it clear that the High Court has the power to issue the directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition to any person or authority, including in appropriate cases, any Government within its territorial jurisdiction for the enforcement of rights conferred by Part-III of the Constitution of India and for any other purpose.*

35. *This Court has interpreted the term ‘authority’ used in Article 226 in the case of Andi Mukta (supra), wherein it was held as follows:*

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The ‘public authority’ for them means everybody which is created by statute—and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all ‘public authorities’. But there is no such limitation for our High Courts to issue the writ ‘in the nature of mandamus’. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to ‘any person or authority’. It can be issued ‘for the enforcement of any of the fundamental rights and for any other purpose’.

20. The term ‘authority’ used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.”



(emphasis supplied)

36. Further, in the case of *Federal Bank Ltd. v. Sagar Thomas*, this Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court which are as follows:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v.) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

37. The respondent No. 3(AIL), the erstwhile Government run airline having been taken over by the private company Talace India Pvt. Ltd., unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and simple, and thus no writ petition is maintainable against respondent No. 3(AIL). The question No. 1 is decided in the above manner.

38. The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No. 3(AIL)- employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No. 3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No. 2 is decided against the appellants.

39. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period. Hence, the question No. 3 is also decided against the appellants.



40. Resultantly, the view taken by the Division Bench of the Bombay High Court in denying equitable relief to the appellants herein and relegating them to approach the appropriate forum for ventilating their grievances is the only just and permissible view.

41. We may also note that the appellants raised grievances by way of filing the captioned writ petitions between 2011 and 2013 regarding various service-related issues which cropped up between the appellants and the erstwhile employer between 2007 and 2010. Therefore, it is clear that the writ petitions came to be instituted with substantial delay from the time when the cause of action had accrued to the appellants.

42. It may further be noted that the Division Bench of Bombay High Court, only denied equitable relief under Article 226 of the Constitution of India to the appellants but at the same time, rights of the appellants to claim relief in law before the appropriate forum have been protected.

43. We may further observe that in case the appellants choose to approach the appropriate forum for ventilating their grievances as per law in light of the observations made by the Division Bench of the Bombay High Court, Section 14 of the Limitation Act, 1963 shall come to the rescue insofar as the issue of limitation is concerned.

44. In wake of the discussion made hereinabove, we do not find any reason to take a different view from the one taken by the Division Bench of the Bombay High Court in sustaining the preliminary objection qua maintainability of the writ petitions preferred by the appellants and rejecting the same as being not maintainable.”

5. In view of the aforesaid judgment of the Supreme Court, the writ petition cannot be entertained and is accordingly dismissed as not maintainable. Liberty is granted to the Petitioner to take recourse to remedies available in law before the 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 under Section 14 of the Limitation Act, 1963, should the Petitioner seek any remedy by instituting fresh proceedings in a forum where question of limitation will be relevant and may arise.



6. Pending applications also stand disposed of.

AUGUST 06, 2024/kks

JYOTI SINGH, J