

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 12770 of 2016

CAN 2 of 2023

**Santosh Sen
Versus
Union of India & Ors.**

For the petitioner. : Ms. Malini Chakraborty
Ms. Shampa De

For the respondents/State : Mr. R.N. Majumder
Mr. S.M. Obaidullah

Heard & Judgment on : 28th February, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The writ petition has been filed claiming for the following relief:
 - a) *A writ in the nature of Mandamus do issue directing the respondents to make payment of the bona fide dues amounting to Rs. 22,000/- (Twenty Two Thousand Only).*
 - b) *A writ in the nature of Certiorari be issued directing the respondents to pay a compensation to the applicant to the tune of Rs. Seventy lacks only for the undue harassment and violation of statutory rights.*
 - c) *Litigation cost amounting to Rs. 60,000/- (Sixty Thousand only)*

d) Any other appropriate writ or writs, direction or directions and/or order or orders;

e) Rule Nisi in terms of prayers (a) to (d) above.

3. The petitioner being an ex employee of Air India Ltd. He joined on 27th January, 1984 and on retirement on January 31, 2016. The petitioner had been aggrieved for non-payment of dues with regard to the deduction on account of being late or absent on several dates. The petitioner was absent from 7th December, 1992 to December 9, 1992 being prevented to attend office for prevailing curfew and was deprived of three days leave salary.
4. The learned advocate representing the petitioner submitted that the petitioner had been deprived of his legitimate claim being an employee of AIR India Limited on retirement.
5. The learned advocate representing the respondents/Air India Limited submitted the respondents/AIR India Limited to have lost its identity on being privatized and in view of the judgments of the Bombay High Court and that of the Hon'ble Supreme Court. The respondents/AIR India Limited is no longer liable to disburse the claim of the petitioner who otherwise could have availed for proper relief sought by him before the appropriate authority.

In R.S. Madireddy & Anr. Etc. Vs. the Union of India & Ors¹. which was delivered on 24th August, 2022. The Hon'ble Bombay High Court as observed in Paragraph 73 as follows:

"It is a fact that this Court could not decide these writ petitions during the long years of its pendency, which is bound to have shattered the hopes and aspirations of retired employees like the petitioners. However, at the same time, such inability to decide these writ petitions prior to privatization of AIL was due to reasons absolutely beyond the control of this Court, as admitted by Mr. Singhvi even. Notwithstanding the same, this Court, through its Chief Justice, regrets its inability to so decide prior to privatization of AIL".

In Mr. R.S. Madireddy & Anr. etc vs. Union of India & Ors². the Hon'ble Supreme Court of India as observed in Paragraph 37 to 46 as follows:

"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 extraordinary 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

¹ WP No. 1770 of 2011

² Special Leave Petition (c) 23441-23444 of 2022

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.

45. With the above observations, the appeals are dismissed. No order as to costs.

46. Pending application(s), if any, shall stand disposed of".

6. In view of the decision of the Division Bench of the Hon'ble Bombay High Court which had been affirmed by the Hon'ble Supreme Court the remedy in the writ petition could not be granted to the petitioner by the respondents/Air India which had lost its identity and credibility upon being privatized.
7. Accordingly, the instant writ petition and connected application are disposed of.
8. Parties to act on a server copy of this order duly downloaded from the official website of this Court.

c.m A.R..

J.)

(Ananya Bandyopadhyay,