

Capt. Rajeevan Thotten, vs Air India Express Limited,

Capt. Rajeevan Thotten, vs Air India Express Limited,

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Court : Kerala

Decided On : Oct-07-2022

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/1350/2022

Appellant : Capt. Rajeevan Thotten,

Respondent : Air India Express Limited,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
FRIDAY, THE 7TH DAY OF OCTOBER 2022 / 15TH ASWINA, 1944
WP(C) NO. 1350 OF 2022 PETITIONER: CAPT. RAJEEVAN THOTTEN,
AGED 61 YEARS (STAFF NO. 78358, AIR INDIA EXPRESS LIMITED),
S/O. LATE SRI K .V. RAMAN, RESIDING AT FLAT 9DI, SREEDHANYA
LAKEWOODS APARTMENTS, THIRUVANANTHAPURAM 695 583. BY
ADVS. SANTHOSH MATHEW ARUN THOMAS KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL ABI BENNY AREECKAL LEAH RACHEL
NINAN MATHEW NEVIN THOMAS KARTHIK RAJAGOPAL
RESPONDENTS: 1 AIR INDIA EXPRESS LIMITED, CORPORATE
HEADQUARTERED, GANDHI SQUARE, DH ROAD, KOCHI KERALA

682 016, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER. 2 THE CHIEF OF HUMAN RESOURCES, AIR INDIA EXPRESS LIMITED, CORPORATE HEADQUARTERS, GANDHI SQUARE, DH ROAD, KOCHI, KERALA 682 016. 3 THE CHIEF OF CORPORATION, AIR INDIA EXPRESS LIMITED, CORPORATE HEADQUARTERS, GANDHI SQUARE, DH ROAD, KOCHI, KERALA 682 016. BY ADVS. M.GOPIKRISHNAN NAMBIAR(G-200) K.JOHN MATHAI JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 3.08.2022, ALONG WITH WP(C).1681/2022,

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
FRIDAY, THE 7TH DAY OF OCTOBER 2022 / 15TH ASWINA, 1944
WP(C) NO. 1681 OF 2022 PETITIONER: CAPT. MUNISH PATHAK
AGED 60 YEARS (STAFF NO.78420, AIR INDIA EXPRESS LIMITED),
S/O. SHRI RAJ KUMAR PATHAK, RESIDING AT FLAT NO.1601, C-2,
PURI DIPLOMATIC GREEN, SECTOR 110- A, GURUGRAM,
HARYANA-122 017

BY ADVS. SANTHOSH MATHEW ARUN THOMAS KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL ABI BENNY AREECKAL LEAH RACHEL
NINAN MATHEW NEVIN THOMAS KARTHIK RAJAGOPAL KURIAN
ANTONY MATHEW RESPONDENTS: 1 AIR INDIA EXPRESS LIMITED
CORPORATE HEADQUARTERS, GANDHI SQUARE, DH ROAD,
KOCHI, KERALA-682 016, REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER 2 THE CHIEF OF HUMAN RESOURCES, AIR INDIA
EXPRESS LIMITED, CORPORATE HEADQUARTERS, GANDHI
SQUARE, DH ROAD, KOCHI, KERALA-682 016 3 THE CHIEF OF
OPERATIONS, AIR INDIA EXPRESS LIMITED, CORPORATE
HEADQUARTERS, GANDHI SQUARE, DH ROAD, KOCHI, KERALA-
682 016 BY ADVS. M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI
JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM

RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.08.2022, ALONG WITH WP(C).1350/2022 AND CONNECTED CASES, THE COURT ON 07.10.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
FRIDAY, THE 7TH DAY OF OCTOBER 2022 / 15TH ASWINA, 1944
WP(C) NO. 1722 OF 2022 PETITIONER: CAPT. SANJAY SHARAN
AGED 61 YEARS (STAFF NO. 78429, AIR INDIA EXPRESS LIMITED)
AGED 61 YEARS, S/O. SHRI ISHWAR SHARAN GUPTA, RESIDING
AT 517 (GF) SECTOR 23, GURGAON, HARYANA 122 017 BY ADVS.
SANTHOSH MATHEW ARUN THOMAS KARTHIKA MARIA ANIL
SEBASTIAN PULICKEL ABI BENNY AREECKAL LEAH RACHEL
NINAN MATHEW NEVIN THOMAS KARTHIK RAJAGOPAL KURIAN
ANTONY MATHEW RESPONDENTS: 1 AIR INDIA EXPRESS LIMITED
CORPORATE HEADQUARTERS, GANDHI SQUARE, DH ROAD,
KOCHI, KERALA 682 016 REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER 2 THE CHIEF OF HUMAN RESOURCES, AIR INDIA
EXPRESS LIMITED, CORPORATE HEADQUARTERS, GANDHI
SQUARE, DH ROAD, KOCHI, KERALA 682 016 3 THE CHIEF OF
OPERATIONS AIR INDIA EXPRESS LIMITED, CORPORATE
HEADQUARTERS, GANDHI SQUARE, DH ROAD, KOCHI, KERALA
682 016. BY ADVS. M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI
JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM
RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.08.2022, ALONG WITH WP(C).1350/2022 AND
CONNECTED CASES, THE COURT ON 07.10.2022 DELIVERED THE
FOLLOWING:

ANU SIVARAMAN, J.

JUDGMENT

1. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

2. These writ petitions are filed challenging the notices issued

to the petitioners intimating the discontinuance of their contractual engagements as Trainee Captain/Captain (Flying Officer) under the 1st respondent. It is submitted that the petitioners, who are highly experienced pilots, had been appointed on contract basis in 2015, 2016 and 2017 and their contracts were being renewed from time to time. It is submitted that the terms of service were also appropriately revised, as evident from Exhibits P3 and P4. It is submitted that the contract of employment was valid and subsisting. While so, on 24th August, 2020, the petitioners were served with notices stating that their contract appointments stood terminated, in view of the prevailing civil aviation scenario. They were paid one month's salary as notice pay in lieu of the one month's notice. It is contended that though the petitioners had approached the respondents with requests for retention, the said requests were rejected. However, it is contended that there was an undertaking held out to the petitioners that the 1st respondent would hire them back before opening the positions held by them to other applicants as soon as there are reasonable signs of demand revival. It is contended that contrary to the undertaking held out, employment notices were issued for the very same positions, however, fixing the age limit as 55 years as on 01.01.2022 disabling the petitioners to apply. The petitioners again approached the respondents with representations, but no action was taken thereon. The petitioners, therefore, approached this Court seeking re-engagement on a contract basis and challenging the orders of termination. Alternative prayers for compensation for the arbitrary and illegal termination and consequent financial and mental distress are also sought for.

3. Detailed counter affidavits have been placed on record by the

respondents. It is contended therein that the writ petitions are not maintainable, since the Air India Express Ltd. has been subjected to privatization and the Government of India has sold 50% of its stake in the company to Talace Private Limited, which is a wholly owned subsidiary of the Tata Group's holding company Tata Son's Pvt.Ltd. It is submitted that the writs and directions, as sought for, cannot, therefore, be issued against the respondents which is no longer an instrumentality of the State under the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is contended that the petitioners, who had been engaged on contract had received the notice pay as well as all the amounts which were liable to them on termination of the contract and that the writ petition filed after receiving all dues is completely unjustifiable. It is contended that the reply given to the petitioners' representations did not hold out any assurance that they would be positively re-engaged. It is contended that the petitioners are long serving pilots, who have retired from service and their contractual appointments were post retiral engagements. It is contended that they cannot be equated with fresh hands, who are required in the industry and that the contractual appointees, governed by the terms of the contract, have no right to any other claim except for notice pay. It is further contended that those of the petitioners who had attended the interview pursuant to the fresh selection had been considered for re-engagement and that the petitioner in W.P.(C).No.1722/2022 had been so re-engaged pursuant to a walk in interview.

4. A reply affidavit is also on record pointing out that the delay

in filing the writ petitions was on account of the restrictions imposed on account of the Covid pandemic. It is also contended that as on the date of filing of the writ petitions, the respondent answered the definition of State under Article 12 of the Constitution of India and since the order passed by the respondent which was amenable to writ jurisdiction at the relevant time was bad in law, this Court is fully empowered to strike it down, as being unsustainable. It is further contended that the very contention that the respondents suffered financial set back due to Covid is absolutely incorrect, since the documents produced by the petitioner would show that the profits of Air India Express Ltd. due to Rs.5219 crore in the financial year 2020 against Rs.4172 crores in the financial year,2019.

5. The learned counsel for the petitioner places reliance on the

decisions of the Apex Court in *Rajahmundry Electric Supply Corporation Ltd v. N. Nageshwara Rao and others* [AIR 1956 SC 213] to contend that the validity of the writ petition must be judged on the facts as they were at the time of its presentation and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. The decision of the Calcutta High Court in *Ashok Kumar Gupta and others v. Union of India and others* [AIR 2007 Cal 195] is also relied on. The decisions of the High Court of Delhi in *Air India Limited v. Kanwardeep Singh Bamrah and others* [2021 SCC online Del 5402] *Arjun Ahluwalia v. Air India Limited* [2021 SCC online Del 3035] are also relied on. The decision of the Apex Court in *Air India Express Limited and others v. Captain Gurudarshan Kaur Sandhu* [(2019) 17 SCC 129] is also relied on.

6. The counsel for the respondents on the other hand relied on

decisions of this Court in *Anulal O v. AI Airport Services Limited* dated 7.02.2022 in W.P.(C).No.21624 of 2020 wherein this Court held that the remedy of a person alleging violation of terms of a contract is for damages as contemplated under Section 40 of the Specific Relief Act, 1963 and not by filing a writ petition under Article 226 of the Constitution of India. The decisions of the Apex Court in *Jatya Pal Singh and others v. Union of India and others* [(2013) 6 SCC 452], *Federal Bank Ltd.v.Sagar Thomas and others* [(2003) 10 SCC 733] and of the High Court of Karnataka in W.P.(C).No. 21448/2021 are also relied on. It is contended that since it is the admitted position that the respondent is no longer a public sector undertaking amenable to writ jurisdiction, the writs and directions, as sought for, cannot now be issued against the respondent.

7. Having considered the contentions advanced, I notice that it

is the agreed position that the respondent is no longer a public sector undertaking, since 50% of the shares held by Union of India in the said undertaking have been divested in favour of Talace Private Limited. Therefore, the issuance of a public law remedy in the nature of a writ cannot be sought for at this point in time. The

only question which remains would be as to the legality of the order of termination passed by the respondent at a time when it was a public sector undertaking. The petitioners were, admittedly, contract employees, who had been re-engaged after their retirement. The termination of such a contractual appointment would, therefore, essentially have to be in terms of the contract between the parties. If that be so, the termination of a contract simpliciter by following the conditions provided in the contract would not, according to me, give rise to a cause of action to the petitioners to challenge the order of termination on the ground that it is arbitrary or illegal. It is contended by the respondents that those of the petitioners who had attended walk in interviews and who had been found suitable had been re-engaged by the 1st respondent.

8. The Apex Court in several decisions, including the decision

reported in Rajasthan State Roadways Corporation v. Paramjeet Singh [2019(6) SCC 250] has held that termination of a contractual appointment, even within the term of contract, would not be vitiated if the terms of the contract permitted such prior termination. In the above view of the matter, I am unable to accept the contentions raised by the petitioners that the termination of their contractual appointments before the term of the contract expires is so arbitrary and illegal as to warrant interference under Article 226 of the Constitution of India. The larger legal questions raised and argued, therefore, do not require to be considered in this writ petition. The writ petitions, therefore, fails and the same are accordingly dismissed, leaving open the contention of the petitioners to be agitated by other means, if any, available to them. sd/- Anu Sivaraman, Judge sj

APPENDIX

1350/22 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE OFFER LETTER DATED 29.04.2015 ISSUED TO THE PETITIONER BY THE IST RESPONDENT. Exhibit P2 TRUE COPY OF THE LETTER DATED 14.06.2018 ISSUED BY THE IST RESPONDENT TO THE PETITIONER. Exhibit P3 TRUE COPY OF THE LETTER DATED 24.08.2020 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE IST RESPONDENT. Exhibit P4 TRUE COPY OF THE EMAIL DATED 10.09.2020 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT ON BEHALF OF THE IST RESPONDENT. Exhibit P5 TRUE COPY OF THE NOTICE DATED 01.02.2022 ISSUED BY THE IST

RESPONDENT. Exhibit P6 TRUE COPY OF THE ARTICLE TITLED 'AIR

INDIA EXPRESS POSTS HIGHEST -EVER NET PROFIT OF RS. 413 CRORE'
PUBLISHED IN THE HINDU BUSINESS LINE ON 28.10.2020.

Exhibit P7 TRUE COPY OF THE REPRESENTATION SUBMITTED BY EMAIL BY
THE PETITIONER TO THE 1ST RESPONDENT ON 29.08.2020. Exhibit P8 TRUE
COPY OF THE LEGAL NOTICE DATED 20.1.2022 ISSUED ON BEHALF OF
RESPONDENTS 1 TO 3 RESPONDENTS EXHIBITS Exhibit R1(A) TRUE COPY
OF THE COMMUNICATION DATED COMPANY TO THE PETITIONER Exhibit
R1(B) TRUE COPY OF THE SERVICE CERTIFICATE DATED 29/12/2020
ISSUED BY THE 1ST RESPONDENT COMPANY TO THE PETITIONER Exhibit
R1(C) TRUE COPY OF THE EMAIL DATED 29/12/2020 SENT BY THE OFFICER
- HR OF 1ST RESPONDENT COMPANY TO THE PETITIONER APPENDIX OF
WP(C) 1681/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE
APPOINTMENT LETTER DATED 01.11.2017 ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER Exhibit P2 TRUE COPY OF THE
COMMUNICATION DATED 04.11.2017 ISSUED BY THE 1ST RESPONDENT TO
THE PETITIONER Exhibit P3 TRUE COPY OF THE LETTER DATED 04.07.2019
ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER Exhibit P4 TRUE
COPY OF THE LETTER DATED 24.08.2020 ISSUED TO THE PETITIONER BY
THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P5
TRUE COPY OF THE EMAIL DATED 10.09.2020 ISSUED TO THE PETITIONER
BY THE 3RD RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit
P6 TRUE COPY OF THE NOTICE DATED 01.01.2022 ISSUED BY THE 1ST
RESPONDENT Exhibit P7 TRUE COPY OF THE ARTICLE TITLED 'AIR

INDIA EXPRESS POSTS HIGHEST -EVER NET PROFIT OF RS 413 CRORE'
PUBLISHED IN THE HINDU BUSINESS LINE ON 28.10.2020

Exhibit P8 TRUE COPY OF THE REPRESENTATION SUBMITTED BY EMAIL
OBY THE PETITIONER TO THE 1ST RESPONDENT 11.10.2021 RESPONDENT
EXHIBITS Exhibit R1A TRUE COPY OF THE SERVICE CERTIFICATE DATED
22.10.2020 ISSUED BY THE 1ST RESPONDENT COMPANY TO THE
PETITIONER. Exhibit R1B TRUE COPY OF THE EMAIL DATED 22.10.020 SENT

BY THE OFFICER-HR OF 1ST RESPONDENT COMPANY TO THE PETITIONER. PETITIONER EXHIBITS Exhibit P9 TRUE COPY OF THE LEGAL NOTICE DATED 20.1.2022 ISSUED ON BEHALF OF THE PETITIONER TO THE 1ST RESPONDENT. APPENDIX OF WP(C) 1722/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE OFFER LETTER DATED 08- 11-2016 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P2 TRUE COPY OF THE APPOINTMENT LETTER DATED 08-02-2017 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P3 TRUE COPY OF THE REVISED TERMS AND

CONDITIONS DATED 06-03-2017 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P4 TRUE COPY OF THE REVISED TERMS AND CONDITIONS DATED 29-08-2019 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT

Exhibit P5 TRUE COPY OF THE LETTER DATED 24-08-2020 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P5A TRUE COPY OF THE EMAIL DATED 29-08-2020 ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT Exhibit P6 TRUE COPY OF THE EMAIL DATED 10-09-2020 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT ON BEHALF OF THE 1ST RESPONDENT Exhibit P7 TRUE COPY THE NOTICE DATED 01-01-2022 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE ARTICLE TITLE AIR INDIA

EXPRESS POSTS HIGHEST-EVER NET PROFIT OF RS. 413 CRORE PUBLISHED IN THE HINDU BUSINESS LINE ON 28-10-2020

Exhibit P9 TRUE COPY OF THE REPRESENTATION SUBMITTED BY EMAIL BY THE PETITIONER TO THE 1ST RESPONDENT ON 09-10-2021 RESPONDENT EXHIBITS Exhibit R1(A) TRUE COPY OF THE COMMUNICATION DATED COMPANY TO THE PETITIONER Exhibit R1(B) TRUE COPY OF THE SERVICE CERTIFICATE DATED 22/10/2020 ISSUED BY THE 1ST RESPONDENT COMPANY TO THE PETITIONER PETITIONER EXHIBITS Exhibit R1(C) TRUE

COPY OF THE EMAIL DATED 22/10/2020 SENT BY THE OFFICER - HR OF
1ST RESPONDENT COMPANY TO THE PETITIONER RESPONDENT
EXHIBITS Exhibit R1(D) TRUE COPY OF THE OFFER LETTER DATED
COMPANY TO THE PETITIONER PETITIONER EXHIBITS Exhibit P10 TRUE
COPY OF THE EMAIL TRAIL WHICH SHOWS

THE EMAILS DATED 21/12/2020, 28/12/2020 AND 30/12/2020 ISSUED BY THE
PETITIONER TO THE OFFICIALS OF THE 1ST RESPONDENT Exhibit P11
TRUE COPY OF THE LEGAL NOTICE DATED PETITIONER TO THE 1ST
RESPONDENT TRUE COPY PS TO JUDGE

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