(2022) 10 KL CK 0018

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 1350, 1681, 1722 Of 2022

Capt. Rajeevan Thotten APPELLANT

Vs

Air India Express Limited, Corporate Headquartered RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 40

Citation : (2022) 10 KL CK 0018

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Santhosh Mathew, Arun Thomas, Karthika Maria, Anil Sebastian Pulickel, Abi Benny Areeckal, Leah Rachel Ninan, Mathew Nevin Thomas, Karthik Rajagopal, Kurian Antony Mathew, M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan

Final Decision : Dismissed

Judgement

Anu Sivaraman, J

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-engagment 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-engagmenet 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 simplicitor 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.

