

(2005) 03 BOM CK 0168

In the Bombay High Court

Case No : Writ Petition No. 3108 of 2004

Capt. Vishal Capoor and Others

APPELLANT

Vs

Air India Limited and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 16, 21, 226, 227
Industrial Disputes Act, 1947 — Section 18(3), 19, 19(2), 19(6)

Citation : (2005) 3 BomCR 566 : (2005) 106 FLR 679 : (2005) 3 MhLj 154

Hon'ble Judges : S.C. Dharmadhikari, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by K.P. Anilkumar, P.M. Palshikar, for Indian Pilots Guild, for the Appellant; Shekhar Naphade, Senior Advocate, S.K. Talsania and J.S. Saluja, instructed by Kini and Co. for respondent Nos. 1 to 3, P.K. Dhakephalkar and N.P. Shimpi for respondent Nos. 4 to 7, C.U. Singh and N.P. Shimpi, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—By this petition under Article 226 of the Constitution of India, petitioners who are pilots challenge an order passed on 30th September 2004 by the first respondent and further seek a writ of mandamus or any other appropriate writ, order or direction directing respondent Nos.1 to 3 not to enforce the order dated 1st October 2004 issued by General Manager-Operations (Administration) of the first respondent whereunder Command Training has been offered to respondent Nos. 4 to 9. In substance, petitioners submit that they ought to have been sent for this Command Training as decided earlier by respondent Nos. 1 to 3 and the decision in that behalf is withdrawn illegally and arbitrarily in total disregard to the mandate of Articles 14 and 16 of the Constitution of India.

2. When this matter was placed before us, our attention was invited by the learned Counsel appearing for both sides to an order dated 29th October 2004

passed by a Division Bench of this Court (Dalveer Bhandari, C.J. and Dr. Chandrachud, J) directing that the petition be listed for final hearing. Mr. Cama, learned Senior Counsel appearing for petitioners as well as Shri Naphade, learned Senior Counsel appearing for respondent Nos. 1 to 3 urged that the matter be disposed of finally at admission stage considering the controversy involved. The Counsel for respondent Nos. 4 to 9 have no objection to the same. We have acceded to this request made by learned Counsel appearing for parties. Since we have heard the matter at length, we proceed to dispose of the same finally with their consent. Hence, Rule. Returnable forthwith. Learned Counsel appearing for respondents waive service. They have already filed their replies and rejoinders.

3. Petitioners are employed as First Officers with the first respondent under separate contracts of employment. First respondent, Air India Ltd., is a company owned by Government of India. Second respondent is its Chairman and Managing Director. Respondent No.3 is the General Manager - Operations (Administration) of first respondent.

4. Respondent Nos. 4 to 9 are co-Pilots employed by first respondent and junior to the petitioners as per the line seniority maintained by Air India.

5. Services of petitioners are governed by contract of employment, various settlements entered into between representatives of pilots and the management, awards as well as orders passed by Industrial Court and other authorities. It is contended that the next higher post available to them is that of Commander as per the regulations and settlement etc. The promotion to the post of Commander is automatic, upon the First Officer completing eligibility requirements and seniority criteria. The process of promotion starts with offering the First Officer for Command training on the basis of seniority list of co-Pilots. It is contended that seniority of co-Pilots is fixed on the basis of date of induction in service. It appears that a batch of 14 Pilots including respondents Nos. 4 to 9 joined first respondent on or about 25th November 1996. This was in pursuance of a recruitment advertisement issued by first respondent for Pilots possessing Airline Transport Permission (ALTP) with 1500 hours of flying experience out of which 500 hours should be as Pilot in Command on Multi-Engineering Aircrafts. Incidentally all 14 pilots were ex-Air force/ex-Navy personnel. It appears that at the time of their appointment this group of pilots was informed that their seniority as co-Pilots will be determined and intimated to them separately. On or about 21st July 1989, a settlement was signed between first respondent and the Recognised union representing Pilots viz., Indian Pilots Guild. Schedule II Para 3(d) of the said settlement deals with seniority of co-Pilots. It reads as under:-

"The pilot joining the Corporation with ALTP licence will always have hire -line seniority over a co-pilot who is already in the employment of the Corporation without ALTP."

6. It appears that the issue regarding seniority of ALTP licence holders v.

Commercial Pilot Licence Holders (CPL) was referred to a Committee by first respondent in the year 1996. The said committee by a report dated 2nd April 1996 recommended criteria that ALTP licence holders should be treated as senior to CPL holders.

7. The Indian Pilots Guild by a notice in September 1990 terminated the settlement dated 21st July 1989. No fresh settlement was arrived at until about January 1998. At the time of appointment of 14 pilots, the settlement of 1989, though terminated unilaterally by the Indian Pilots Guild, was not substituted by another settlement. However, on 3rd January 1998 a new settlement was arrived at between first respondent and Indian Pilots Guild. Clause 7 of the said settlement reads thus:-

"7. (a) The Issue of seniority of Trainee-Pilots/ Co-Pilots was discussed with reference to the following letters.

(b) 4-46/2415 dated July 12, 1995. 4-46/545 dated September 28, 1995.

(c) Based on these discussions the seniority of Trainee Pilots/ Co-Pilots has been determined as an one time exercise as indicated in the Seniority List contained in Annexure-D and this will not be cited as a precedent in future.

(d) Clause -3D of Schedule 2 of Memorandum of Settlement dated July 21, 1989 stands deleted. Henceforth line seniority of Co-pilots joining the company will be based on the date of entry of the Pilot in the grade of a First Officer.

(e) The Management will lay down guidelines in this regard"

8. Since emphasis has been placed on note below the said clause, the note divided into two clauses viz., A and B, is also reproduced below for ready reference.

(A) The inter-se-seniority within the batch of the co-pilots from S.No.83 to 92 would be subject to the outcome of the decision of the Hon'ble Court in W.P.No.1745 of 1997.

(B) The co-pilots who would fail to upgrade their license to ALTP/SCPL within span of five years from the date of entry into the grade of co-pilot, would keep on losing their seniority in relation to the next co-pilot who has obtained ALTP/ SCPL within five years of date of entry. The grade and their seniority would be fixed only after they obtain ALTP/SCPL. However, the co-pilots who were issued the letters dated 22.02.1995 in this regard, the period of five years shall be counted from the date of issuance of such letters."

9. In the light of the aforesaid settlement, a seniority list was prepared which is annexed to the note. In this seniority list 14 pilots from Airforce, Navy recruited by first respondent as above have been shown as juniors to some of the co-Pilots including the present petitioners.

10. The 14 pilots include respondent Nos. 4 to 9 herein. These pilots instituted

W.P. No.2930 of 1999 challenging the 1998 settlement to the extent it determined the seniority as between them and co-pilots like the present petitioners. This Court by a judgement and order dated 14th November 2000 dismissed this writ petition. Thereafter, they filed complaints bearing No.N.T.B.01/2001 and N.B.B. 5/2002 arising out of a reference N.T.B. No.1 of 1999 before National Tribunal at Mumbai. However, they withdrew the complaints as well.

11. It appears that 14 pilots then made a detailed representation to the Director (HRD) of first respondent dated 15th October 2003 enlisting their grievances with regard to seniority. This representation was endorsed by the Director to the General Manager (HRD). He was called upon to forward his recommendations on the representations. It appears that the General Manager (HRD) made a detailed report on 20th April 2004. In his report the following recommendations were made:-

(i) The seniority of ALTP Batch of November 1996 be fixed as per the provisions of MOS of 1989 - Schedule 2 Clause 3D, and also recommended by the Seniority Committee in their Report dated 2nd April 1996.

(ii) During the intervening period, the seniority of any co-pilot put on command shall be re-fixed as per (i) above;

(iii) The seniority of ALTP vis-a-vis CPL Holders should be fixed as per policy and criteria recommended by the Committee in 1996. This criteria should also be followed for appointment in that ALTP and CPL selection should be made separately as it is the industry practice. Putting ALTP below the CPL holder would delay the command conversion and affect flight operations. The CPL holders should be appointed/confirmed in Co-pilot grade only after they obtain ALTP. It is also recommended that CPL holders should be appointed in Grade 32 and ALTP in Grade 34 to clearly demarcate their induction position instead of grant of additional increment in the same grade."

12. The substance of this report is that seniority of 14 pilots who are ALTP licence holders be fixed as per the provisions of 1989 settlement. There were further representations by 14 pilots to the second respondent as well. He constituted a committee vide office order dated 11th May 2004 to examine all aspects. The committee so constituted forwarded its report to the second respondent on 4th June 2004. The committee took into consideration several aspects and was of the opinion that ALTP is higher qualification than CPL. Therefore, ALTP licence holders ought to be placed higher in the seniority list. All these events are subsequent to the proceedings initiated by the concerned 14 pilots including respondent Nos. 4 to 9.

13. Despite such recommendations, first respondent issued an order on 14th September 2004 insofar as petitioner Nos. 1 to 4 intimating them that their Command Training on A-320 Aircraft will commence from 4th October 2004. They were directed to report to Deputy General Manager - Technical for further

instructions. Consequent upon this intimation, petitioner Nos. 1 to 4 were transferred to training division. Similar orders were also issued pertaining to petitioner Nos. 5 and 6. While making preparations for training, suddenly, petitioners were informed by an order dated 30th September 2004 that earlier directions sending them for command training with effect from 4th October 2004 stand cancelled. Petitioners addressed a letter dated 30th September 2004 to the General Manager Operations (Administration) in which they made a grievance that as per the existing seniority, petitioners are senior most eligible candidates and were rightly sent for training. They have joined in the year 1994-95. Therefore, withdrawing the direction to send them for training all of a sudden and without prior intimation affects them adversely and, therefore, their grievance be looked into. The least that they expected from the authorities is that reasons would be communicated to them for the sudden withdrawal. As there was no reply to this letter, an Advocate's notice was addressed on 1st October 2004 to which also there is no response. First respondent issued an order on 1st October 2004 and on this occasion, decided to send respondent Nos. 4 to 9 for the command training with effect from 7th October 2004.

14. Petitioners being aggrieved by withdrawal of the letter dated 30th September 2004 and the decision of the first respondent to send respondent Nos. 4 to 9 for training with effect from 7th October 2004 have instituted this petition on 5th October 2004.

15. A preliminary objection has been raised to the maintainability of this petition by Mr. Naphade, learned Senior Counsel appearing for respondent Nos. 1 to 3. He is supported by Mr. Dhakephalkar and Mr. Singh. The preliminary objection is two fold. It is contended that the action of the first respondent is alleged non-implementation of the settlement and/or failing to adhere thereto. Such a grievance is expected to be redressed in appropriate proceedings under Industrial Disputes Act, 1947. It is contended that without exhausting that remedy, petitioners cannot approach this Court under Article 226 of the Constitution of India. Secondly, it is contended that in the facts and circumstances of the present case, there is a dispute about interpretation and implementation of the settlement. Petitioners place their interpretation of the relevant clause of the settlement whereas respondent Nos. 1 to 3 and 4 to 9 have interpreted the settlement in a particular manner. As to whether the interpretation of petitioners is correct, proper and justified or that respondents were right in their approach is something which should not be gone into in a writ petition. For the disputes to be resolved, it is essential for petitioners, not only to allege but prove that settlement was being operated and implemented all throughout in a particular manner by the concerned respondents and their understanding and interpretation is identical to that of the petitioners herein. For this adjudication, a machinery having been provided under the relevant statute, the petition should not be entertained.

16. Mr. Dhakephalkar and Mr. Singh joined Mr. Naphade and additionally

contended that case of petitioners as pleaded in para 15 of this petition is alleged arbitrariness, discrimination and violation of the settled principles of law, settlement, contract of employment, customs and contracts pertaining to command training on the basis of line seniority. The disputes arise out of a service contract and contentions urged on behalf of petitioners have been vehemently denied. What is alleged by the petitioners is a factual dispute which cannot be gone into in a writ petition under Article 226 of the Constitution of India.

17. In support of the aforesaid contentions, reliance is placed by Mr. Naphade on the decisions of the Supreme Court in the case of Supreme Court Bar Association Vs. Union of India and Another, and in the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and an order passed by a Division Bench of this Court in W.P.No.2365 of 1992. Some other decisions have been relied upon by Mr. Dhakephalkar and Singh to urge that the proper remedy is to raise an industrial dispute and such remedy is not only alternate but equally efficacious. Consequently, the petition is liable to be dismissed.

18. These submissions have been countered by Mr. Cama. Apart from the fact that he contends that there are no factual disputes at all, additionally, it is pointed out that the seniority list appended to the settlement has been operative uptill the names of the petitioners and it is only when the turn of the petitioners came all of a sudden the management turns around and withdraws the earlier order. He submits that even if the allegation is of breach of settlement, atleast, in this case, it does not require resolution of any factual disputes. Therefore, this is not a case where a writ petition is not maintainable. He relies upon a decision of the Supreme Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .

19. After considering rival submissions on the preliminary point, we are of the view that there is no substance in the contention of the respondents. Applying the ratio of the Supreme Court in the case of Life Insurance Corporation of India v. D.J. Bahadur, it is absolutely clear that a settlement lives so long as new lawful contract is brought into being. In this context, it would be useful to reproduce para 33 of the aforesaid decision:-

"33. The core question that first falls for considerations as to whether the settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the

notice of termination u/s 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lies so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end - order in society - can it commit functional harakiri by leaving a conflict situation to lawless void?

20. In the light of the aforesaid settled principles, if the present controversy is considered, it is crystal clear that Air India and the Recognised union have entered into a fresh settlement which contains a clause pertaining to seniority. Air India has operated the seniority list prepared consistent with the clause pertaining to the same. It is clear that they held petitioners eligible for command training on the basis of their placement in the seniority list. What made them reverse their decision is something which is to be decided in this case. The facts about the existence of the settlement and the orders passed from time to time are clear. There is no factual controversy. Therefore, in our view, the petition cannot be thrown out on the ground of alternate remedy. Even otherwise, existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition. It is a matter of prudence and caution to be exercised. In our view, the preliminary objection must therefore fail. The decisions relied upon by the respondents are distinguishable. Therein, the basic facts were in dispute and therefore, the conclusion was recorded that the parties must resort to the remedies made available by the statutes.

20. Now merits of the controversy. Mr. Cama's submission is that the seniority list prepared pursuant to settlement of 1998 has been acted upon and implemented by respondent Nos. 1 to 3 till Pilots at Sr.No.172. It is only when the turn of petitioners in the line came that a departure was made and instead of petitioners, respondent Nos. 4 to 9 who are ranked much below in the list were selected for command training. This was done by withdrawing an earlier order sending petitioners for command training. No reasons have been assigned for cancellation and/or withdrawal of the order in favour of petitioners. Admittedly, the settlement is in operation. Relevant clause 7 was subject matter of challenge at the instance of ALTP licence holders in the earlier petition which has been disposed of on merits by a Division Bench of this Court. The challenge to this clause as well as to the settlement has failed. Further, pursuant to liberty given

in the said judgement, the ALTP licence holders (including respondent Nos. 4 to 9 herein) approached the concerned Industrial court but their complaints also have been withdrawn. Therefore, respondent Nos. 1 to 3 could not have acted at their behest and taken a decision to withdraw the letter issued in favour of the petitioners. Therefore, the action is contrary to the settlement and also unfair, unjust, unreasonable, arbitrary and violative of the mandate of Articles 14, 16 and 21 of the Constitution of India. Mr. Cama places reliance upon various decisions of the Supreme Court and this Court in support of his submissions.

21. On the other hand Mr. Naphade, learned Senior Counsel appearing for respondent Nos. 1 to 3 invites our attention to the affidavit filed in reply and points out that a High Power Committee constituted by the Chairman and Managing Director of Air India recommended suitable measures being taken to modify the list and redress the grievances of the ALTP licence holders. According to him, the ALTP licence holders being ex-Navy and ex-Airforce pilots deserve to be placed higher in seniority considering their past service. Therefore, it was open for the respondent Nos. 1 to 3 to make a departure.

22. Air-India has not contended that the settlement of 1998 is vitiated by fraud or misrepresentation. Neither has it taken a stand that there are any special circumstances and reasons which have prompted respondent Nos. 1 to 3 to withdraw the communication in favour of petitioners herein. However, Mr. Dhakephalkar and Mr. Singh contend vehemently that the settlement is vitiated by fraud and malafides on the part of the office bearers of the Indian Pilots Guild.

23. Mr. Dhakephalkar has also countered the contentions of Mr. Cama insofar as breach of settlement and violation of Constitutional mandate. He submits that Article 21 talks of Right to life and liberty but does not guarantee livelihood. He submits that Petitioners cannot allege discrimination or arbitrariness once it is demonstrated that orders issued in their favour are vitiated by fraud. He submits that a conspiracy was hatched by the office bearers of the Indian Pilots Guild who were also high ranking officials in the management. Their sons are commercial pilots and with a view to bestow all benefits on them, the seniority list has been prepared. Mr. Dhakephalkar submits that the management has mechanically accepted this seniority list. A seniority list is prepared by the office bearers of the Indian Pilots Guild and the management has not independently determined the issue of seniority. The management as well as the office bearers of Indian Pilots Guild acting in collusion have deprived respondent Nos. 4 to 9 of their valuable rights and, therefore, corrective steps were liable to be taken. Such corrective steps being initiated by the management, its decision cannot be faulted. Mr. Singh supports Mr. Dhakephalkar and further contends that the settlement together with the seniority clause cannot be said to be binding on the ALTP licence holders. He submits that the issue is still at large and unless and until the validity of the settlement is decided in appropriate proceedings, action of the management should not be disturbed by us.

24. Mr. Singh submits that the management decided to give due weightage to

the services rendered by ALTP Licence holders in the Airforce and Navy. Once such weightage is liable to be given in terms of the rules, then Management was duty bound to correct its earlier error. This being the position, there is nothing wrong in the management selecting respondent Nos. 4 to 9 for command training in place of petitioners herein. In any event, Mr. Singh submits that the remedy of petitioners is not to pursue this petition but approach the Industrial Tribunal. In support of their submissions, Mr. Singh and Mr. Dhakephalkar have relied upon decisions of the Supreme Court.

25. With the assistance of learned Counsel appearing for parties, we have gone through the petition, its annexures and the relevant documents including memorandum of settlement. We have also gone through the decisions rendered by the Division Bench of this Court in W.P.2365 of 1992 and W.P.No.2930 of 1999. Similarly our attention has been invited to the orders passed by the Industrial Tribunal in proceedings instituted by respondent Nos. 4 to 9 and others. After careful perusal of this material, we are of the view that petitioners have made out a case for interference by us in our writ jurisdiction. Our reasons for this conclusion are set out hereinbelow.

26. Respondent Nos. 4 to 9 were parties together with other Pilots holding ALTP licence, to W.P. No.2930 of 1999. They joined first respondent company in the year 1996-97. Their grievance in the writ petition was that clause 7(c) of the settlement is arbitrary, unreasonable since it deprives them of their vested right of seniority based on higher technical qualifications. They submitted that tripartite settlement dated 3rd January 1998, insofar as it deletes clause 3(d) of Schedule II of Memorandum of Settlement dated 21st July 1989 is liable to be struck down. This submission was duly noted by this Court. It was noted by this Court that respondent Nos. 4 to 9 and others were selected for appointment as co-pilots pursuant to an advertisement dated 14th February 1995. Letters of appointment were issued to them on 16th October 1996 wherein it was stated that their seniority as co-pilots would be determined and intimated to them separately. When respondent Nos. 4 to 9 were appointed, earlier settlement had come to an end. There was a fresh charter of demand submitted. In the settlement dated 21st July 1989, para 3(d) of Schedule II provided that pilots joining first respondent with ALTP licence will always have higher line seniority over a co-pilot already in employment, but without ALTP. By a notice dated 1st December 1990, the Indian Pilots Guild terminated the settlement dated 21st July 1989 and forwarded an advance copy of their charter of demands.

27. A writ petition was filed by the pilots holding CPL being W.P. No.2365 of 1992 before this Court praying that they be confirmed in their position on completion of one year of their initial appointment as co-pilots without insisting upon ALTP licence. They prayed that seniority be determined solely on this basis and without any other weightage including possession of ALTP licence. That writ petition was dismissed by this Court by an order dated 11th February 1993. This Court negated the submission that obtaining of ALTP licence was wholly

irrelevant for confirmation as co-pilot.

This court held that the terms of contract which have been accepted by the co-pilots were binding and they were estopped from challenging the same. Further, it was held that it is a policy decision and there is nothing arbitrary or discriminatory in the clause. Between 1992-94 several batches of co-pilots were recruited which included pilots holding ALTP licence, but their appointment letters contained the aforesaid stipulation about seniority. It is to be noted that pursuant to the advertisement referred to above, respondent Nos. 4 to 9 were selected and appointed with identical stipulations. Thereafter, this court has noted in its order on the earlier petition that the issue was considered by the management upon pleas of Indian Pilots Guild. The reports of 16th January 1996 and 2nd April 1996 have been noted in this behalf in the judgement of this Court. Further, reference is made to newsletter dated 16th December 1997. The newsletter showed respondent Nos. 4 to 9 as juniors to the co-pilots such as petitioners before us.

28. The seniority was fixed on the basis of date of joining of service by the management and consequently, respondent Nos. 4 to 9 were aggrieved by this action. They insisted that the seniority be fixed on the basis of the memorandum of settlement dated 21st July 1989. A representation was made pressing this demand but finding no response thereto W.P.No.1615 of 1997 was filed in this court. That petition was rejected on 16th October 1997. This Court noted in its order that memorandum of settlement dated 21st July 1989 which is sought to be enforced is already terminated on 1st November 1990. No claim, therefore, can be based on a non existing settlement.

29. Aggrieved by the order passed by this Court in W.P.1615 of 1997, a SLP was filed in the Supreme Court, which has been withdrawn on 26th October 1998. Withdrawal was on the basis that the petition itself was premature.

30. Prior to disposal of SLP a settlement was arrived at between Respondent No. 1 and the intervenor Union settling large number of disputes between management and the workmen, including respondent Nos. 4 to 9. So far as determination of seniority is concerned, clause 7 reproduced above has been framed. It is this clause which was subject matter of challenge in W.P.2930 of 1999 which was heard by a Division Bench of this Court and ultimately dismissed by a judgement delivered on 14th November 2000.

31. Apart from noting that one clause in settlement cannot be picked up in isolation and made subject matter of challenge, this Court has gone into the complaint of arbitrariness made by respondent Nos. 4 to 9. It is observed by this court as under in paragraphs 15, 16, 19, 25 to 27 and 29:-

"15. The moot question that arises for consideration in this Writ Petition is whether this court in exercise of its writ jurisdiction should interfere with the settlement brought about between the management of respondent No.1 and its workmen in the course of conciliation proceeding, at the instance of some of the

workmen only, who also, at one time, were members of the Indian Pilots Guild, respondent No.2 herein.

16. The petitioners contend that even though they are members of respondent No.2 Guild, they resigned from the Guild on 30th September 1996, but again joined the guild on 11th January 1998. Since the settlement was arrived at on 3rd January 1998, they were not members of the Guild on that day. This, to our mind, makes no difference in view of the express provision of Section 18(3) of the Industrial Disputes Act, which makes such a settlement binding upon all workmen. Mr. Tulsi, however, relying upon two decisions of the Supreme Court, submitted that even such a settlement may be challenged in the High Court by way of a writ petition on the ground that the same is unjust, unfair, not bonafide, and has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements. The correctness of this proposition has been challenged by the counsel for the respondents, who contend that there is a limited scope for interference by the High Court in exercise of Writ Jurisdiction and the facts of this case do not justify interference by this Court in exercise of writ jurisdiction.

19. Mr. Tulsi, therefore, does not appear to be right in submitting that the decision lays down the law that the question of settlement being unfair, unjust and not bonafide or being vitiated by fraud, misrepresentation or concealment of facts can be challenged before a High Court by way of a writ petition.

25. We do not feel inclined to reject this Writ Petition on this technical objection because the settlement having been arrived at on a date subsequent to the dismissal of the Writ petition by this Court, the petitioners may be justified in contending that a fresh cause of action had arisen. They could not have earlier challenged clause 7(c) of the settlement which in point of time was subsequent to the order of this Court dated 16th October 1997, rejecting the writ petition. We have, therefore, examined the legal position as to whether this Court may exercise its writ jurisdiction to consider the challenge to clause 7(c) of the settlement and we find that the decisions of the Supreme Court cited on behalf of the petitioners do not support the contention of the petitioners. The petitioners may challenge clause 7(c) of the settlement, if so advised, and if they are entitled to do so, by raising an industrial dispute. The question as to whether the settlement is just, fair and bonafide or that it is vitiated by fraud, misrepresentation or concealment of facts, in the first instance, must be examined by the Industrial Tribunal on a reference being made to it by the State Government. Of course, the award of the Tribunal may be challenged in a proceeding under Article 227 of the Constitution of India on the grounds permissible in law.

26. Having come to the conclusion that this Court should not interfere with the settlement arrived at in the course of conciliation proceedings in exercise of writ jurisdiction, we are not inclined to examine the other submissions urged on behalf of the petitioners because those questions may have to be raised in an

industrial dispute which may be referred for adjudication by the Tribunal. It is not as if the settlement is so blatantly arbitrary, unreasonable or irrational that the same should be quashed by this Court without anything more. While, on the one hand, the petitioners contend that they have higher proficiency since they hold ALTP licence, and, therefore, they should always have higher line seniority over co-pilots who do not possess ALTP licence, the respondents contend that those possessing CPL are also eligible for appointment as co-pilot as much as those possessing ALTP licence. If both are eligible for appointment, there is no justification for granting seniority to a pilot possessing ALTP licence over and above the pilots who are CPL holders and who may have been appointed ever earlier than those possessing ALTP licence.

27. Similarly, the contention of the petitioners that they should be governed by the earlier settlement which granted them seniority, is challenged by the respondents on the ground that by the time the petitioners were appointed, the earlier settlement had come to an end, and the petitioners were told clearly in their letters of appointment that the question of their seniority will be decided later. This was fully justified in view of the fact that a charter of demands was pending consideration and the parties were negotiating a settlement. The petitioners had, therefore, not acquired any vested right of seniority. Similarly, while the petitioners contend that the interest of public policy and public safety require that in a high risk and high-tech area like air transportation of passengers, the most qualified people ought to be assigned the task of piloting the aircraft, the respondents contend that no question of public safety is involved because both the ALTP licence holders and the CPL holders are eligible for appointment as co-pilot. The settlement also takes into account the higher qualification of ALTP licence holders and clause 7(h) of the settlement provides that command training will be offered as per line seniority only to pilots possessing ALTP licence. Any pilot bypassed for command training due to non-possession of ALTP, cannot have any claim on his/her original seniority on obtaining ALTP. Thus, possession of ALTP licence is a must before a co-pilot is sent for command training.

29. Having regard to the facts and circumstances of the case, we find no reason to interfere with the settlement dated 3rd January 1998 which has been arrived at in the course of conciliation proceedings, and which is binding upon all workmen. Only 14 out of 321 pilots feel aggrieved by only one clause of the settlement, namely, clause 7(c). It is doubtful, if the petitioners can challenge only one clause of the settlement, namely, clause 7(c) which deals with determination of seniority while accepting the monetary package offered to them under the settlement. In any event, the petitioners must seek their remedy under the provisions of the Industrial Disputes Act instead of invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. This writ petition is, therefore, dismissed."

32. In our view, it is not possible to agree with the learned Counsel appearing for

respondents that this judgement does not decide the issues finally but leaves them open for adjudication all over again. In any event, taking advantage of the liberty granted by this Court, complaints were in fact filed before National Industrial Tribunal, Mumbai by respondent Nos. 4 to 9 but the complaints have been withdrawn. Now self-same pleas are raised. We cannot permit parties to re-open the issue pertaining to seniority. The decision of this Court was clearly binding on Air India. Once this Court negated the challenge to the clause pertaining to seniority in the memorandum of settlement dated 3rd January 1998, then it is obviously not open for the Management to ignore and by-pass the judgement of this Court. The seniority list appended to the settlement of 1998 has been acted upon and implemented. In fact, Mr. Naphade and Mr. Talsania brought to our notice the fact that in terms of the note forming part and parcel of the clause regarding seniority in the settlement of January 1998, time has been granted for acquisition of ALTP licence. Time has been extended beyond what was stipulated therein. The note (B) relied upon does not in any manner advance the case of Mr. Dhakephalkar and Mr. Singh inasmuch as all that it talks of is loss of seniority in relation to the next co-pilot who has obtained ALTP/SCPL within five years of date of entry in the grade. Clause 7 will have to be read in its entirety and if so read, it is clear that seniority of trainee pilots - co-pilots has been determined as a one time exercise and as indicated in the seniority list (Exh.D). When this clause talks of command training in terms of line seniority to pilots possessing ALTP licence then, it is absolutely clear that the line seniority means nothing but as indicated in Exh.D i.e. the seniority list.

33. As held by this Court ALTP licence is necessary and its non possession results in consequences set out in the settlement itself. It is clear that seniority will be governed by this clause of the settlement until it is in force and in accordance with the law laid down in the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, . Therefore, there is no question of Air India withdrawing its communication on command training which was rightly issued in favour of petitioners herein. Once, there is no dispute that the petitioners are senior in the line seniority over and above respondent Nos. 4 to 9 then, they have to be sent for command training ahead of them. The decision of Air India is contrary to the order of the Division Bench in W.P.No.2930 of 1999.

34. It is pertinent to note that seniority ought to be determined in the manner indicated by us above was the stand taken by the management before the Division Bench when it was deciding W.P. 2930 of 1999. In other words, in that petition the management supported the petitioners before us and opposed the pleas of respondent Nos. 4 to 9. What persuaded it to now change its stand is not clear to us at all. The complaints and grievances of respondent Nos. 4 to 9 do not justify departure from the law laid down by this Court and the express terms of the settlement. The action of respondent Nos. 1 to 3 is in breach of the settlement which was binding upon them as well as respondent Nos. 4 to 9. In our view, the order withdrawing the petitioners from command training is, therefore, totally illegal and deserves to be quashed and set aside.

35. We need not take any cognisance of the contentions of Mr. Dhakephalkar and Mr. Singh based upon alleged fraud by Indian Pilots Guild and collusion of the management with its office bearers. That is not the plea raised on behalf of respondent Nos. 1 to 3 nor have they been able to justify by giving reasons, their action of withdrawing the earlier communication in favour of the petitioners. That apart, at the instance of respondent Nos. 4 to 9, we cannot examine the allegations of fraud in a writ petition filed by the present petitioners to challenge withdrawal of the communication in their favour. That would amount to entertaining a totally distinct grievance based upon independent cause of action. Respondent Nos. 4 to 9 had the liberty to avail of legal remedies and having abandoned them, it is now not open for them to urge that the settlement which is in force and implemented from 1998 is vitiated by fraud and collusion. We, therefore, decline to examine this aspect of the matter.

36. Once above conclusion is reached, no reference is necessary to the decisions brought to our notice by Mr. Dhakephalkar and Mr. Singh. They all proceed on the basis that when a writ petition filed earlier is disposed of not on merits but on the ground of availability of alternate remedy, then all findings on merits in such an order would not operate as estoppel or Res judicata. In our view, as pointed out above, the management is clearly estopped in the present case. The findings rendered by this Court earlier are not for the purposes of disposing of the writ petition on the ground of alternate remedy. The contentions raised by respondent Nos. 4 to 9 before us were raised on their behalf as well as their colleagues in the earlier petition and this Court found no substance in them. That is certainly an adjudication on merits. When such an order gains finality, then, it will be travesty of justice, if we permit the management as well as respondent Nos. 4 to 9 to urge that issues raised before us now, though identical to those in the earlier petition, are still open and at large. Consequently, all decisions brought to our notice are distinguishable. On the other hand, the decision brought to our notice by Mr. Cama is apposite. In the case of Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, ., the principle of estoppel and res judicata has been summarised. The relevant para reads thus:-

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgement and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is

to approach the higher forum if available. The determination of the issue between the parties given rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."

37. That this principle applies to writ petitions as well is not disputed. The other decisions are on the point of availability of alternate remedy which have been already referred to above.

38. In the result, writ petition succeeds. The order dated 1st October 2004 is quashed and set aside. However, we clarify that respondent Nos. 4 to 9 having been already sent for command training, they need not be recalled at the fag end of their training. That would be contrary to public interest as all efforts and expenses would be totally wasted. We clarify that this direction does not alter the position of respondent Nos. 4 to 9 in the line seniority list. On the other hand, interest of justice would be served if we direct and command respondent Nos. 1 to 3 to send petitioners for necessary training as per their placement in the line seniority in the First available batch.

39. Our direction as aforesaid is in accordance with the line seniority enunciated in the settlement. Rule made absolute in the above terms. We make no order as to costs.