

(2014) 04 BOM CK 0262
In the Bombay High Court
Case No : Writ Petition No. 175 of 2014

Melroy Bosco Dias and Others

APPELLANT

Vs

Air India Engineering Services Limited and Others

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2014) 04 BOM CK 0262

Hon'ble Judges : V.M. Kanade, J;A.K. Menon, J

Bench : Division Bench

Advocate : M.A. Amonkar and R.A. Amonkar, Advocates for the Appellant

Judgement

A.K. Menon, J.—Rule. Rule returnable forthwith. Respondents waive service. By consent, the petition is taken up for final hearing.

2. This petition impugns the failure of the Respondents to accept the resignations of the Petitioners and their request to be relieved from services and to pay them all their legal dues.

3. The Petitioners were employed initially with respondent No. 2 till February, 2013 and with effect from February, 2013 their services were transferred to Respondent No. 1 Air India Engineering Services Limited. The employees union had challenged the hiving off the engineering department by Respondent No. 2 to Respondent No. 1 in this Court in Writ Petition No. 2457 of 2012. This Court rejected the challenge while noting that the service conditions have not been changed. The order of rejection was confirmed by the Hon'ble Supreme Court vide order dated 9th May, 2013 in S.L.P. No. 14219 of 2013. Respondent No. 2 communicated the transfer to Petitioner No. 1 with effect from 1st March, 2013 and confirmed that there was no adverse change in service conditions and it was without affecting the continuity of service, pay and allowances, Productivity Linked Incentive (PLI) and perquisites".

4. The Petitioners"" conditions of service were inter alia governed by the Air

India Certified Standing Orders applicable to Workmen ["CSOs"] from time to time. Clause 17 of the said CSO provides for termination of service. Clause 18 of the CSO provides for resignation which is reproduced below:-

18. RESIGNATION

(i) No workman shall resign from the service of the Company except by giving such notice as he would have received under Standing Order 17 if his services were to be terminated, or compensation in lieu of such notice, unless, at the request of the workman, the notice is waived or shorter notice accepted in writing by the Competent Authority. Such compensation shall be equivalent to the amount of the wages as defined in the explanation to Standing Order 17 which the workman would have drawn during the period by which the notice falls short of the prescribed period, and shall be deemed to be a liability owed to the Company for the purpose of Regulation 22(2) of the Air India Employees' Provident Fund Regulations, 1954.

(ii) A resignation given under (i) above may be accepted with immediate effect or at any time before the expiry of the period of notice, in which case the workman shall be paid his wages in respect of the entire period of notice given by him.

(iii) In case of short period of notice is accepted at the request of the workmen, he shall be entitled to receive his wages only for the actual number of days worked.

(iv) If a workman leaves the service of the Company without giving any notice or by giving inadequate notice, such resignation shall be liable to be construed as misconduct and may entail any of the punishments prescribed under Standing Order 20.

(v) Notwithstanding anything contained in clause (i) and (iii) above, a workman shall not be entitled to tender his resignation and any resignation tendered by him shall not be effective or operative against the Company, unless the Company decides to accept the resignation, if at the time when such resignation is tendered, disciplinary action is pending against him or is intended or proposed to be taken against him by the appropriate authority.

5. It is contended that some employees who are sent for training on various aircraft were required to execute bonds to conditionally remain in service for a specified period as set out below. Petitioner Nos. 1 & 2 had no such training and were not required to sign any bond to remain in employment for any particular period. Petitioner No. 3 was sent for training for Boeing 787 in April, 2013. He had signed a bond that he would not be released from the services of the Company for a period of 5 years but he may be considered for release provided all the costs incurred on him by the Respondents is reimbursed to the Respondents.

6. Petitioner No. 1 submitted his resignation on 22nd November, 2013. Petitioner No. 1 submits that his salary and dues have been delayed for months together

along with productivity linked incentives (PLI) which has not been paid to them since May, 2012. Conciliation proceedings before the Assistant Labour Commissioner were held on 29th October, 2012. At the hearing held on 7th November, 2012, Respondent No. 2 undertook to release the PLI for May, 2012 by 12th November, 2012 and that salary for the month of June, 2012 will be paid by 12th November, 2012. On 13th December, 2012, Respondent No. 2 stated that wages for the months of September and October, 2012 had been paid and those for November, 2012 would be paid by third week of December, 2012.

7. In respect of PLI outstanding for the months of July, 2012 to November, 2012, the Respondents stated that the matter will be taken up with higher management and sought adjournment before the Conciliation Officer. Subsequently, during the proceedings on 11th January, 2013, the Respondents management submitted that PLI for the month of July, 2012 payable in August, 2012 will be released on or before 17th July, 2013.

8. On 23rd January, 2013 a staff notification dated 22nd October, 2013 was published wherein it was stated that only 75% of the arrears upto September, 2013 of applicable entitlement will be paid on 30th January, 2014. Respondent No. 2 unilaterally effected deductions from the PLI and continues to do so till the date of filing this petition. The Petitioners state that the salary for the months of December, 2013 and PLI for the months of November and December, 2013 are still outstanding. In view of the uncertainty in Respondents complying with their obligation to pay salaries and PLI without unilateral deductions, the Petitioners were constrained to consider seeking alternate employment. Petitioner No. 1 tendered his resignation on 22nd November, 2013. Petitioner No. 2 has sent his resignation on 28th November, 2013. Petitioner No. 3 submitted his VRS application on 14th November, 2013.

9. At the time of tendering resignations the Petitioners had received time bound offers from other Airlines. Petitioner Nos. 1 & 2 were required to be released by 31st January, 2014 and Petitioner No. 3 by 3rd February, 2014. In view of the offers being time bound, they suggested that if their resignations were not accepted and they are not released by the said dates, then, they do not wish to press their resignations as they would be left in the lurch with no employment.

10. Correspondence ensued between the parties after which the Respondents declined to accept the resignations and refused to release the Petitioners. The Petitioners have, therefore, approached this Court contending that though they exercised their right pursuant to clause 17 of the Air India Certified Standing Orders applicable to Workmen, the Respondents failed to accept their resignations and they acted in a discriminatory and arbitrary manner. The Petitioners have also contended that there are no disciplinary proceedings pending or proposed against them that would deprive them of their right to resign.

11. Respondent No. 1 has filed three affidavits of one Ravikiran Vedpathak. In

the first affidavit dated 15th March, 2014 the deponent contends that the Petitioners have an alternate efficacious remedy under the Industrial Disputes Act, 1947 and, therefore, the petition is not maintainable. That the Petitioners were employed in engineering service which are essential services and without being certified by the Petitioners, aircraft cannot take off.

12. It is further contended that the petitioners are employed in the engineering department where essential services such as repairs, maintenance and mandatory safety checks are carried out of all aircrafts domestic and other foreign airlines. The engineering department is a continuous process and repairs and mandatory checks are essential to enable the aircraft to leave the airports on scheduled time and continue its normal operations and no aircraft can be given permission to take off without it being certified fit to fly by the licensed engineers like the petitioners. It is contended that the presence and availability of the aircraft engineers is absolutely vital for carrying on the operations of any airline company. Non availability or shortage of aircraft engineers will result in aircrafts not being permitted to take out of fly and will result in irreparable loss and serious prejudice not only to the passengers but to the nation as well as Air India limited is a national carrier. The Respondents contend that they are not in a position to accept the resignations as it would adversely affect the general public and economic loss to the nation.

13. In a further affidavit sworn 1st April, 2014 dealing with the merits of the petition, it is contended that the Petitioners had withdrawn their resignations vide their letters dated 28th February, 2014 and that vide letter dated 20th March, 2014 the Petitioners seem to have been informed that their requests for withdrawal of their resignations has been accepted. Petitioner No. 3 apparently refused to acknowledge the letter dated 20th March, 2014. Respondent No. 1 therefore contends that the resignations stood withdrawn and, therefore, the cause of action does not survive. The affidavit goes on to state that Respondent No. 2 deferred the acceptance of the Petitioners resignations due to business exigencies and shortage of manpower. The importance and responsibilities of the Petitioners' duties are reiterated. Reference is made to Aircraft Rules, 1937. It is stated that several aircrafts have been acquired by the Director General of Civil Aviation and only upon issuing these licences the newly trained engineers are to be appointed and assigned the duties. Reference is also made to (i) the issue pertaining to the wages and arrears of allowances in view of the serious financial crises faced by the respondents, (ii) the decision of this Court in a group of Writ Petitions which gave rise to the common issue relating to the applicability of Section 9A of the Industrial Disputes Act, 1947 to the airline employees. Reference to this judgment is made only for the purpose of clarifying that the productivity linked incentive is discontinued from July, 2012 and in lieu thereof a fixed amount is paid as ad-hoc allowance which is 25% less than the PLI paid to the employees by the Respondents. The allegations of forced labour have been denied. It is admitted that Petitioner Nos. 1 & 2 have never been asked to sign any bond though earlier they were trained for working on Boeings 747 and 777

aircrafts. It is admitted that by the letter dated 12th August, 2003 Petitioner No. 3 was informed that he was bound to serve Respondent No. 2 for a period of five years from the date of the completion of the bond but could be considered for release if the cost incurred by Respondent No. 1 was reimbursed. It is further submitted by learned Counsel for the Respondents that the Petitioners resignations can be considered subject to trained engineers obtaining licences from the Director General of Civil Aviation.

14. In the affidavit in rejoinder filed by Petitioner No. 3, the contentions in the petition have been reiterated and it is stated that the Petitioners had addressed the letters of resignation with specified dates by which they should be relieved only on account of the companies offering them alternate employment had kept the offer open in or around the date specified in the resignation letters. However, as of April, 2014, the third party Airlines were still willing to employ the Petitioners subject to their obtaining the relieving letters from the Respondents. In the circumstances, it is contended that the resignation letters hold good and the same had not been withdrawn. It is further contended that the said letter of 20th March, 2014 was backdated and was in any event acknowledged without accepting the contents.

15. Respondent No. 1 has a filed sur-rejoinder dated 4th April, 2014 disputing the contents of the Rejoinder. The sur-rejoinder reveals that Respondent No. 1 has sold five B777 aircraft to Etihad Airways and the delivery of three aircrafts has been effected and the remaining two aircraft are to be delivered in the next three months. It is submitted that (i) Respondent No. 1 is in the process of selling three more similar aircrafts and the tender process is about to take place shortly; (ii) prior to delivery of aircraft, Respondent No. 1 is required to carry out all major maintenance work / checks on each aircraft as per the delivery conditions imposed by the buyers; (iii) some of the aircraft maintenance engineers, have been specifically assigned to work on the aforesaid two aircraft so as to ensure that the delivery of the aircraft is completed within the scheduled time and that if the said delivery is delayed, Respondents will be liable to pay a penalty of Rs.9 lacs per day; (iv) in view of the said sale transaction, the services of the aircraft maintenance engineers who are allocated to work on the aforesaid aircrafts are not available for the day to day maintenance and related work of other aircraft which are used for day to day flying operations.

16. It is submitted that due to operational exigencies coupled with manpower shortage, Respondent No. 2 has kept the acceptance of the resignations of the Petitioners in abeyance. It is submitted that the work of the Petitioners is connected to public safety involving public interest and, therefore, Respondent No. 2 has no other option than to defer the acceptance of resignations.

17. Paragraph 8 of the same affidavit reveals that the Air India is required to provide two aircrafts for Haj operations which are planned in end of August, 2014 as per Government of India requirement which has to be fulfilled without fail and for the Haj operations, two B747-400 aircraft are required to undergo major

checks before commencement of Haj flights, which require aircraft maintenance engineers, including the Petitioners. It is contended that Petitioner No. 1 is not reporting for work. It is quite evident that the reluctance of the Respondents to accept the Petitioners'" resignations is to avail of their services for regular operations while some engineers are deputed for ensuring timely completion of the sale of aircraft.

18. It is the grievance of the Petitioners that the allowances and wages have been reduced arbitrarily since February, 2013 by about 25% apparently, on the basis of the recommendation the Dharmadhikari Committee report. These reductions were challenged by the Union of the Petitioner in Writ Petition No. 277 of 2013 filed by Air India Employees Union & Ors. V/s. Air India Limited & Ors. and 7 other petitions wherein the common question that arose was " Whether Air India Limited can alter the Pay Scale, Designation, Seniority, etc. i.e. conditions of service as provided in the Fourth Schedule of the I.D Act, 1947 on the basis of the recommendation of Justice Dharmadhikari Committee without following the due procedure of law as provided under Section 9A of the I.D. Act, 1947 ?

19. The aforesaid writ petitions were decided by this Court on 27th January, 2014 and the question framed has been answered in the negative i.e. Air India Limited cannot alter the conditions of service as provided in the fourth schedule of the Industrial Disputes Act, 1947 without following the procedure prescribed in Section 9A of the Industrial Disputes Act, 1947. The revised wage structure is not, therefore, in accordance with law. This fact along with the admitted delay in payment of wages certainly had not inspired the confidence of the Petitioners. The Petitioners have tendered their resignations in accordance with the provisions of the Certified Standing Orders. No. disciplinary action is pending against the Petitioners. Even so far as Petitioner No. 1 is concerned, apart from the statement in paragraph 9 of the sur-rejoinder dated 4th April, 2014 that he is not reporting for work unauthorisedly and without permission, nothing has been stated about and action taken against Petitioner No. 1.

20. We do not find any force in the Respondents'" submissions of that the Petitioners resignation had been withdrawn. The petition is still pending and the Petitioners have pressed for the reliefs with the explanation provided that the provisions of deemed withdrawal was made in view of the fact that according to the Petitioners, initially the offer of the alternate employer was conditional and for a limited period of time. However, that is not the case now since the alternate employer had extended the offers and it is not time bound. Respondent No. 1 Company has candidly admitted that the persons who are available for day to day operations have been diverted or duties to ensure that the delivery of aircrafts with Air India to Etihad Airways is completed in the scheduled time. Furthermore, the reason given is that Air India is required to provide aircrafts for Haj operations and that the Petitioners amongst others are required to major checks of aircrafts. Both appear to be reasons which cannot be justify the non-acceptance or deferment of the Petitioners resignations. On the one hand, the

Respondents wish to save penalty admittedly of over 9 lacs per day, yet, they have no hesitation in implementing the wage cut of the employees without following the due process and in accordance with law.

21. It is a well settled principle that a contract of employment is not a bond of slavery and the permanent employee cannot be deprived of his right to resign. In the case of (1996) 3 Supreme Court Cases 156 Central Inland Water Transport Corporation Limited & Anr. V/s. Brojo Nath Ganguly & Anr. the Supreme Court observed that it can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the midst of an urgent or important assignment, completion of which necessitated his participation. An employer can refuse to accept the resignation where there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be allow him to escape the consequences of an adverse finding against him in such an inquiry. It is further observed that there can be other grounds on which an employer would be justified in not accepting the resignation of an employee. The Employer ought to make suitable provisions in that behalf in the said Rules. Reliance is placed by the Respondents on the judgment of Delhi High Court in the case of Rahul Shukla Vs. Union of India and Others, , wherein it is held that resignation of the petitioner could be rejected based on adequate and justifiable reasons. In that case, Regulation 105 (f) of the Army Rules dealt with the procedure to be adopted by Army Headquarters while considering resignation from the Army. In that case, the petitioner was informed that the resignation was kept in abeyance in order to enable the Respondent to make alternate arrangement. The Division Bench directed the respondent to intimate the petitioner within two weeks as to from which date his resignation would be accepted.

22. In the present case, certainly Certified Standing Orders applicable to the petitioners clearly set out the provisions for resignation. The Petitioners have acted in accordance with the said provisions and have issued notices. Admittedly, there are no disciplinary proceedings pending against the petitions nor any such proceedings are intended or proposed to be taken against the petitioners by the appropriate authority. The resignations are fully in compliance with the provisions of Clause 18 of the CSO and do not fall foul of any of the sub-clauses. In the circumstances, there is no justification in deferring the acceptance of the resignations of the Petitioners any longer merely so as to facilitate the sale of aircraft or facilitate the Haj flights while imposing the burden of wage reduction and delaying payments of dues. For the aforesaid reasons, we allow the petition.

23. Rule is made absolute in terms of prayer clause (a). The Petitioners shall be relieved effective from the date of this Judgment. There will be no Order as to costs.