

(1999) 05 DEL CK 0127

In the Delhi High Court

Case No : CW No's. 1187, 2929, 3227 and 4907 of 1995 and 141 of 1996

M.K. Verghese and Others

APPELLANT

Vs

Air India Limited and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 50 DRJ 353

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Rudra Kahlon, for the Appellant; Lalit Bhasin, Ratna Diwedi, Bhavna Kohli and V.P. Sharma, for the Respondent

Judgement

K. Ramamoorthy, J.—The writ petitioners have prayed for the following reliefs:-

"In the above mentioned circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) issue a writ of mandamus or any other appropriate writ, order or direction in the nature of a writ of mandamus directing the respondent to treat the petitioners as their employees of the respondent No.1 from the dates of their joining;
- b) issue a writ of mandamus or any other appropriate writ, order or direction in the nature of a writ of mandamus directing the respondent No.1 to regularise the services of the petitioners with respondent No.1 and extend all service conditions, emoluments and consequential benefits as available to the regular employees of respondent No.1;
- c) issue a writ of mandamus or any other appropriate writ, order or direction in the nature of a writ of mandamus directing the respondent to pay as arrears the difference in pay scales and or other consequential benefits such as would have been available to the petitioners if they were regular employees of the respondent No.1 since their respective dates of joining;

d) issue a writ of prohibition and or any other writ, order or direction in the nature of a writ of prohibition restraining the respondent Nos.3 and 4 from transferring the petitioners to any other unit."

2. This point raised by the petitioners had already been dealt with by me on the 6.3.1999 and following order was passed:-

"The petitioners in all these writ petitions raised the point that employees in a statutory canteen run by an agency of the principal employer would ipso facto become the employees of the principal employer. That very point has been referred to the Industrial Tribunal for adjudication. Mr. Kahlon, learned counsel for the petitioners submits that the question before the Industrial Tribunal is primarily to adjudicate on the relationship of master and servant between the principal employer Air India and employees who claim permanent status. Mr. Kahlon further submits that in deciding the point that is raised in all these writ petitions this Court is not invited to adjudicate disputed questions of fact that the point is to be decided on the basis of materials available on record. Mr. Kahlon further submits that the position on facts is almost admitted by the respondents.

Mr. Lalit Bhasin learned counsel for the respondents submitted that when the very question is pending adjudication before the Industrial Tribunal the petitioners cannot seek the relief before this Court under Article, 226 of the Constitution of India. The facts to be established before the entitlement of the petitioners could be accepted have to be gone into by the Tribunal. The submission by Mr. Kahlon, learned counsel for the petitioners, that the position has been admitted by the respondents is not correct. The Industrial Tribunal or this Court while deciding the point is to consider the right of the employees to be transferred from one place to another working with the entity running the canteen and the control of the principal employer over that entity and, Therefore, the Industrial Tribunal is the competent forum to adjudicate on the disputes which have already been referred to it. Mr. Lalit Bhasin submitted that the petitioners could be given liberty to participate in the proceedings before the Industrial Tribunal. The petitioners in all the writ petitions can file individual petition or petition through union or collectively for participating in the proceedings without their being any reference independently with reference to these petitioners. The Industrial Tribunal Along with the disputes already referred shall also decide the questions raised by the petitioners. The Industrial Tribunal shall also decide the question of right of the employer to transfer. The Industrial Tribunal shall adjudicate the rights of the workmen as on the date of reference. The Industrial Tribunal is directed to dispose all the disputes as expeditiously as possible having regard to the fact that the matter is pending for a long time. With the above observations the writ petitions are disposed of."

3. The matter is covered by the order dated 6.3.1999. The writ petitions are dismissed.

4. There shall be no order as to costs.

5. The petitioners are at liberty to raise industrial disputes under the Industrial Disputes Act, 1947. The Industrial Tribunal shall dispose of the matter as early as possible.