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W.P.No.10966 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

Writ Petition No.10966 of 2018

and

Writ Miscellaneous Petition No.12875 of 2018

P.Elilarasan

.. Petitioner

/versus/

1.Union of India,
rep.by its Secretary,
Ministry of Civil Aviations,
Government of India,
New Delhi.

2.The Executive Director,
Air India Ltd.,
National Aviation Company of India Ltd.,
NAC II(1),
Airline House, Meenambakkam,
Chennai 600 027.

3.The General Manager-Personnel,
Air India Ltd.,
National Aviation Company of India Ltd.,
Airline House, Meenambakkam,
Chennai-600 027.

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4.The Deputy General Manager-Personal,
Air India Ltd.,
Air Lines House, Meenambakkam,
Chennai 600 027.

5.Manager-HR,
Air India Air Transport Services Ltd.,
Air India Unity Complex,
Pallavaram Cantonment,
Chennai-600 043.

.. Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 4th respondent dated 17.04.2018 in Ref.MAA/IR/CL quash the same and consequently direct the respondents to absorb the petitioner with all other attendance benefits.

For Petitioner : Mr.S.Gunaseelan
For Respondents : No appearance

ORDER

This Writ Petition has been filed challenging order of the 4th respondent dated 17.04.2018 in Ref. MAA/IR/CL quash the same and consequently direct the respondents to absorb the petitioner with all other attendance benefits.

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2. According to the petitioner, he joined as Casual Helper in Air India Limited in the year 1993 respectively and his nature of the work is that of permanent and perennial. However, the Air India engages workmen for short durations to deny them the benefit of permanency and other consequential benefits. Hence, this writ petition.

3. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the issue involved herein is covered by the earlier order of this Court dated 28.03.2018 passed in WP.No.17513 of 2010 etc. batch of cases [Antson Joseph and others v. the Union of India rep. by the Secretary, Ministry of Civil Aviation, New Delhi and others], wherein, this Court disposed of those writ petitions with the following observations:

“17. As rightly contended by the learned counsel appearing for the respondents 2 and 3 that in view of drastic changes in Aviation industry over a period of time due to open sky policy adopted by the Government of India, the

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monopoly of the respondent Airlines had ended. In view of global competition in the Aviation industry, the Airlines had also suffered huge financial loss and eventually even unable to pay salaries due to the permanent employees regularly. Moreover, when the ground handling activity has been outsourced in all Airports in the country and these petitioners having been employed only in such activity, they cannot be ordered to be absorbed permanently in the respondent Airlines. As stated by the learned counsel for the respondents that the respondent Airlines was not recruiting any permanent Helpers for the last many years after the exist of permanent employees from employment. That being the case, the question of consideration of the original prayer by this Court as sought for in the writ petitions, does not arise.

18. In view of the inevitable changes which took place in the Aviation industry, this Court has to take practical and pragmatic view to find just and equitable solution to the employment crisis faced by the petitioners. As

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contended by the learned counsel for the petitioners that atleast the present state of employment of the petitioners with the 7th respondent has to be protected, since they cannot be made to work under constant fear of termination at any time, particularly, in the teeth of the fact that these petitioners had been employed as Helpers for more than two decades. That is why, probably the learned counsel appearing for the petitioners had pleaded only for limited protection in order to atleast protect the present nature of employment of the petitioners, instead of seeking for absorption of their services with the respondent Airlines.

19. Considering the submissions made on behalf of the petitioners that their nature of present employment as indicated in the contract of appointment entered into by the 7th respondent with the individual workman as reflected in specimen copy enclosed in additional typed set of papers, dated 19.5.2016, which pertains to one of the workmen, namely,

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Thiru.S.Venkatesan, on the same terms and conditions and such employment shall be continued in respect of other petitioners who were offered such appointment till they attain the age of superannuation. As rightly contended by the learned counsel for the respondents 2 and 3 that the requirement of man power may change from time to time due to fluctuating market trends as the ground handling activity may increase or decrease depending upon the client-Airlines patronage. Therefore, considering the said submissions, this Court is of the view that as long as man power requirement is there by the second respondent, the services of the petitioners ought to be utilized and the petitioners at no point of time should be replaced by any other casual arrangement by resorting to employ other persons. It is made clear that on the basis of genuine man power requirement, it is always open to the 7th respondent to downsize or rightsize the employment as and when the situation demands and depending on such contingencies, these petitioners shall be

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continued in service with the terms and conditions of services as stipulated by the 7th respondent. In any case, the petitioners' employment cannot be brought to end by adopting any unfair mean or unfair labour practice by bringing other casual workers from the open market in order to displace the petitioners herein.

With these observations and directions, these Writ Petitions shall stand disposed of. No costs."

4. The learned counsel for the petitioner also placed reliance on the order dated 29.08.2023 in W.P.No.19140 of 2010, wherein, in an identical circumstances a similar order was passed.

5. The learned counsel for the petitioner sought to pass same order in this Writ Petition also.

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6. The learned counsels appearing for the respondents also accepted that the said order is applicable to the facts of the present case.

7. Having heard the submissions of the learned counsels appearing for their respective parties and in view of the facts and circumstances of the case, this Writ Petition is disposed of in terms of the order dated 28.03.2018 in W.P.No.17513 of 2010 etc batch of cases.

8. Accordingly, this Writ Petition is disposed of.

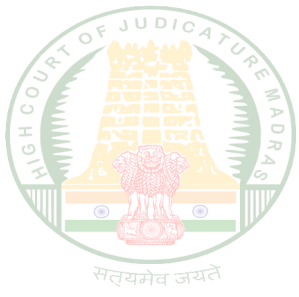
9. Consequently, connected Miscellaneous Petition is closed.

10. There shall be no order as to costs.

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Speaking order : Yes/No
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