Neutral Citation Number: 2022/DHC/005765

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th December, 2022*

\+ W.P.(C) 6090/2016 & CM APPL. 386/2018, 13566/2018, 8058/2021

INDIAN AIRLINES OFFICERS ASSOCIATION ..... Petitioner

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Dattatray Vyas, Mr. Shashank Dixit and Ms. Rudrakshi, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Ms. Arunima Dwivedi, Central Government Standing Counsel with Ms. Swati Jhunjhunwala and Mr. Aakash Pathak, Advocates for R-1.

Mr. Rajiv Nayar, Senior Advocate with Mr. Amit K. Mishra, Mr. Sanjeet Ranjan, Ms. Anindita Barman, Mr. Siddhant Bajaj, Ms. Akanksha Das, Ms. Manjira Dasgupta and Mr. Azeem Samuel, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 36233/2018, 5764/2019, 5767/2019, 5768/2019, 5771/2019, 5772/2019, 5775/2019, 5777/2019, 5781/2019, 5784/2019, 5785/2019, 16180/2019, 16181/2019 and 16182/2019

1. Present applications have been filed by the Applicants for impleadment as Petitioners in the present writ petition on the ground that they are similarly placed and seek the same relief as sought in the present writ petition.

2. For the reasons stated in the applications, the same are allowed and the Applicants therein are impleaded as Petitioners in the writ petition.

3. Applications stand disposed of.

W.P.(C) 6090/2016

4. Present writ petition was filed by the Petitioners seeking arrears of pay and allowances for the period 01.01.1997 to 31.07.2006 and to quash the letter dated 19.03.2014 by which the said relief was declined by Respondent No. 1, amongst other reliefs.

5. Mr. Rajiv Nayar, learned Senior Counsel appearing on behalf of Respondent No. 2 raises a preliminary objection to the maintainability of the writ petition on the ground that as a result of the disinvestment process initiated by the Government of India, Air India Limited ('AIL') has ceased to be a public body and therefore, no writ can lie against AIL in the circumstances that exist today. It is submitted that originally AIL was a statutory body constituted under the Air Corporations Act, 1953, however, post its repeal and in terms of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, it had become a wholly owned company of the Government of India. It is at that stage that the present writ petition was filed, however, in light of the position that obtains today, where AIL has been privatised and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd., (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.), no writ petition can lie under Article 226 of the Constitution of India as AIL is no longer a public body or Authority within the meaning of Article 12 of the Constitution of India. In order to support the submissions, Mr. Rajiv Nayar, learned Senior Counsel relies on a judgment of this Court in ***Naresh Kumar Beri & Ors. v. Union of India & Ors., 2022 SCC OnLine Del 3585,*** relevant para of which is as under:

> *"23. The Court also finds merit in the second objection which was addressed on behalf of the respondents who had contended that since AIL had ceased to be a government company by virtue of the exercise of privatization noted above, the writ petition itself would cease to be maintainable. This Court notes that High Courts of the country appear to have consistently taken this position as would be manifest from a reading of the decision rendered in R.S. Madireddy by the Bombay High Court and Tarun Kumar Banerjee by the Karnataka High Court. The said position has also been duly reiterated in the judgments rendered by our Court in Asulal Loya, Ladley Mohan and Satya Sagar. The writ petition would thus warrant dismissal on this score also."*

6. Reliance is also placed on the judgment of the Bombay High Court in ***R.S. Madireddy & Anr. v. Union of India & Ors., 2022 SCC OnLine Bom 2657,*** relevant passages from which are as follows:

> *"57. That a writ could be issued to an 'authority' within the meaning of "the State" as in Article 12 of the Constitution as well as an 'authority' within the meaning of Article 226 has never been in dispute. By judicial pronouncements, law has developed over a period of time that a writ or order or direction under Article 226 can also lie against a 'person', even though it is not a statutory body, if it performs a public function or discharges a public duty or owes a statutory duty to the party aggrieved. These are unquestionable principles and the parties are ad idem in respect thereof. However, they have joined issue because of the intervening event of privatization of AIL.*
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> *58. While proceeding to examine the question that has emerged for an answer, we can profitably draw guidance from the decision of the Supreme Court in G. Bassi Reddy (supra) cited by Mr. Khambatta. We extract a relevant passage therefrom for better appreciation hereunder:*
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> > *"27. It is true that a writ under Article 226 also lies against a 'person' for 'any other purpose'. The power of the High Court to issue such a writ to 'any person' can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words 'and for any other purpose' must mean 'for any other purpose for which any of the writs mentioned would, according to well-established principles issue'.*
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> *59. .....*
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> *Thus, satisfaction as regards the breach of a legal entitlement apart, what is important in this context is that such breach must have been at the instance of the party complained of to whom a writ or order or direction can legitimately be issued. Not only, therefore, the party complained of should be amenable to the writ*

jurisdiction of the high court on the date of institution of the writ petition, it must also be so when the writ petition is finally heard and decided. It is thus axiomatic that only upon a double check (first at the time of admission of the writ petition, and then again at the time of final hearing thereof that the respondent against whom the complaint of commission of breach of a legal right of the petitioner is made is amenable to the writ jurisdiction) would the court proceed to decide the contentious issues. If not so amenable, the question of deciding the issues on merits may not arise. What follows from the aforesaid discussion is that the writ court when approached must not only have jurisdiction to issue a writ or order or direction to the party against whom the complaint of breach of a legal right has been made at the inception of receiving the writ petition but such jurisdiction it must retain, without impairment, till the jurisdiction to issue the writ to such party is actually discharged.

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68. With its privatization, AIL has ceased to be an Article 12 authority. There is and can be no doubt that no writ or order or direction can be issued on these writ petitions against AIL for an alleged breach of a Fundamental Right. Conscious of the change in the factual as well as legal position arising out of privatization of AIL, Mr. Singhvi with the experience behind him changed the line of argument and introduced the concept of 'public employment' of the petitioners and contended that since the petitioners were employees of AIL, which at the material time was discharging public functions, the writ petitions ought to be heard particularly when the petitioners are not at fault for the time lapse.

69. We are afraid, the contention that the petitioners were in 'public employment' earlier and that it should weigh in our minds for the purpose of grant of relief, as claimed originally, or moulding of relief because of the changed circumstances, is unacceptable for the reasons discussed above. By way of reiteration, we say that whether or not AIL was discharging public functions or the petitioners were in public employment need not be examined in these proceedings because, as the matter presently stands, no writ can be issued by us to AIL. In the circumstances, all the decisions cited by Mr. Singhvi laying down the law that a body discharging public functions would be amenable to the writ jurisdiction have no materiality for deciding the question at hand."

7. Mr. Jayant Mehta, learned Senior Counsel appearing on behalf of the Petitioners, *per contra*, submits that the judgments relied upon by Respondent No. 2 are distinguishable on facts of the present case and in any case, the judgment of the Bombay High Court does not bind this Court and at the highest can have a persuasive value. It is

also submitted that the petition was filed in the year 2016 and the Petitioners cannot be blamed for the intervening circumstances and should not be non-suited at this stage, especially looking at the fact that the claims relate to arrears of pay and allowances and several years have passed since the Petitioners have been seeking this relief. Another apprehension that is expressed by Mr. Mehta is that if the writ petition is disposed of and Petitioners take recourse to any other remedy, Respondent No. 2 may, in future, disown its liability to pay the arrears of wages on the ground that it is privatised.

8. Responding to the contention of Mr. Mehta, with regard to the liability to pay the arrears of wages, Mr. Nayar, on instructions, in order to put at rest the apprehensions and fears of the Petitioners, submits that if the Petitioners succeed in establishing their claims, before an Appropriate Forum, the liability to pay shall rest entirely on Respondent No. 2.

9. Having heard the learned Senior Counsels for the parties, this Court is of the view that there is merit in the contention of Respondent No. 2. It is an admitted position that during the pendency of the present writ petition, on 27.01.2022, 100% shareholding of Air India has been acquired by M/s. Talace Pvt. Ltd. and Air India having ceased to be a Government controlled company, is no longer amenable to the writ jurisdiction of this Court. The judgments referred to above squarely cover the present case and the writ petition cannot be entertained.

10. It is no doubt true that when the writ petition was filed in the year 2016, it was maintainable as AIL was amenable to the writ jurisdiction being a public body. However, with the change of circumstance, this Court is precluded from issuing a writ of mandamus in the current situation. In fact, the Bombay High Court in ***R.S. Madireddy & Anr. (supra)***, has in this context observed as follows:

"64. We may in this connection profitably take note of the enunciation of law in Beg Raj Singh (supra). The Supreme Court, while dealing with proceedings arising out of a writ petition, had the occasion to observe that:

> *"7. *** The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. ***"*

65. Perusal of the aforesaid excerpt would reveal some of the circumstances when a subsequent or an intervening event during pendency of a writ petition could result in the petitioner becoming disentitled to relief, viz. relief claimed being rendered redundant by lapse of time, or rendered incapable of being granted by change in law, or being rendered inequitable because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of the judgment, or creation of third-party interests. It is, therefore, not an invariable rule that a writ petition has to be decided on the facts as were presented on the date of its institution. A circumstance of the present nature would count as an additional reason for the writ court to hold a petitioner disentitled to relief.

66. We may also take note of the decision in Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni. The decision arose out of appeals under section 72(4) of the Bombay Public Trusts Act, 1950. In the appeals, challenge was laid to a decision of the IInd Additional District Judge, Bijapur. The dispute related to elections claimed to have been conducted by 2 (two) rival groups for the Managing Committee of a Sangh, which was a society registered not only under the Societies Registration Act, 1860, but also the provisions of the said Trusts Act. One of the points raised before the Supreme Court was that the high court had lost sight of the fact that by passage of time, the dispute as regards validity of the election in October 1996 became non-est. Per contra, it was submitted that the dispute did not become infructuous by passage of time. The exposition of law on the point is found in paragraph 4. According to

the Supreme Court, the courts are entitled to mould, vary or reshape the relief to make it justly relevant in the updated circumstances, provided (i) circumstances in which modified remedy is claimed are exceptional; (ii) such modification, if the statute on which the legal question is based, inhibits by its scheme or otherwise, such change; and (iii) the party claiming the relief must have the same right from which either the first or the modified remedy may flow. We do not see any reason to hold that conditions (ii) and (iii) are satisfied in view of the very scheme of a writ remedy. Article 226 would not arm us to issue a writ to any authority or person not comprehended within its meaning. We are thus precluded from issuing any writ to AIL in the changed circumstances."

11. Insofar as the liability of payment of the arrears of wages sought in the present writ petition are concerned, the assurance given by Respondent No. 2 is taken on record and needless to state, will bind the said Respondent. Therefore, in the event of the Petitioners succeeding in their claims before the Appropriate Forum, Respondent No. 2 shall be entirely responsible for clearing the dues.

12. The writ petition along with pending applications is accordingly disposed of, granting liberty to the Petitioners to take recourse to remedies available to them in law in an appropriate Forum. It is made clear that the time period, for which the writ petition has been pending in this Court, will be excluded for the purpose of computation of limitation, should the Petitioners seek any remedy by instituting fresh proceedings in a Forum where question of limitation will be relevant and may arise.

JYOTI SINGH, J

DECEMBER 16, 2022/*shivam/rk*