

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2006

Coram

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

WRIT PETITION No.36366 of 2003

Singapore Airlines Limited,
"West Minster", First Floor,
108, Dr. Radhakrishnan Salai,
Chennai 600 004. ... Petitioner

Vs.

1. Presiding Officer,
Principal Labour Court, Chennai.

2. R. Rajendran @ Rajan, .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records on the file of the first respondent, quash the order, dated 14.10.2003, made in I.A.No.744 of 1999 in I.D.No.381 of 1995 and to forbear the first respondent from proceeding further in I.D.No.381 of 1995.

For petitioner : Mr.M.Vijayan

for M/s. King & Partridge

For respondents : M/s. P.V.S. Giridhar Associates for R2

O R D E R

The writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records on the file of the first respondent, quash the order, dated 14.10.2003 made in I.A.No.744 of 1999 in I.D.No.381 of 1995 and to forbear the first respondent from proceeding further in I.D.No.381 of 1995.

The brief facts of the case leading to the filing of the present writ petition are as follows:

2. The petitioner is a world renowned Airlines Corporation and it operates a fleet of planes flying on almost all the commercial routes of the world offering passenger, cargo, mail and other services. The petitioner Airlines is well known for the high exemplary standard of services and had been getting the best Airlines award of the year for a number of years. The award is given for maintaining high standards of

technical and operational excellence. The petitioner Airlines provides excellent service conditions for its employees and has been following all the Labour Laws applicable to them, scrupulously.

3. It has been further stated that one of the former Managers of the petitioner Airlines, Zainel Arifin, while working in Chennai, had engaged the second respondent as a personal driver and there was no employer-employee relationship between the petitioner Airlines and the second respondent. After Zainel Arifin was transferred to Singapore, the second respondent had raised an Industrial Dispute against the petitioner Airlines alleging non-employment. The Industrial Dispute was raised by the second respondent, under Section 2A of the Industrial Disputes Act, 1947, (herein after referred to as the Act). Under Section 2(a)(i) of the Act, the Appropriate Government for "Controlled Industry" is the Central Government. Section 2(ee) of the Act defines the term "Controlled Industry" as any Industry, the control of which, by the union, has been declared by any Central Act, to be expedient in the public interest. The Industries (Development and Regulation) Act, 1951, is the Central Act relating to a Controlled Industry. Those Industries, which are mentioned in the first schedule of the Industries (Development and Regulation) Act, 1951, are called as Controlled Industries, for which the appropriate Government is the Central Government. Transportation through aircraft has been included under Item 7 Schedule I of the Industries (Development and Regulation) Act, 1951. Singapore Airlines is an Air Transport Company and therefore, the appropriate Government for Singapore Airlines is the Central Government.

4. Under Section 2(a)(i) of the Act, for an Air Transport Service, the appropriate Government is the Central Government. Therefore, any Industrial Dispute with regard to Singapore Airlines should be referred by the Central Government to the Central Government Labour Court for adjudication. Whereas, in the present case, the second respondent had raised the Industrial Dispute, under Section 2A of the Act, before the Labour Court constituted by the State Government, as if the State Government is the appropriate Government. In view of the above circumstances, the first respondent labour Court has no jurisdiction to adjudicate the Industrial Dispute. In view of the above legal position, the petitioner Airlines had filed an interim application in I.A.No.744 of 1991 questioning the jurisdiction of the first respondent in adjudicating the dispute.

5. In the affidavit filed by the second respondent in respect of W.V.M.P.No.674 of 2004, it is stated that he has been working as a driver in the petitioner Airlines, from 5.5.1984 till his retrenchment from service, on 4.8.1992. He had filed I.D.No.381 of 1995, before the Principal Labour Court, Chennai, challenging his retrenchment following the failure report issued by the Conciliation Officer. The petitioner herein had filed a counter statement and the matter had been posted for enquiry. The second respondent was examined as W.W.1, on 3.8.1999, and

the case was posted for cross-examination, on 17.8.1999. The petitioner did not proceed with the case and at that stage I.A.No.744 of 1999 came to be filed. A counter affidavit was filed by the second respondent in the said interim application stating that the Industries (Development and Regulation) Act, 1951, was concerned with the development and regulation of Industries involved in manufacturing or production of goods and articles and not with the service Sector. The first schedule of the Act begins with the words "any Industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings" and under Item 7(1) "aircraft" is mentioned. The petitioner-Airlines, admittedly, is not involved in the manufacture or production of aircraft and it only provides service of transporting people and cargo. It was admitted by the petitioner Airlines that they did not have a registration under Section 10 or a licence under Section 11 of the Act for manufacturing or for production. If that be true, they have to close down their undertaking and would be liable for committing an offence under the Act punishable by law if they are carrying on the activity of manufacturing or production without complying with the provisions of the said Act.

6. Heard the learned counsels for the petitioner as well as for the respondents.

7. Learned counsel appearing for the petitioner Airlines contends that Section 2(a) (i) of the Industrial Disputes Act, 1947, states that the Appropriate Government is the Central Government in case of Air Transport Service. However, it is seen that the words "Air Transport Service" have been substituted by the Industrial Disputes (Amendment), Act, 1996, with effect from 11.10.1995 only whereas, the claim statement had been filed by the second respondent in I.D.No.381 of 1995, under Section 2A of the Industrial Disputes Act, on 24.4.1995 itself. This shows that at the time of filing of the claim statement, the appropriate Government for Air Transport Service was not the Central Government. Therefore, the above contention of the petitioner Airlines cannot be correct in law.

8. According to the learned counsel appearing for the petitioner Airlines, Section 2(ee) of the Act defines the term "Controlled Industry" as "any Industry, the control of which, by the Union, has been declared by the Central Act, to be expedient in the public interest." It has been further stated that the Industries (Development and Regulation) Act, 1951, is the Central Act relating to "Controlled Industry" and the first schedule of the said Act enumerates the Controlled Industry for which the appropriate Government is the Central Government. Item 7 of Schedule I of the Industries (Development and Regulation Act, 1951, includes the term 'aircraft'. However, it is seen that the schedule relates to 'production or manufacture' of aircraft and it does not deal with transportation by aircraft, which is a service rendered by the petitioner-Airlines. Therefore, the above contentions of the petitioner Airlines are not acceptable.

9. Paragraphs 8 and 9 of the order passed by the Principal Labour Court, Chennai, on 14.10.2003, in I.A.No.744 of 1999 in I.D.No.381 of 1995, read as follows:

"8. This I.D. was filed in the year 1995. Counter was filed, on 22.10.1996. W.W.1 was examined in chief, on 29.6.1999 and 3.8.1999. Exs.W.1 to W.13 were marked. I.D. was posted for the cross-examination of W.W.1 from 17.8.1999. This I.A. has been filed only, on 12.11.1999. Though the counter was filed in the year 1996, this I.A. was filed only, on 12.11.1999 i.e., after a lapse of a 3 years. From this we can presume that the petitioner/respondent has no intention to conduct the I.D. and he also wants to prolong the I.D. It is admitted by the petitioner/respondent that the respondent/petitioner was engaged as a driver. This I.D. was for reinstating the petitioner in service with backwages and continuity of service.

9. Perused the counter in the main I.D., and the ruling cited by the petitioner/respondent. There is no whisper about the jurisdiction of this Court in the main counter. For the above reasons, I hold that this petition was filed only to drag on the proceedings and there is sufficient cause or reason to allow this petition. Hence, this petition is dismissed with costs of Rs.2,000/-."

10. On a perusal of the records available and on an analysis of the rival contentions, this Court is of the considered view that there is no substance in the contentions raised by the petitioner Airlines and there is nothing shown for invoking the jurisdiction of this Court to set aside the order of the first respondent labour Court, dated 14.10.2003, made in I.A.No.744 of 1999 in I.D.No.381 of 1995. In such view of the matter, the writ petition is liable to be dismissed.

11. However, in view of the fact that the Industrial dispute in I.D.No.381 of 1995 has been pending from the year 1995, the first respondent Labour Court is directed to hear and dispose of the dispute on merits, following the due procedure as established by law, within a period of four months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands dismissed. No costs. Consequently, connected W.P.M.P.No.44150 of 2003 and W.V.M.P.No.674 of 2004 are closed.

Sd/
Asst.Registrar

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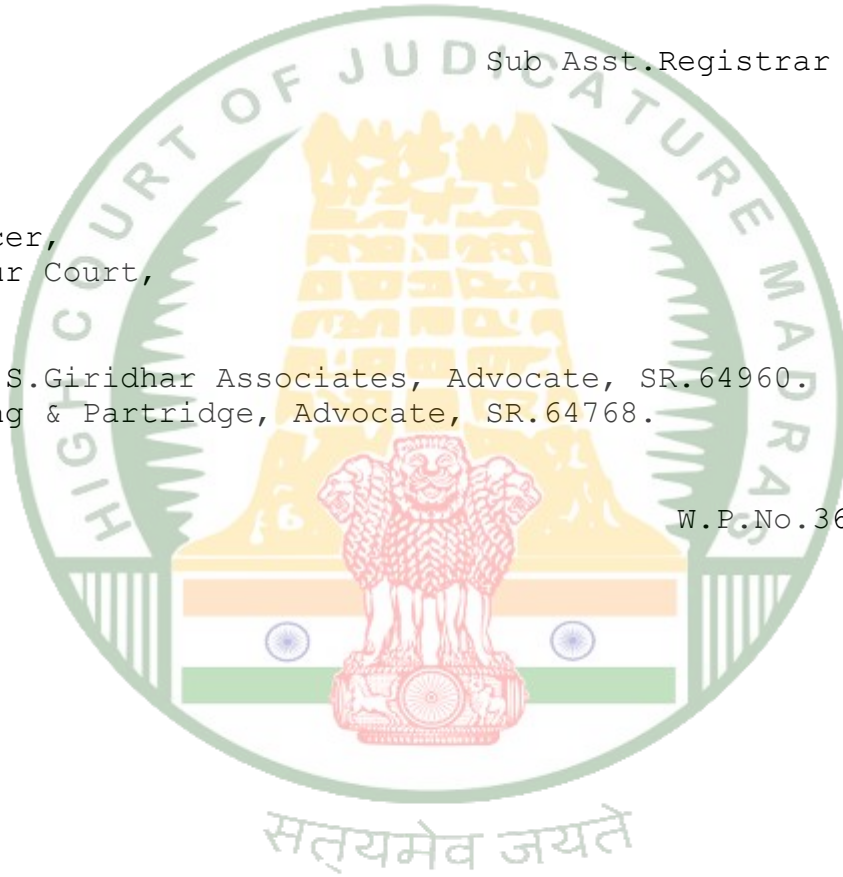
To:

Presiding Officer,
Principal Labour Court,
Chennai.

1 cc To Mr.P.V.S.Giridhar Associates, Advocate, SR.64960.
1 cc To M/S.King & Partridge, Advocate, SR.64768.

W.P.No.36366 of 2003

NG (CO)
RVL 04.01.2007



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