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

+ W.P.(C) 9521/2018 & CM APPLs. 37098-37099/2018

INDIAN AIRLINES KAMGAR SANGTHAN ..... Petitioner

Through: Mr.Saket Sikri, Adv. with  
Mr.Ajay Pal Singh, Adv.

versus

AIR INDIA LIMITED AND ANR. .... Respondents

Through: Mr.Lalit Bhasin, Adv. with  
Mr.Ajay Pratap Singh, Ms.R.D.Dhingra and  
Ms.Bhavna Dhami, Adv. for R-1  
Ms. Anjana Gosain and Ms. Rabiya Thakur,  
Adv. for R-2

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

% **11.09.2018**

**CM No.37099/2018 (exemption)**

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

**W.P.(C) 9521/2018**

1. Issue notice to show cause as to why rule *nisi* be not issued, returnable on 8<sup>th</sup> February, 2019.
2. Counter affidavit be filed within four weeks with an advance copy to the petitioner, who may file rejoinder thereto, if any, within two weeks thereof.

**CM No.37098/2018 (for stay)**

1. This writ petition is directed against a communication, dated 16<sup>th</sup> August, 2018, issued by respondent no.1 (Air India Ltd.), whereby all casuals, deployed in the Airport, are proposed to be



transferred to the respective ground handling subsidiary company/joint venture subsidiary company. In Delhi, such employees stand transferred to the AI SATS, which, the petitioner points out, is a 50:50 joint venture between the respondent and SATS Ltd.

2. Inasmuch as the ramifications of the present order is serious, it would be appropriate that a brief outline of the controversy is set out.

3. In 1989-90, Indian Airlines issued an employment notification for filling up regular vacancies of Helpers, Loaders etc. The petitioners, who applied, thoroughly scrutinized and interviewed by a recruitment board of Airlines, their suitability being adjudged on the basis of physical appearance, manners and mental alertness. Out of a total of 11706 candidates who were called for interview, 8310 candidates appeared for the interview, from which the petitioners were selected. The interview was held in May, 1990, which the petitioners qualified. Following the selection, a panel of successful candidates was prepared on 3<sup>rd</sup> December, 1990, to fill up regular vacancies then existing and to arise in the future. Ultimately, 88 persons were appointed.

4. Against other regular vacancies, the petitioners were engaged from the panel, on rotation basis for three months each, from December, 1991 to July, 1994. Against 325 vacancies, 200 persons were employed on casual basis, though, according to the petitioners, the work was perennial. The panel, which was extended from time to time, finally expired on 15<sup>th</sup> July, 1994, whereupon respondent no. 1 disengaged the petitioners and brought their casual employment to an end.

5. This provoked the petitioners to file W.P.(C) No. 4113/1994,



seeking appointment against regular vacancies existing with the respondent no. 1 and also seeking regularisation.

6. The said writ petition was disposed of *vide* order dated 9<sup>th</sup> May, 1997, with directions not to discontinue to such persons, whose names appeared in the select panel, and who were prepared to work on casual basis till regular appointments were made, and further directing that, if such persons were deployed on casual or *ad-hoc* basis, they would be replaced only by regular employees to get employed on regular basis and not by other casual workers. Appointment on casual/*ad-hoc* basis was, therefore, directed by taking the select panel as the base and according to the merit position in the select panel. *They were to be continued to be engaged till posts were filled on regular basis.*

7. SLP(C) No.16392-99/1997, preferred against the said order, 9<sup>th</sup> May, 1997, was dismissed by the Supreme Court on 15<sup>th</sup> September, 1997.

8. Pursuant to the above directions, the petitioners joined the services of respondent no.1.

9. The petitioners are now, by the impugned communication, dated 16<sup>th</sup> August, 2018, being sought to be transferred to “outside entities” (as the petitioners would aver), without eliciting their opinion or consent. The impugned communication also states that daily deployment, certification of overtime and payment would be done by the respective companies where the petitioners are transferred.

10. The petitioners also point out that they have moved W.P.(C) No.5202/2010, seeking regularisation w.e.f the date of their initial engagement without consequential benefits, which is pending before this Court, and in which the respondent no. 1 is yet to file a counter



affidavit. Implementation of the impugned communication, dated 16<sup>th</sup> August, 2018, it is contended, is bound to render the said writ petition infructuous.

11. In the said W.P.(C) 5202/2010, (i) an interim order dated 4<sup>th</sup> August, 2010, was passed, restraining respondent no.1 from dislocating the petitioners from their *present place of posting within Delhi* and (ii) a second interim order, dated 5<sup>th</sup> October, 2010, was passed, to the effect that, till disposal of the writ petition, the petitioners would be entitled to get the benefits of daily-wages from respondent no. 1 along with other benefits.

12. The latter order dated 5<sup>th</sup> October, 2010, was challenged by respondent no.1 in LPA No.784/2010. Respondent no.1 offered, during the pendency of the LPA, to pay certain amounts whereupon the LPA was disposed of, *vide* order dated 3<sup>rd</sup> February, 2011, directing that “*voluntary steps taken by the appellant shall continue till the disposal of the writ petition*”.

13. In my considered opinion, the impugned communication, dated 16<sup>th</sup> August, 2018, may, possibly defy, on the face of it, (i) the order dated 9<sup>th</sup> May, 1997 passed by this Court, read with the order dated 15<sup>th</sup> September, 1997 of the Supreme Court, (ii) the interim order dated 5<sup>th</sup> October, 2010 in WP(C) No. 5202/2010 and (iii) the order dated 3<sup>rd</sup> February, 2011 in LPA No.784/2010.

14. I have already passed orders in cases filed by individual petitioners, staying the operation of the impugned communication, dated 16<sup>th</sup> August, 2018. I nevertheless felt it appropriate to set out, in detail, the reasons for stay, as the impugned communication is in the nature of an omnibus exercise, which would cover all casuals working



with Air India, so that the respondent would be in a position to address arguments on this issue and a quietus can be imparted to the controversy.

15. Mr. Bhasin, learned counsel for the petitioners, submits that he does not subscribe to the narration of facts, as set out by the petitioners in the writ petition, and would file an appropriate response thereto, in his counter affidavit.

16. In the above circumstances, as has already been directed in similar cases, and for the above reasons, there shall be an *ad interim* stay of the operation of the impugned communication, dated 16<sup>th</sup> August, 2018, till the next date of hearing.

17. Renotify on 8<sup>th</sup> February, 2019.

**C.HARI SHANKAR, J**

**SEPTEMBER 11, 2018**

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