

HIGH COURT

KGSJ

DATED: 18.01.2012

ORDER

WP NO. 8172 OF 1997



ALLOWING THE WP
WITHOUT COSTS

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND TWELVE

PRESENT
THE HON'BLE SRI JUSTICE K.G.SHANKAR

WRIT PETITION NO : 8172 of 1997

Between:

1. Airports Authority Employees Union (NAAEU), Registration No. 3515 represented by President Sri S.R. Santhanam S/o Sri Srinivas Raghavana, R/o R 28-A, NAA Airport Quarters, Begumpet, Allaudin Side, Hyderabad
2. Sri Balraj Singh S/o Prem Singh, Assistant General Secretary, Bhopal Airport, Bhopal Madhya Pradesh State.

..... PETITIONERS

AND

1. Government of India, Ministry of Civil Aviation and Tourism, rep by its secretary Safdarjung, Airport, New Delhi - 3.
2. Chairman Airport Authority of India (National Division), R.G. Bhavan, Safdarjung Airport, New Delhi
3. Chief Labour Commissioner Government of India, Rafimarg, Sharam Shakti Bhavan, New Delhi 110 001
4. Regional Labour Commissioner, Curzon Barracks New Delhi 110 001
5. Regional Labour Commissioner (Central) Opposite Sivam, Vidyanagar, Hyderabad
6. Director of Public Enterprises no. 14 CGO Complex, Lodhi Road, New Delhi
7. Airport Director, Airport Authority of India (NAD), Hyderabad - 500 016.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of Writ of Mandamus 1. declaring the action of the N.A.A in not framing the terms and conditions of service from the date of absorption of employees who came from the Department of Civil Aviation and CPWD as illegal and arbitrary; 2. declaring the recommendations of High Power Pay Committee constitute under the Chairmanship of Hon'ble Sri Justice R.B. MISRA and consequential Office memorandum of No. OM no.2 (43)/90/DPE (WC) dated June 21, 1990 are not applicable to absorbees from Department of Civil Aviation and CPWD to national

Airports Authority 3. declaring the action of respondent NAA in entering into understanding W.E.F 01.01.1992 by treating the pay scales as abinitio pay scales without calling for options as per joint consultative machinery recommendations and without finalizing terms and conditions of services of NAA as illegal and arbitrary 4. direct the respondent to prescribe the terms and conditions of service of abosorbees who came to the fold of National Airports Authority before deciding the merger of national Airports Authority of India and International Airports Authority of India into Airports Authority of India.

Counsel for the Petitioner: SRI G.VIDYASAGAR

**Counsel for Respondent No.1,3 to 7: SRI. PONNAM ASHOK GOUD
(ASSISTANT SOLICITOR GENERAL).**

Counsel for the Respondent No.2: SRI.R.VIJAYANANDAN REDDY

The Court made the following ORDER:

THE HON'BLE SRI JUSTICE K.G.SHANKAR

WRIT PETITION No.8172 OF 1997

ORDER:

The petitioners are Airports Authority Employees Union and one of its members. The 2nd respondent is the Chairman of Airport Authority of India. After the enactment of Airports Authority of India Act (Act 55 of 1994), the Airports Authority of India, the present 2nd respondent took over the members of the 1st petitioner. The petitioners contend that the National Airports Authority (NAA, 'for short') has not framed the terms and conditions of service of the members of the 1st petitioner-Union, that the High Power Committee headed by the Hon'ble Sri Justice R.B.Misra has not considered the controversy with reference to the members of the 1st petitioner- Union, and that the action of the 2nd respondent in terms of the recommendation of the High Power Committee is illegal as the same is not applicable to the members of the 1st petitioner- Union. The petitioners also submit that the 2nd respondent be directed to determine the terms and conditions of service of the petitioners within a reasonable time framed.

2. The controversy arose in the circumstances where members of the Civil Aviation and Central Public Works Department were deputed to work with NAA. Sri R.Vijayanandan Reddy, the learned counsel for the 2nd respondent *inter alia* contended that the petitioners do not have locus standi to contest the case at all. He as well as Sri G.Vidya Sagar, the learned counsel for the petitioners have explained the circumstances in chronology in which the petitioners have become employees of NAA. The National Airports Authority Act, 1985 came into force with effect from 01.06.1986. The employees were working under the Director

General of Civil Aviation (DGCA, 'for short'). There were several services like Air, traffic services etc. All of them were absorbed in NAA and came under the control of DGCA.

3. The learned counsel for the 2nd respondent pointed out that it is not as though every employee working in the Airport and its services was absorbed as an employee of NAA. He submitted that only those employees, who expressed their willingness were absorbed in NAA and not all the employees. The absorption was recorded in the proceedings dated 15.09.1989 duly authorized by the Director of Personnel on behalf of NAA. The notice of absorption in the regularization did not refer to the Memorandum of the Ministry of Personnel, Public Grievances and Pensions dated 05.07.1989 (Memorandum dated 05.07.1989, 'for short'). The 2nd respondent- NAA was constituted on 21.05.1986, and as already pointed out, the employees from DGCA were absorbed, indeed on deputation. Through notice of absorption dated 15.09.1989 referred to above, the deputed employees were absorbed as regular employees of NAA. All the members of the 1st petitioner have expressed willingness to be absorbed in the NAA and were accordingly absorbed.

4. However, it is the grievance of these petitioners that their service conditions have not been finalized particularly with reference to the scales and other allowance between CDA (Central Dearness Allowance) and IDA (Industrial Dearness Allowance). The petitioners contend that with effect from 01.01.1986, they had been enjoying the pay scale in accordance with the recommendations of the 4th Pay Commission.

5. As things stood thus, the Airports Authority of India Act, 1994 (Act 55 of 1994) was enacted which came into force with effect from 01.04.1995. The Airports Authority of India (AAI) was constituted

merging the national and international airports constituted under the National Airports Authority Act, 1985 and the International Airports Authority Act, 1971. A formula was evolved for the Central Government employees being absorbed into public sector undertakings. Such a formula was not framed in respect of the members of the 1st petitioner herein and that the petitioners consequently seek for the same.

5. In the meanwhile, a dispute came up before the Supreme Court in *Jute Corporation of India Officers' Association vs. Jute Corporation of India Ltd.*¹ The Supreme Court resolved the controversy of the employees of Central Government, who went into public sector undertakings with reference to drugs and pharmaceutical companies, cement companies and jute industry. The learned counsel for the 2nd respondent contended that in view of the decision of the Supreme Court in *Jute Corporation of India Officers' Association* (supra 1), the petitioners herein cannot raise the dispute once again. He also contended that a tripartite agreement was entered into between the recognized Union by AAI and NAA before the Regional Labour Commissioner, New Delhi and that this case was finalized for the employees of NAA. It is his further contention that as the scales were already finalized, the petitioners cannot reopen the same as they are bound by the tripartite agreement.

6. The learned counsel for the petitioners contended with reference to the judgment of the Supreme Court cited above that the judgment of the Supreme Court is in respect of jute, drugs and pharmaceutical, cement and engineering employees and not with reference to the employees of NAA. He also contended that the decision of the Supreme Court is with reference to third Pay Revision Commission (3rd PRC, 'for

¹ (1990) 3 Supreme Court Cases 436

short') and not with reference to the 4th Pay Revision Commission (4th PRC, 'for short'). He submitted that the grievance of the members of the 1st petitioner is that their service conditions shall be determined with reference to 4th PRC with effect from 01.06.1986 till 01.01.1992.

7. It would appear that the tripartite agreement referred to by the learned counsel for the 2nd respondent was with reference to the service conditions from 01.01.1992 till 31.12.1996. The agreement does not refer to the service conditions prior to 01.01.1992. It is the case of the petitioners that the petitioners were deputed to NAA with effect from 01.06.1986. There is a vacuum regarding the service conditions of the petitioners from 01.06.1986 till 01.01.1992. It is also pertinent to notice that the service conditions from 01.01.1992 to 31.12.1996 with reference to the scales would change if the service conditions with reference to the scales are redetermined with effect from 01.06.1986, primarily in terms of the 4th PRC. On the strength of the 4th PRC and the admitted fact that the tripartite agreement was with reference to the scales from 01.01.1992 only, the learned counsel for the petitioners contended that there is need for the redetermination of the service conditions of the petitioners with effect from the date of deputation on 01.06.1982 till 01.01.1992.

8. I agree with the contention of the learned counsel for the petitioners that there was no determination of the service conditions of the members of the petitioners till 01.01.1992. The proceedings dated 15.09.1989 also did not speak about the same.

9. According to it, the Central Government Circular dated 05.07.1989 mentioned about the settlement of pensionary terms of the Central Government employees transferred from Public Sector

Undertakings to Central public sector undertakings. Para 4 of the Memorandum reads as under:

"The PSU/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government."

10. The Memorandum obligates the absorption of the employees of PSU (Public Sector Undertakings) to formulate the terms and conditions of service of the absorbed employees. In the present case, while the petitioners who were employees of the Central Government were absorbed into the service of NAA and the present AAI with effect from 01.06.1986, their service conditions were partly clarified and determined with effect from 01.01.1992. Their service conditions, however, remained undetermined from the date of their joining into service from 01.06.1986 till 01.01.1992. I, therefore, consider that the request of the petitioners for determination of their service conditions is certainly justified and deserves to be ordered.

10. The petitioners sought for a Mandamus declaring the action of NAA in not framing the terms and conditions of services from the date of absorption, as illegal and arbitrary. In view of my observations, the petitioners are entitled to such a declaration as NAA did not determine the terms and conditions of service of the absorbed employees with effect from 01.06.1986 till 01.01.1992.

11. The petitioners also sought for a declaration that the recommendations of the High Power Committee without finalizing the terms and conditions of services of NAA, are illegal and arbitrary. Admittedly, the terms and conditions of services of the petitioners into NAA have not been determined so far, so much so, the recommendations of the High Power Pay Committee becomes *non est*. The petitioners consequently are entitled for a declaration as prayed for in this regard.

12. The petitioners finally sought for a direction to the respondents to prescribe the terms and conditions of service of the members of the 1st petitioner- Union within a reasonable time. I deem it appropriate to direct the 2nd respondent to determine the terms and conditions of services of the absorbed employees, including the petitioners, within a period of six (6) months by following the prescribed procedure.

13. Accordingly, this Writ Petition is allowed. The action of NAA in not framing the terms and conditions of services of the absorbed employees is declared as illegal. It is held that the recommendations of High Power Pay Committee shall not be applied to the absorbed employees without finalizing their terms and conditions of services. The 2nd respondent consequently is directed to take steps to determine the terms and conditions of service of the absorbed employees and shall determine the same within a period of six (6) months from the date of receipt of these orders. No costs.

This Rule Nisi has been made absolute as above witness the Hon'ble Sri Madan B. Lokur, the Chief Justice on this Wednesday, the Eighteenth day of January, Two Thousand Twelve.

SD/-S. SAMMAIAH CHARY
ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

- To
- 1 Government of India, Ministry of Civil Aviation and Tourism, rep by its secretary Safdarjung, Airport, New Delhi - 3.
 - 2 Chairman Airport Authority of India (National Division), R.G. Bhavan, Safdarjung Airport, New Delhi
 - 3 Chief Labour Commissioner Government of India, Rafimarg, Sharam Shakti Bhavan, New Delhi 110 001
 - 4 Regional Labour Commissioner, curzon Barracks New Delhi 110 001
 - 5 Regional labour Commissioner (Central) Opposite Sivam, Vidyanagar, Hyderabad
 - 6 Director of Public Enterprises no. 14 CGO Complex, Lodhi Road, New Delhi
 - 7 Airport Director, Airport Authority of India (NAD), Hyderabad - 500 016.
 - 8 One CC to Sri. G. VIDYASAGAR, Advocate (OPUC)
 - 9 One CC to Sri. R. VIJAYANANDAN REDDY, Advocate (OPUC)
 - 10 One CC to Sri. PONNAM ASHOK GOUD, Assistant Solicitor General (OUT)
 - 11 Two C.D. Copies
- Avs