

(2000) 04 AP CK 0014

Andhra Pradesh High Court

Case No: Writ Petition No. 14246 of 1997

Mohd. Ghouse and Others

APPELLANT

Vs

Regional Executive Director,
National Airport Authority of
India and Another

RESPONDENT

Date of Decision: April 9, 2000

Acts Referred:

- Aircraft Rules, 1937 - Rule 78A, 78A(5)
- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 2

Citation: (2001) 1 ALT 218

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Kalyan Rao Joshi, for the Appellant; K. Srinivas Murthy, S.C., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.S.A. Swamy, J.

The petitioners who are working as Lift Operators in the first respondent-unit at Hyderabad under the administrative control of the second respondent, filed this writ petition seeking a Writ of Mandamus to declare that the petitioners are eligible to the pay scale of Rs. 2,950-90-3,850-100-4,850 attached to the post of Lift Operator Higher Grade with effect from 1-7-1990, the day on which they were transferred from the Central P.W.D. of the second respondent and pay all the increments and difference in pay and allowances apart from extending the Revised Pay Scales from 1-1-1986.

2. The questions that arise for consideration in this writ petition are:

- (1) Whether all the petitioners are entitled to the Pay Scales attached to the High Speed Lift Operators from the date of their transfer to the respondent-authority from the Central P.W.D.?
- (2) Whether the first petitioner is entitled to claim the salary of the Lift Operator till he was appointed in that capacity on 8-12-1984, the date on which he was promoted as Lift Operator on regular basis?
3. All the petitioners initially joined as Khalasis in the Central P.W.D. and they were transferred to the respondent-authority on 1-7-1970. On that day, the first petitioner was working as Khalasi whereas petitioners 2 and 3 were working as Lift Operator. In that capacity, they were transferred to this organization. The respondent-authority accordingly fixed the pay of the first petitioner in the Pay Scale attached to the post of Khalasi and the pay of petitioners 2 and 3 in the Pay Scale attached to Lower Grade Lift Operator. It is the case of the first petitioner that since the time of transfer, he was working as Lift Operator, and till actual promotion was given on 3-12-1995, he was being paid only wages attached to the post of Khalasi. It also came to light during the hearing that while the first petitioner was working as Khalasi, he seemed to have been acting as Lift Operator intermittently. When the pay scale applicable to the Lift Operator were not implemented, the first petitioner filed C.A.No. 943 of 1996 on the file of the Central Administrative Tribunal. The said Tribunal directed the said organization to pay difference in the minimum of pay scales for the period from 1-8-1982 to 30-6-1990 after establishing the fact that he worked as Lift Operator during that period. As per the order of the Central Administrative Tribunal, the Central P.W.D. paid the difference of pay at Rs. 950/- per month in the pay scale of Rs. 950-20-150-EB-25-1500 attached to the post of Life Operator for the number of days he worked on the lifts during that period and the same was communicated by the Executive Engineer of the Central P.W.D. in his proceedings 10(1)(3)99/ HCED-II/306, dated 18-2-1999. These proceedings reflect that the Central P.W.D. paid difference in wages attached to the post of Lift Operator to the first petitioner for the days he worked as Lift Operator but he was not given the pay scale attached to the post of Lift Operator. Hence till the date of transfer he was only a Khalasi and on transfer also he was accommodated in the office of the respondents as Khalasi. But he contends that he worked as Lift Operator and the respondents denied him the pay scale attached to the post till he was posted as Lift Operator.
4. This being a disputed question of fact, I cannot adjudicate the same sitting in the jurisdiction under Article 226 of the Constitution and it is open to the first petitioner to move the Labour Court for the relief sought for by him to this extent.
5. The next question that arises for consideration is whether all the petitioners are entitled to receive the Pay Scales attached to the post of High Speed Lift Operator? From the documentary evidence produced before this Court, it is clear that the lifts that are being operated are of the Speed of one meter per second. As per the

certificates given by the suppliers, therefore classified as Low Speed Lift. But the Counsel for the petitioners contends that as per the Indian Standard Specifications, lifts are divided into 4 categories. They are (1) .5 meter per second, (2) .5 to 1 meter, (3) one meter/per second (4) 1.25 per second. It is his case that lifts with speed of 1 meter per second and 1.25 per second have to be treated as High Speed Lifts and the Operators of those lifts are entitled to receive the salaries attached to the post. But in the light of the certificates given by the manufacturers, I cannot accept the contention of the Counsel that the lifts that are being operated are of High Speed Lifts. It is not in dispute that they are being paid the pay scales attached to the Low Speed Lifts from the date of their absorption in case of petitioners 2 and 3 and from the date of his promotion i.e. 3-12-1994, in case of the first petitioner. This relief cannot be granted. Accordingly, this contention is also rejected.

6. This leaves me one more aspect of the case. I started hearing the case on 25-7-2000. On that day, I directed the learned Counsel for the respondents to produce the pay scales that are in force with respect to various categories of Lift Operators. On 27-7-2000, the second respondent - the Airport Director - in his order AAI/HY/ AD/G.13/2000, dated 27-7-2000, prohibited the first petitioner i.e. Mohammed Ghouse, from entering the two terminals operated at Begumpet, Rajiv Gandhi Terminal and N.T.R. Terminals by stating that he is completely satisfied that it is necessary for maintenance of proper order, to refuse entrance to the first petitioner into the terminals, in exercise of his power under Rule 78-A of the Aircraft Rules 1937 (for short "the Rules"). When this fact was brought to my notice, by order dated 1-8-2000, I directed the second respondent to file an affidavit either accepting or denying this fact. Pursuant to the directions given by this Court, the second respondent in para 3 of his affidavit dated 2-9-2000 stated hereunder:

"With regard to para 1 of the order I submit that basing on the complaints received from the Airlines officials and contractors that the petitioners was interfering with the passenger facilitations and also the petitioner was missing from duty place. Taking into consideration all the factors, the regular Airport Director issued the above order vide memorandum stated above to the petitioner restraining him from entering into terminals of Rajiv Gandhi and N.T.R. terminals as per the Rule 78 A (5) of the Aircraft Rules 1937....."

7. From the above, it is seen that the second respondent prohibited the first petitioner from entering the terminals on the ground that he was causing interference to the passengers facilitations and that he was also missing from duty places. But no material whatsoever was placed before this Court. On the other hand, this order emanated from the second respondent after I started hearing the writ petition on 25-7-2000. In the reply filed, the first petitioner stated that as Assistant Secretary of Airport Authority, Kamgar Union he filed an application before the Labour Commissioner on 1-7-1998 u/s 2(k) of the Industrial Disputes Act wherein representation was made for appointment of contract labour and absorption of

contract labour on regular basis. When this Court started hearing Writ Petition No. 17308 of 1998 which was hotly contested by the respondents whose hearing spread more than one year, a representation filed by the Petitioner before the conciliation Officer on 1-7-1998 was also filed by the petitioners therein as an exhibit and thereafter his troubles started. Be that as it may, the fact remains that except a vague allegation that the petitioner was causing interference with the passengers' facilitation and absconding from the duty, no material was placed before this Court. Further if any complaint was received by the authorities, they were expected to call for the explanation of the petitioner and consider the same before passing adverse order affecting the interest of the first petitioner. In this case, nothing of that sort took place and straightaway the order in question was issued. He passed this order in exercise of the powers vested in him under Rule 78-A(5) of the Rules. As much stress has been placed on the said Sub-Rule, the same is extracted hereunder:

"(5) Notwithstanding anything contained in this rule, the Director-General, the officer in-charge of an Aerodrome or any other officer authorised by the Director-General in this behalf may, if he is satisfied that it is necessary or expedient so to do for the maintenance of proper order or decorum refuse admission to any person into the terminal building or any part of such building, or any other area, in a Government Aerodrome or require any person in such building, part or area to leave the same."

8. From this it is seen that the Director-General or any Officer authorised by him if he is satisfied that any person entered into the terminals for maintenance of proper order or decorum can refuse admission to any person into the terminal, building or any part of such building or any other area in a Government Aerodrome or require any such person in such building, part or area to leave the same. The word used in this sub-rule is "person", not "employee". This is more intended to prohibit outsiders, not persons connected with the affairs of the airport from entering any of the terminals, buildings or any other area in the Aerodrome. Hence it cannot be said that under this Rule, the second respondent is having power to prohibit the petitioner who is a regular employee of the air port, from entering any terminal. If the petitioner indulged in any acts of violence or misbehaviour, which attracts the punishment, it is always open to the respondent-authorities to conduct an inquiry as per the regulations and take suitable action. But the question of prohibiting the employee from entering any terminal or any part of the building as long as he is working in the Airport Authority does not arise. Hence, I have no manner of doubt to hold that the order, dated 27-7-2000, emanated from the second respondent is vitiated with mala fides and intended to harass the petitioners for approaching this Court. Accordingly, the said order is set aside. The respondents are directed to utilize the services of the first petitioner as Lift Operator forthwith.

9. With the above directions, the writ petition is disposed of. No costs.