GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No-2, NEW DELHI.

Present:

SMT. PRANITA MOHANTY,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 190/2020

Date of Passing Order- 25th January, 2021.

Between:

AIR ASIA Management

Versus

CAPT GAURAV TANEJA Applicant

This order is in respect of a prayer made by the 2nd party claimant for a direction to the 1st party management for grant of interim relief to him pending adjudication and disposal of the industrial dispute raised by him.

Copy of the claim petition being served, the management of Air Asia filed written statement and the matter was heard,when argument at length were advanced by the Ld. A/Rs for both the parties. In order to discuss and give a finding on the prayer of the claimant,it is necessary to mention briefly the background facts leading to filing of this claimpetition.

The claimant/workmen, who is a pilot by profession, claiming himself to be the employee of Air Asia has stated that during the course of his employment, on many occasions he had raised objections with regard to the violation of safety norms by the management company which has the effect of endangering the safety of the passengers. Since no rectification action was taken at the end of the management, the claimant workman, as an honest and responsible person took the matter to the regulator i.e. DGCA, who took note of the same and initiated action against the person responsible, as a result of which the chief of flight safety was placed under suspension. Since then the 1st party management was carrying a grudge against the claimant and searching for an opportunity to take action against him. On 4th May 2020 and 30thMay 2020 two separate show cause notices were served on him and on14.6.2020,an order of suspension and notice for inquiry were also served on him. The inquiry was concluded on 23.6.2020, finding the claimant guilty of misconduct and the management, on the same day served another show cause notice. Soon

thereafter on 4th July 2020, he was dismissed from service. Challenging the said act of dismissal as arbitrary and vindicated, the claimant had raised a dispute before the conciliation officer after serving demand notice on the employer. Since the conciliation failed, he filed this industrial dispute challenging the order of dismissal as illegal. The grounds taken by the workman amongst others is that the management had not followed the principles of natural justice and the procedure prescribed under the model standing order for departmental inquiry. No opportunity was given to the claimant to set up his defence. It has inter alia been prayed that pending adjudication of the dispute the interest of the workman be protected and the management be directed to reinstate him into service, pay the unpaid salary from the date of dismissal till filing of the dispute and deposit the salary for every month hence forth in the account of this Tribunal till a final decision is taken as an interim relief. No separate petition for interim relief, however has been filed.

The management Air Asia by filing written statement has refuted the stand taken by the workman in the claim petition. It has also challenged the maintainability of the proceeding on the ground that the claimant is not a workman and the challenge made by him with regard to the fairness of the domestic inquiry not being an industrial dispute, this tribunal has no jurisdiction to adjudicate upon the same or grant the interim relief sought for, unless and until the objection on the maintainability is heard and decided. To support the contention reliance has been placed in the case of **Hira Sugar Employees Co-Op Consumer Store Ltd vs P.P Korvekar and others:1995 1 LLJ 1158.** The other objection taken by the management is that in absence of a specific provision under the Industrial Dispute Act for grant of interim relief, the prayer for the same is liable to be rejected.

The learned AR for the claimant during hearing on the plea for interim relief submitted that the workman has a strong primafacie case having a fair chance of success as the management in order to take revenge on the workman omitted to follow the principles of natural justice and model standing order. The charges framed having not been enumerated in the standing order cannot be termed as misconduct. More over the order of suspension was made against the workman without the provision for subsistence allowance. The inquiry was conducted in haste, only with the object of punishing the workman for the safety issues raised by him before the Regulator i.e DGCA. While answering the objection taken by the management with regard to the maintainability of the prayer for interim relief it has been stated that under the provisions of sec 10(4) of the ID Act, this Tribunal can very well grant interim relief. Citing the judgment of the Hon'ble High Court of Delhi, in the case of **Col(Retd)Rama Krishna** Sareen**vsPawan Hans Helicopters Ltd** argument was advanced that the Hon'ble Court have clearly held that the pilot is a workman and the objection taken by the management in this regard is liable to be rejected.

On the argument advanced by the AR for both the parties and the objections taken by them, and for the purpose of granting the interim relief prayed by the claimant, a decision is to be taken if the claimant is a workman and if the Tribunal has the jurisdiction to grant interim relief.

Provisions of law laid under section10(4) of the ID Act provides that the Tribunal, while adjudicating an industrial dispute is obliged to make adjudication on the points formulated under the reference by the Appropriate Government and matters incidental thereto. In the case of **Hotel Imperial vs. Hotel Workers Union reported in 1959 II 1959 LLJ 544** and various other subsequent judgments in which the judgment of Imperial Hotel has been referred to it has been held that when the reference is for regularization and parity of wage and an incident like termination happened during the pendency of the Industrial Dispute, the prayer for wage as an interim relief is incidental to the dispute and can be decided or ordered by this tribunal. Similarly in the case of **Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad reported in (1999) 6SCC 275** it has been held that when there is an order of retrenchment during the period between closer of conciliation proceeding and filing of industrial dispute and there was no prohibiting order from any authority, the industrial tribunal can stay the said order of retrenchment as the same is incidental to the reference by the Appropriate Authority. But this is a case where the workman is praying for deposit of his wage in the Tribunal alleging his dismissal to be illegal. Hence, in view of the discussion made in the light of different pronouncements of the Hon'ble Supreme Court and High Court of Delhi it is held that the prayer for wage as an interim relief made by the claimant/workmen is NOT incidental to the industrial Dispute raised by him and cannot be considered and decided by this tribunal in the pending Industrial Dispute.

In the written statement filed by the management it has been specifically pleaded that the claimant who is a pilot by profession is not a workman and he has other sources of income. By placing certain documents on record it was argued that he being otherwise gainfully employed is not entitled to the interim relief sought for. On behalf of the claimant reliance has been placed in the case of**Col. (Retd)Rama Krishna SareenvsPawan Hans Helicopters Ltd**decided by the Hon'ble High court of Delhi to say that the pilot is a workman. But in the case of **Express News Papers Pvt Ltd vs The Workers & others** decided by the Hon'ble SC, which was followed by the Hon'ble High Court of Karnataka in the case of Hira Sugar Employees referred supra, it has been held that

> *"the jurisdiction of the labour court to decide the dispute depends upon the decision on the question whether the 1st respondent is a workman. Therefore the labour court ought to have decided the issue as a preliminary issue if it was required to consider the interim relief sought for by the 1st respondent."*

Thus on a careful reading of the decisions referred above it is found that when one party raises objection with regard to the jurisdiction of the Tribunal on the ground that the claimant is not a workman that need to be decided as a preliminary issue before considering the prayer for interim relief, since there is every possibility that at the end of the proceeding if it is held that the claimant is not a workman, the interim relief ordered would be without jurisdiction. Hence, it is held that grant of interim relief, without addressing the question whether the claimant is a workman, whether the Tribunal has jurisdiction to grant the relief sought for in the claim petition would be erroneous. It is also felt proper to observe that interim relief in a pending litigation is often allowed to save the litigator from further harassment and as an aid for his survival till the final adjudication. In this case the claimant has not pleaded that the deposit of his salary in the tribunal as an interim measure, is necessary for his survival or to save him from harassment. On the contrary the management has placed some documents to prove that the claimant has a stable source of alternate income and he has been otherwise gainfully employed. Hence considering all these aspects of the matter it is held that the prayer for interim relief made by the claimant is devoid of merit and thus rejected. Call the matter on 08.03.2021 for filing of rejoinder by the claimant.

Sd/-

Presiding Officer
25th January, 2021