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(17) Mr. Hooda has conceded that the factual position in all the cases is identical except in C.W.P. No. 19141 of 1998. According to the learned counsel, the respondent-workman had been in service only from 1st December, 1994 to 27th July, 1995. Mr. Hooda states that the employee had worked for 237 days and not for 240 days. Thus, the provisions of Section 25 F shall not be attracted. So far as this case is concerned, the Labour Court has noticed three things. Firstly, it has been noticed that the employer had not produced the records. Nothing was produced to show that the workman had remained absent even for a day. On this basis, it would be clear that the workman had remained in continuous employment from 1st December, 1994. Thus, he would complete 239 days on 27th July, 1995. Still further, the post had been sanctioned upto 31st July, 1995. Yet the services of the workman were shown to have been terminated on 27th July, 1995. Why? The Labour Court has observed that this was done "before the expiry of the last day of the sanction." The Court has, not surprisingly, concluded that the action was prompted by "*mala fide* intention". In the circumstances, we find no ground to take a different view.

(18) Mr. Hooda concedes that the factual position of the other cases does not require to be noticed. He further submits that the Court may disallow back wages to whatever extent they have been granted by the Labour Court. No argument has ever been advanced in support of this submission. We notice that the Labour Court has examined the factual position in each of the cases. We find no ground to differ with the view taken by the Court and the discretion as exercised by the respective officers.

(19) No other point has been raised.

(20) In view of the above, we find no ground to interfere in any of these petitions. These are, consequently, dismissed. However, there shall be no order as to costs.

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**J.S.T.**

*Before Iqbal Singh, J*

GULF AIR COMPANY,—*Petitioner*

*versus*

NAHAR SPINNING MILLS LTD. AND OTHERS,—*Respondents*

C.R. 1019 of 1999

7th September, 1999

*Code of Civil Procedure, 1908-S. 115—Carriage by Air Act, 1972—  
Rl. 29—Second schedule—Jurisdiction—Suit filed at Ludhiana—*

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*Carrier is ordinarily resident of Bahrain—Agreement entered into at its principal place of office at Delhi—Goods handed over for carriage at Delhi—Ludhiana Courts have no jurisdiction to try suit—Carriage by Air Act is a Special Act—Stipulations contained in Code of Civil Procedure ousted.*

*Held*, that a perusal of the relevant provisions of Rules 18, 19, 24 (1) and 29 (1) contained in the second Schedule (Chapter III) to the Act show that only those Courts would have the jurisdiction to entertain an action against a carrier where (a) the carrier is ordinarily resident (b) or has his principal place of business (c) or has an establishment by which the contract has been made, and (d) or before the Court having jurisdiction at the place of destination. Admittedly, the carrier is ordinary resident at Bahrain. Its principal place of office is at New Delhi. The destination in the present case was Manchester (U.K.). The parties entered into agreement in question at Delhi. A perusal of Air Way Bill dated 14th December, 1992, a copy of which has been placed on the record, shows that the goods were handed over to the petitioner-company at Delhi for carrying the same by air for delivery to defendant—respondent No.2 at Manchester (U.K.). Therefore, the Courts at Ludhiana, by no stretch of reasoning, can be said to have jurisdiction in the present matter.

(Para 8)

*Further held*, that the Carriage by Air Act, 1972 is a Special Act and, therefore, its provisions will prevail over the provisions of the Code of Civil Procedure, which is a general Act. Since the Act has stipulated the Courts which have the jurisdiction to entertain an action for damages by a consignor/consignee against a carrier, the stipulations contained in sections 16 to 20 of the code of Civil Procedure would be ousted.

(Para 8)

M. Wadhvani, Advocate with Harleen Arora, Advocate, *for the Petitioner*

A.K. Mittal, Advocate, *for the Respondent No. 1.*

### JUDGMENT

*Iqbal Singh, J.*

(1) Aggrieved against the order 1st December, 1998 passed by the Civil Judge (Senior Division), Ludhiana, the defendant-petitioner i.e. Gulf Air Company (hereinafter referred to as the petitioner-

Company), has filed this revision petition under section 115 of the Code of Civil Procedure (hereinafter referred to as the Code).

(2) A suit for recovery of Rs. 22,39,450 including interest, was filed by plaintiff-respondent No. 1 i.e. Nahar Spinning Mills Ltd., Ludhiana (hereinafter referred to as the respondent-Mill). The amount relates to the recovery of the price of goods sold by the respondent-Mill to defendant respondent Nos. 2 and 3. The suit against the petitioner-Company is based upon the Air Way-bill dated 14th December, 1992.

(3) Alongwith the written statement, the petitioner-company filed an application under order VII Rules 10 and 11 of the Code and prayed for rejection of the plaint on the ground that the respondent-Mill had not disclosed any cause of action and that the Courts at Ludhiana did not have the jurisdiction to entertain the suit in view of Rule 29 of the Second Schedule to the Carriage by Air Act 1972 (hereinafter referred to as the Act).

(4) The trial Court framed the following issue :—

“Whether the courts at Ludhiana have jurisdiction to entertain and try the present suit against the defendants ? OPD.”

(5) *Vide* impugned order dated 1st December, 1998, the trial Court decided the said issue against the defendants by holding as under :—

“The perusal of Air Bill 072-2468-5990 shows that the name of the consignor in the left side of the said document was written as Nahar Spinning Mills, Industrial Area, Ludhiana. The name of the consignee is written just below the name of consignor as Vijay Hosiery Company, 75 High Street, Manchester. This further shows that this Air Bill has been taken at New Delhi on 14th December, 1992. The perusal of this bill does not show that the jurisdiction of any dispute arising from this bill would be exclusively at Delhi.”

(6) I have heard Mr. M. Wadhvani, Advocate, assisted by Ms. Harleen Arora, Advocate, for the petitioner and Mr. A.K. Mittal, Advocate, for the respondent, and have gone through the records of the case.

(7) The question required to be determined in this petition is whether the Courts at Ludhiana have the jurisdiction to try the matter or not. For deciding this point, it is necessary to reproduce the relevant provisions of Rules 18, 19, 24(1) and 29 (1) contained in the Second Schedule (Chapter III) to the Act.

- “18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.
- (2) The carriage by air within the meaning of the preceding sub-rule comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.
- (3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.
19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.
- 24.(1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in these rules.
29. (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.”

(8) A perusal of the above provisions go to show that only those Courts would have the jurisdiction to entertain an action against a carrier where (a) the carrier is ordinarily resident (b) or has his principal place of business (c) or has an establishment by which the contract has been made, and (d) or before the court having jurisdiction at the place of destination. Admittedly, the carrier is ordinary resident at Bahrain. Its principal place of office is at New Delhi. The destination in the present case was Manchester (U.K.). The parties entered into agreement in question at Delhi. A perusal of Air Way-bill dated 14th December, 1992, a copy of which has been placed on the record, show that the goods were handed over to the petitioner-company at Delhi for carrying the same by air for delivery to defendant-respondent No. 2

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at Manchester (U.K.). Therefore, the Courts at Ludhiana, by no stretch of reasoning, can be said to have jurisdiction in the present matter. The only Courts that can have jurisdiction to entertain the action brought by the respondent-Mill against the petitioner-Company, are the Courts at Delhi. The Carriage by Air Act, 1972 is a special Act and, therefore, its provisions will prevail over the provisions of the Code of Civil Procedure, which is a general Act. Since the Act has stipulated the courts which have the jurisdiction to entertain an action for damages by a consignor/consignee against a carrier, the stipulations contained in Sections 16 to 20 of the Code of Civil Procedure would be ousted.

(9) The Act was enacted by the Parliament of the Republic of India in 1972 to provide legislation for giving effect to international agreements as envisaged under Article 253 which reads as under :—

*“Legislation for giving effect to international agreements.—*

Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

(10) Section 4(1) of the Act stipulates that the rules contained in the Second Schedule, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(11) In view of the above provisions of Act and the Rules framed thereunder and the provisions of Article 253 of the Constitution, the Courts are required to be careful not to attach to the words used in the said provisions anything more or less than their normal meaning consistent with the context in which they appear and consistent with the schedule of the legislation.

(12) The contention of the learned counsel for the respondent-Mill that the jurisdiction of the Civil Courts at Ludhiana is not barred because the cause of action of the respondent-Mill against the petitioner-Company is joint with that of other respondents, has no force in view of the provisions contained in the Act, as reproduced and explained above, and Article 253 of the Constitution of India.

(13) In view of the aforesaid discussion, the jurisdiction of the Courts at Ludhiana, *qua* the petitioner-Company, is straightway ousted. If the respondent-Mill has any cause of action against the petitioner-Company, the proper forum for it (respondent -Mill) will be in Courts at Delhi because the courts there have the jurisdiction to entertain the cause of action against the petitioner-company. This petition accordingly succeeds and is accepted. The impugned order passed by the trial Court is, accordingly, set aside, however, the respondent-Mill is at liberty to pursue its case against the other defendants in the Courts at Ludhiana and the trial court shall proceed with the same in accordance with law.

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*J.S.T.*

*Before Jawahar Lal Gupta & V.M. Jain, JJ.*

FACULTY ASSOCIATION, PGI, CHANDIGARH AND OTHERS,—  
*Petitioners*

*versus*

UNION OF INDIA & OTHERS,—*Resopondents*

*CWP No. 11005 of 1999*

*16th September, 1999*

*Post Graduate Institute of Medical Education and Research Act No. 51 of 1966—Schedule 1, Cl. 61—Reg. 22—Post Gradutate Institute of Medical Education and Research, Chandigarh, Rules, 1967—Rl. 7—Assistant Professors appointed on ad hoc basis without following due procedure have no right to claim a mandamus to PGI to frame a scheme for regularisation of service—PGI being an Institute of national importance cannot compromise on merit—Such Assistant Professors have only a claim for consideration by competing with other eligible candidates, who may apply for posts under an advertisement—Their past experience in PGI would be one of the relevant factors for consideration—Delay in filling up posts for one reason or the other—The decision of the Supreme Court in the case of Dr. K. L. Narsimhman was required to be implemented and the decision of the Governing Body thereafter requiring the Director PGI to hold parleys with both General and reserved category and try to reach a written consensus deprecated—The decision of the Supreme Court cannot be subjected to “a written consensus”—Court fixing time frame within which regular selection is to be made without delay or demur.*