

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7240 OF 2001

INDIAN INSTITUTE OF TECHNOLOGY & ANR.

Appellant (s)

VERSUS

PARAS NATH TIWARI & ORS.

Respondent(s)

(With office report )

Date: 21/02/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. A.K. Ganguli, Sr. Adv.

Mr. Nikhil Nayyar, Adv.

Mr. Ankit Singhal, Adv.

For Respondent(s) Mr. S.S. Khanduja, Adv.

Mr. Y.P. Dhingra, Adv.

Mr. D.V. Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order

with no order as to costs.

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aster

(K.K. Chawla)  
Court Master

(Radha R.  
Court M

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NO.7240 of 2001

INDIAN INSTITUTE OF TECHNOLOGY & ANR.

Appellant (s)

VERSUS

PARAS NATH TIWARI & ORS.

Respondent(s)

O R D E R

The Appellant is the Indian Institute of  
Technology, Kanpur, established under the provisions of  
Institute of Technology Act, 1961, which gives technical  
education of a very high standard to students. The  
Institute has a Department known as "Aeronautical  
Engineering Department" in which technical education is

imparted to students with respect to several aspects of aeronautics. For this purpose, the Institute owns two Piper Aircrafts, One Cessna Aircraft and one Hansa Aircraft. We are informed by Mr. Ganguli, the learned senior counsel for the Appellants, that these Aircrafts are flown periodically and used for teaching several aspects of aeronautical engineering to the students.

Under the provisions of the Indian Aircraft Act, 1934 read with the Rules framed thereunder (The Aircraft

Rules 1937) all such Aircrafts, even if they be

privately owned, have to be maintained by qualified

Engineers licenced by the Director General of Civil

Aviation (in short "D.G.C.A.") with regard to the type

of Aircraft they are required to maintain.

By an advertisement dated 23.12.1987 the Appellant

advertised several posts and one such post was the post

of Maintenance Engineer (Aircraft). The qualification

mentioned for eligibility to apply for the said post was

B. Tech in Aeronautical or Mechanical Engineering.

Respondent No.1 applied in response to the

advertisement. He was an A.I.M.E., recognized as

equivalent to B. Tech or B.E. in the concerned subject

and was also working in the Indian Air Force in the

Maintenance Department. He also held certificates

issued by the competent authority of the Indian Air

Force that he was qualified to maintain HT 2, Dakota and

Gnat Aircrafts. The Respondent was issued an

appointment letter dated 20.9.1988. The appointment

letter contained a probation clause in the following

terms:-

"4. PROBATION: Subject to the provisions of the Rules and Statutes, this appointment is made on probation for a period of one year and till the necessary certificates for maintenance of the Institute aircraft are obtained, from the date of joining. However, the appointing authority shall have the power to extend the

period of probation. The appointment will be confirmed on permanent basis, after satisfactory completion of the probationary period."

This condition was stipulated because in order to be employed as Maintenance Engineer on the aircrafts possessed and used by the Appellant-Institute, the first Respondent had to be licensed under the Aircraft Rules, 1937 for maintenance of such types of aircrafts. The letter of appointment also called upon the first respondent to signify as to whether the offer of appointment was acceptable to him and to join duties. By a reply dated 3rd November 1988 the first respondent accepted the terms of employment and stated inter alia:

"I shall abide by the terms and conditions given in the above mentioned appointment letter"

On 13.3.1989 the first respondent was issued a letter reminding him that he would have to obtain the

necessary licence for maintenance of the aircrafts of  
the Institute and called upon to inform the authorities  
as to the progress made by him for obtaining the  
requisite maintenance licence. On March 17, 1989 the  
first respondent sent a reply to the Dean, Aircraft  
Engineering Department informing him that under the DGCA  
Rules the examination for Aircraft Maintenance Engineers  
are held twice a year; that the second examination was  
due in September 1989 in which he would appear; that he  
would submit his examination form in the month of July  
1989 and that he was preparing for the said examination.  
Again by a letter dated July 5, 1989 the first  
respondent was reminded that as per condition No.4 of  
his appointment letter his confirmation was subject to  
his obtaining the A.M.E. licence within a reasonable  
time and requested to intimate the progress made in the  
said direction. On 24.7.1989 the first respondent

informed the Head, Aeronautical Engineering Department

that he had already submitted his examination form for

appearing in the A.M.E. licence exam for September cycle

and that he was also preparing for his examination. On

1.12.1989 the first respondent was informed that since

he had not produced the requisite A.M.E. licence as

required by the letter of appointment, his probationary

period had been extended for a period of one year with

effect from 3.11.1989 on the same terms and conditions

as contained in the letter of appointment. On

22.10.1990 the first respondent addressed a letter to

the Dean of Faculty, IIT, Kanpur, informing him that he

had already appeared in the March 1990 session for a

category Cat. A&C (Cessna Aircraft) examination and the

result was expected in November/December 1990. If he

passed the said examination, he would have to appear for

practical and oral examination and after passing these

examinations he would get A.M.E. licence with regard to

Cat. A&C (Cessna). In case he passed partially, then he would have to appear in January/February 1991 examination for Piper Aircraft, which would be followed by practical and oral examination. Finally, he stated, "I therefore request that my present term of employment may please be extended further to enable me to acquire requisite licence for Institute Aircrafts".

On 21.12.1990 an Office order was passed by which the first respondent was informed as under:

"OFFICE ORDER

"Further to letter No: Estt.4493 (FA)/89-IITK/4183 dated December 1, 1989, the term of probationary period of Shri P.N. Tewari Maintenance Engineer (Aircraft), Department of Aerospace Engineering, has been extended for a period of six months w.e.f December 4, 1990 on the same terms and conditions contained in the original appointment letter No; DF/D-1/(FA)/IITK/88/1333 dated September 13/20, 1988 with the stipulation that no further extension will be given.

Sd/-

(V. SUNDARARAJAN)

DEAN, FACULTY AFFAIRS"

The Respondent challenged the office order by his Writ Petition No.22284 of 1991 before the High Court. In the said Writ Petition the substantive prayer made and the relief sought was quashing of the office order dated 21.12.1990.

The Writ Petition was allowed by the impugned Judgment of the High Court which peculiarly has travelled much beyond relief prayed for in the Writ Petition and directed that the first Respondent was entitled for consideration of permanent appointment on the post in question despite the fact that he had not obtained the A.M.E. licence for maintenance of the aircrafts of the Institute.

Mr. Ganguli learned senior counsel for the

Appellant-Institute has drawn our attention to the relevant provisions of the Aircraft Act, 1934 and the Aircraft Rules, 1937. Rule 61 provides that for the purpose of Rule 54 the appropriate authority prescribed by the Central Government may grant licences, authorizations and approvals to persons to act in the capacity of Aircraft Maintenance Engineers, authorized or approved persons and to sign, in connection with construction, repair, overhaul and maintenance of aircraft, such certificates as may be prescribed by the Director-General or required under the Rules.

Rule 54 provides that the certification required under Parts VI, XIIB and XIII A of the Rules shall be signed by appropriately licensed Engineers or authorized persons qualified under the terms and conditions of the licence issued by the DGCA or by an approved person or persons authorized by organization approved by the DGCA in that behalf.

We have been taken through the Rules in Parts VI,

XIIB and XIII A. These provisions relate to persons who

privately own aircraft, which are required to be kept in

good repair, maintained and kept in good condition.

Even such persons working as Maintenance Engineers have

to be licensed by the DGCA or the other authorities

prescribed under the Act and the Rules, for obvious

reasons. Whenever an aircraft flies, there is danger to

the lives of the persons flying in the aircraft as well

as to the persons in the vicinity if the aircraft is not

properly maintained as a result of which it crashes.

Hence, there are stringent requirements under the

Aircraft Act read with Aircraft Rules that the aircraft

be maintained at all times in proper condition and

certified to be airworthy by the Maintenance Engineers

in accordance with the Rules holding licence in

accordance with the Rules. That was the reason why the

Appellant-Institute had called upon the first Respondent

to produce a licence of the requisite type from the

DGCA. This was exactly what was understood by the first

Respondent also, as evident from the correspondence

between him and the Appellant-Institute.

Learned counsel for the Respondent took up the

stand that there was no obligation on the part of the

first Respondent to produce such a licence. He

repeatedly contended that there was no such requirement

indicated in the advertisement of the vacancy and,

therefore, the Respondent was not obliged to produce any

such licence. We are unable to accept this contention.

In the first place, as rightly contended by Mr. Ganguli,

what is required by law must be read overridingly into

every contract of employment. That the Rules require a

licence for a person to be employed as Maintenance

Engineer of an Aircraft is clear, irrespective of

whether the advertisement prescribed it or not. Such a requirement must be read into the advertisement and to the contract of employment. Apart therefrom, the letter of appointment in clear term states (vide clause 4) that the first Respondent was required to produce an A.M.E. licence for the requisite type of aircraft owned by the Institute. This was clearly understood by the first Respondent, as seen from his correspondence wherein he did not deny such a requirement, but kept asking for time and extension of probation. The contention of the learned counsel for the first Respondent is, therefore, without merit and cannot be accepted.

The High Court wholly erred in interfering with the office order dated 21.12.1990. The Appellant-Institute was perfectly justified in putting an outer limit of time within which the requisite licence had to be obtained and produced by the first Respondent.

Perhaps, the High Court should have dismissed the Writ

Petition as being premature. Surprisingly, not only was it allowed by the High Court, but a direction was issued to the Appellant to consider the first Respondent for permanent post which, to say the least, is contrary to the legal provisions.

For all these reasons, we are of the view that the impugned order cannot be sustained and needs to be set aside.

In the result, we allow the Appeal and set aside the impugned judgment of the High Court with no order as to costs.

.....J.  
(B.N. Srikrishna)

.....J.  
(Lokeshwar Singh Pant)

New Delhi;  
February 21, 2006.