

*** THE HIGH COURT OF DELHI AT NEW DELHI**

+ Writ Petition (Civil) No. 190/2007

Date of Decision : 14.05.2009

TRANS BHARAT AVIATION (P) LTD. Petitioner

Through : Mr. M.A.Niyazi, Advocate.

Versus

UNION OF INDIA & ORS. Respondents

Through : Mr.Dalip Mehra & Mr.Rajiv Ranjan
Mishra, Advocates for respondent no.1.
Mr.Sanjay Kumar, Advocate for respondent
nos.2 and 3.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. (Oral)

Rule with the consent of the parties.

The writ petition is taken up for final disposal.

1. The petitioner has filed the present writ petition seeking mandamus against the respondent no.1 to debar respondent no.2 permanently under Rule 39-A (2) of the Air-Craft Rules, 1937 from holding the Pilot licence for violation of statutory Civil Aviation Requirement (hereinafter referred to CAR) dated 01.9.2005 for not giving the employer namely the petitioner, six months notice before leaving its services.

2. It may be pertinent herein to mention that the second prayer is with regard to cancellation of appointment of respondent no.2 as a Pilot with respondent no.3/Organization is not pressed.

3. Briefly stated the facts giving rise to the present writ petition are that respondent no.2 was engaged as a Pilot on retainer basis initially for a period of for one year by the petitioner under an agreement dated 17.6.2004. It was envisaged that this contract may be renewed from time to time for such period as may be agreed upon between the parties. This agreement was last renewed on 01.4.2005 for a period of one year which came to an end on 31.3.2006. It may be pertinent here to mention that clause 8 of the agreement gave the right to either of the contracting parties namely the petitioner and respondent no.2 to terminate the agreement by giving one month's notice or payment in lieu thereof.

4. Pursuant to this agreement, the case of the petitioner is that on 04.9.2006, respondent no.2 gave a notice to the petitioner company stating that it may be treated as a notice of six months of termination of his services from the petitioner company. It is further alleged that this period of six months if reckoned from 04.9.2006 it would have come to an end on 03.3.2007 while as the petitioner abruptly on 06.12.2006 gave a notice to the petitioner company indicating them that he is not

coming from next day i.e. 07.12.2006. This abrupt discontinuation of duties by respondent no.2 with the petitioner company was not only in violation of the letter dated 04.9.2006 given by respondent no.2 but it was also alleged to be in violation of the Civil Aviation requirements. These instructions which are called as CAR are passed by the office of Director General Civil Aviation on 01.9.2005 as a requirement of notice period by pilots to the Airlines employing them. It may be pertinent here to reproduce some of the relevant provisions of the said Civil Aviation Requirement:-

“CIVIL AVIATION REQUIREMENT
SECTION 7- FLIGHT CREW STANDARDS
TRAINING AND LICENSING.
SERIES ‘X’ PART-II EFFECTIVE FORTHWITH

“1. INTRODUCTION

1.1. It has been observed that pilots are resigning without providing any notice to the airlines. In some cases, even groups of pilots resign together without notice and as a result airlines are forced to cancel their flights at the last minute. Such resignation by the pilots and the resultant cancellation of flights causes inconvenience and harassment to the passengers. Sometimes such an abrupt action on the part of the pilots is in the form of a concerted move, which is tantamount to holding the airline to ransom and leaving the travelling public stranded. This is a highly undesirable practice and goes against the public interest.

1.2 Such an action on the part of pilots attracts the provisions of sub-rule (2) of rule 39A of the Aircraft Rules, 1937, which reads as follows:

“The Central Government may debar a person permanently or temporarily from holding any licence or rating mentioned in rule 38 if in its opinion it is necessary to so do in the public interest.”

2. APPLICABILITY

2.1 These Civil Aviation Requirements are applicable to any pilot working for any Air Transport Undertaking as defined in clause 9A of the rule 3 of the Aircraft Rules, 1937.

3. REQUIREMENTS

3.5 The ‘Notice Period’ of six months, however, may be reduced if the airlines employing them provides a ‘No Objection Certificate’ and accepts their resignation earlier than six months.”

5. It was further contended by counsel for the petitioner that a perusal of the aforesaid regulations would show that the entire purpose of giving this notice of six months by a pilot was actuated with a view to prevent the pilots from leaving abruptly the services of its employees and thereby bringing its functioning or flying of the aircrafts and Helicopter, as the case may be to a grinding halt. In case violation of these regulations, the Director General, Civil Aviation was given power to debar such delinquent pilots permanently or temporarily from holding the licence.

6. The case of the petitioner is that since respondent no.2 had left the employment of the petitioner company without completing the requisite notice period of 6 months, the Director General of Civil Aviation for having failed to take any action, the

petitioner has been constrained to file the present petition seeking mandamus for implementing the regulations.

7. It was also averred by the petitioner that on 9th December, 2006, the respondent no.2 had given a letter of resignation to the petitioner company enclosing therewith a cheque of Rs.5,00,000/- on account of bond amount which to be given by the respondent no.2 on account of his having given the bond to the petitioner company.

8. The respondent no.2 has filed his counter affidavit and admitted that a letter dated 4th September, 2006 was given to the petitioner company under a mistaken impression that he was governed by the CAR but later on it is stated that the respondent no.2 learnt that the CAR were applicable only to a permanent employee and not to a retainer as respondent no.2 was working and therefore, he left the services without completing the requisite period of six months as was required of him in terms of the regulations. It was also admitted by respondent no.2 that the amount of Rs.5,00,000/- which was the bond amount was also paid to the petitioner for having given a bond for not complying with the condition of serving the petitioner /Organization for five years with regard to the notice period. It is also urged by the respondent that he had personal meetings with one Mr.J.M.Lal, Vice President of the petitioner company who had agreed that respondent no.2 may leave before completion of the requisite

period of six months and therefore, it was on the basis of the said representation that respondent no.2 left the services of the petitioner company on 6th December, 2006.

9. So far as the respondent no.1 is concerned, it has taken the stand that the CAR are applicable only to the permanent employees and not to the retainers and since the respondent no.2 was only a retainer with the petitioner company, therefore, the said regulation did not apply to him. It is also stated that the CAR was applicable only to the commercial Pilots and not to any private Pilots who was flying private aircrafts and Helicopters and further it gave a discretion under clause 1.2 to debar a pilot only if pilot left such services abruptly without completing the period of six months notice would jeopardize the public interest. It was averred by respondent no.1 that since in the present case, the leaving of services of the petitioner by respondent no.2 did not complete the notice period it did not jeopardize any public interest. Therefore, the facts of the present case did not warrant any action against the respondent no.2 on the part of Civil Aviation Authority (DGCA).

10. I have heard the learned counsel for the parties and perused the record.

11. The first contention which has been raised by the learned counsel for the petitioner is that as the respondent no.2 had left the services without completing the six months notice period in

terms of CAR therefore, the respondent no.1 was under an obligation to enforce Rule 39(A) of the Air-Craft Rules 1937 and debar the respondent no.2 from holding any licence to fly. The contention of the learned counsel for the respondent no.2 was that he is not governed by the CAR on account of the fact that he was not a permanent employee of the petitioner which is urged by him that he was only a retainer which was in the nature of a contractual appointment and further that he had given a sum of Rs.5 lakhs in terms of the bond dated 13.5.2005 to the petitioner company on account of having left the service before completion of five years of service.

12. The first question which arises for consideration is as to whether the respondent no.2 was a contractual employee/a retainer or he was a permanent employee. The appointment letter would throw the light to decide this question. It is not in dispute that the first agreement which was entered into between the petitioner and the respondent no.2 was on 17.6.2004 which was valid for a period of one year on the following important terms and conditions:-

“1(a) Professional services shall be provided by the Second Party on retainerhip basis initially for a period of one year which may be renewed further from time to time for such period as may be agreed upon by the First party and the Second party.

4. The Second Party, shall not have any right/privilege, which are otherwise available to

employees of the company. That the Second Party shall not be entitled to any retirement benefits or any other type of compensation after completion of tenure of this agreement.

8. The either party has option to terminate the agreement by giving one month notice or amount of professional charges in lieu thereof.”

13. This agreement was renewed on 01.04.2005 with the same terms and conditions except that there was an enhancement of professional charges of respondent no.2. It may also be pertinent here to mention that on 13.5.2005, an undertaking was also furnished by the respondent no.2 to the petitioner that in the event of his leaving the services before completion of five years, he shall pay a sum of Rs.5 lakhs to the petitioner. So far as this sum of Rs.5 lakhs is concerned, that has admittedly been paid by the respondent no.2 to the petitioner on 7.12.2006.

14. On the basis of the terms and conditions of the appointment letter, it is clear that the respondent no.2 was only a contractual employee or what has been stated in the counter affidavit is only a retainer for a fixed amount. This gets fortified from other two relevant clauses of the appointment letter which lay down, firstly that respondent no.2 is not entitled to the benefits which are entitled to a regular employee of the petitioner company and secondly, the contract was terminable by either of the parties by giving one month's notice. These relevant clauses clearly show beyond any pale of doubt that the respondent no.2

was a contractual employee whose contract was admittedly not renewed beyond 31.3.2006 and it had come to an end by efflux of time and therefore, no notice whatsoever was ever required to be given by the respondent no.2 to the petitioner as the contract itself has come to an end.

15. The next question which arises for consideration is whether the respondent no.2 being a contractual employee is governed by the CAR and whether the mandamus can be issued to the respondent no.1 to debar the respondent no.2 from holding the flying licence as is being prayed by the petitioner.

16. The respondent no.1 in its counter affidavit has stated categorically that the CAR are applicable to the regular pilots and not to persons or pilots engaged on retainership basis and since the respondent no.2 was engaged on retainership basis, therefore, it could not be made applicable to him. There seems to be some merit in this stand of the respondent no.1. If one goes through the CAR, the very object of the CAR is given in the introduction which is reproduced herein under: -

“1.1 It has been observed that pilots are resigning without providing any notice to the airlines. In some cases, even groups of pilots resign together without notice and as a result airlines are forced to cancel their flights at the last minute. Such resignation by the pilots and the resultant cancellation of flights causes inconvenience and harassment to the passengers. Sometimes such an abrupt action on the part of the pilots is in the form of a concerted move,

which is tantamount to holding the airline to ransom and leaving the travelling public stranded. This is a highly undesirable practice and goes against the public interest.”

17. A perusal of this introduction clearly shows that it is only in the case of regular employees so as to prohibit them from abandoning or leaving the services of their employer individually or in a group by a concerted action with a view to hold the airline to ransom and leaving the travelling public stranded that a notice of six months is required to be given. Even this notice period of six months can be dispensed with by providing a no objection certificate to accept their resignation as issued by the concerned employer earlier than expiry of six months.

18. Rule 39A of the Air-Craft Rules 1937 gives a sanction to deal with such delinquent regular pilots who do not adhere to this time period of giving notice to their employers and thereby jettison their business and also inconvenience the public.

19. The petitioner admittedly is a contractual employee and not a regular one. Moreover, he is flying a helicopter and not a regular aircraft on some scheduled flights. It has been stated in the counter affidavit of the respondent no.2 that the helicopter which he used to pilot was being used very sparingly by the individuals or the companies or as the petitioner company may require but there used to be no public booking or ferrying of public in general from one destination to other destination

thereby meaning that the respondent no.2 services as a helicopter pilot was being used more as a private pilot and not for general public. Therefore, his leaving the services of the petitioner even before completion of notice period of six months would not and could not jeopardize the interest of the general public. This is in addition to the fact that the petitioner was not required to give the notice of six months at all in terms of CAR because he was not a regular employee. In terms of his appointment letter, he was required to give a one month's notice which he had already done and in addition thereto he had also paid a bond amount of Rs.5 lakhs to the petitioner for having not rendered the requisite service of five years with the petitioner company.

20. This Court need not go into the question of the interpretation of Rule 39A of the Air-Craft Rules 1937 because the said rule also uses the word that the Central Government 'may' debar a person permanently or temporarily from holding any licence or rating mentioned in Rule 38 if in its opinion it is necessary to do so in the public interest meaning thereby even if an individual pilot may have been actually found to be violating CAR by not giving six months notice then in such contingency, the Central Government at its discretion may debar the pilot permanently or temporarily from holding the licence. It is not mandatory that if such an infraction is shown that the Central Government must debar such pilot but that issue of debarring

the respondent no.2 does not arise in the instant case because according to the view of this Court, the CAR itself would not be applicable to the respondent no.2 as he is not a regular employee of the petitioner.

21. For the reasons mentioned above, I find that no mandamus can be issued to the respondent no.1 to debar the respondent no.2 permanently under Rule 39A(2) of the Air-Craft Rules 1937 from holding pilot licence for violation of CAR dated 1.9.2005.

22. Accordingly the writ petition is without any merit and the same is dismissed.

V.K.SHALI, J.

MAY 14, 2009
RN/gm