

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

+ W.P.(C) 1416/2011 & C.M.No.3031/2011

% Judgment reserved on :09th May, 2012
Judgment delivered on:3rd July,2012

SALOME SINGSIT Petitioner
Through : Mr. Ashwarya Singh, Adv.

versus

AIRLINE ALLIED SERVICES LTD AND
ORS. Respondents
Through : Mr.Milanka Chaudhary and
Mr. Sarojanand Jha, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition is being filed while challenging the impugned order dated 27.12.2010 passed by the Respondent No. 1 (Airline Allied Services Ltd.) by which the fixed Term Employment Agreement of the petitioner has not been renewed beyond 31.12.2010.

2. The petitioner joined with the respondents pursuant to an advertisement followed by selection and interview on a contractual basis on the post of Cabin Crew in the Operations Department in the year 1996. The contracts were renewed uninterruptedly from time to time. In the year 2003 she was promoted to the rank of Check Cabin Crew and also given an additional charge of Inspector of Flight Operations Quality Assurance.

3. Vide the communication dated 25.03.2005, the petitioner was advised to bring down her weight within permissible range and 30 days leave on loss of pay was made effective w.e.f. 26.03.2005.
4. In the year 2005-06, the petitioner got married and conceived but unfortunately she suffered miscarriage and had to undergo operation.
5. Despite extreme medical conditions she reported for work on 07.03.2006, but strangely on the said date she was grounded for 15 days to bring down her weight within the permissible limit, as she was found overweight by 8 kgs.
6. At her request, after seeing her medical condition, she was advised to join the office of the Chief of IFS w.e.f. 21.06.2006.
7. Ld. counsel for the petitioner submits that the problem started from 30.06.2006 whereby without any notice unilaterally and arbitrarily withdrew the petitioner's check ship status and a further leave on loss of pay was made effective from 22.03.2006 to 21.04.2006.
8. The petitioner was already under tremendous stress, unfortunately, had to undergo a second abortion surgery, for which she was again hospitalized and a strict medical treatment was prescribed along with bed rest.
9. Ld. counsel for the petitioner submits that she continued to orally inform the respondent authorities about her medical conditions and the treatments undertaken. The respondent authorities again issued a letter on the said date asking the petitioner to bring down her weight within 15 days.
10. Thereafter, on 29.11.2006, the petitioner made a representation

to extend her period of performing ground duties owing to her extreme medical conditions. Due to two major surgeries and other medical complications there was an obvious hormonal imbalance, which made impossible for the petitioner to bring down her weight. It was strictly advised not to undertake any physical activity.

11. On 13/14.02.2007, the petitioner again made a request to allow her to perform ground duties due to medical reasons and the authorities acceded to her request. On 22.05.2007, the petitioner made a representation to the Executive Director, AASL for re-instatement as check cabin crew, which was arbitrarily and unilaterally withdrawn.

12. Ld. counsel further submits that since the petitioner was undergoing continuous treatment, she was again admitted in Artemis Hospital at Gurgaon, where laparoscopic myomectomy surgery (total constructive operation of uterus) was performed. Post operation, she was advised complete bed rest and thorough medication.

13. In February, 2010, the petitioner again got conceived and pregnancy report came positive. Due to innumerable medical conditions, she had to again medically terminate her pregnancy in the 20th week.

14. Due to the reasons mentioned above, the petitioner could not continue in the services regularly. The respondent issued a show cause on 06.09.2010 which is reproduced as under:-

“Ref: AASL/IFS/CC-10

Date: 06/09/2010

To,

Ms. Salome Singsit

Cabin Crew, N/R

Emp. No.-16066

Sub: Absenteeism

The undersigned has been appraised of your absenteeism from duties. As per the medical certificate dated 15.07.2010 submitted to the office, you were required to resume duty after completion of rest period of 08 weeks (starting w.e.f. 13.06.2010).

A considerable time has elapsed and there has been no correspondence from your side direct or indirect till date. Your action has been viewed agreement with AASL and merits action.

Also notice that if within the stipulated time no satisfactory reply is received from you, it will be construed that you have none to furnish & Alliance Air shall be free to act / proceed in terms of contract.

***Capt. Devi Sharan
Executive Director(Ops&Pers)”***

15. Thereafter, vide communication dated 29.09.2010 the petitioner was advised to be extremely vigilant henceforth and for improvement in discharging her duties and responsibilities diligently. It was further stated therein that non-compliance to the above shall be treated as serious violation and the respondent shall be free to act/proceed in terms of contract.

16. Finally, the respondent No.1. vide impugned order dated 27.12.2010 decided not to renew her Fixed Term Employment Agreement beyond 31.12.2010.

17. Ld. counsel for the petitioner submits that since 1996 to 2010 she continued in service thereafter the respondent had no authority to discontinue her services as per decision of the Apex Court in the case of *State of Karnataka vs. Uma Devi, 2006(4) SCC 1*.

18. Ld. counsel has further submitted that the respondents were supposed to take the petitioner on ground duty if she was not found fit for the flying duties.

19. Ld. counsel for the petitioner has also relied upon the judgment of the Calcutta High Court in the case of *Smt. Nipa Dhar (Nee Ghosh) vs. National Aviation Company of India Ltd. and Ors., (2011) 1 Calt.284 (HC)*. The case of the appellant was that due to medication to cure 'phobic anxiety', the chemical as consumed was the contributory factor of overweight. It was her further case that settlement under the Industrial Dispute Central Rules, being the condition of service and she got a right for fair and just consideration of her case for annuity due to her medical unfitness to perform flying duties due to suffering from 'altitude phobia' and the authority did not consider her case, but terminated the service. A positive case has been made out by foundational facts that the authorities discriminated. The High Court of Calcutta directed the respondents to constitute a medical board and assess her medical condition and thereafter give her the job suitable to her.

20. Being aggrieved, the respondent challenged the same before the Supreme Court. The Hon'ble Supreme Court stayed the order passed by the Calcutta High Court, subject to the condition that the petitioner/authority shall, within a period of four weeks from today, pay a sum of Rs.5 lacs. In addition, the petitioner shall pay Rs.20,000/- per month to the respondents with effect from 01.04.2011.

21. Ld. counsel submits that though the judgment of the Calcutta High Court has been stayed, but keeping in view the facts and

circumstances of the case, the same type of arrangement can be made in this case also.

22. On the other hand, ld. counsel appearing on behalf of the respondents submits that the issue of check ship which was withdrawn in 2006 to which she never contested and the same was withdrawn at her own request. Even otherwise that decision of the respondent authority had attained finality and at this stage after a gap of six years this issue cannot be agitated in the instant petition.

23. Ld. counsel further submits that the case of the petitioner is not a case of termination, but is a case wherein the contract agreement has not been further extended because of the facts narrated in the letter dated 27.12.2010 which is reproduced below:-

*“Ref. No.AASL/PERS/2010/1248
27th December, 2010*

*FROM
Executive Director
(Pers.&Ops.)
Alliance Air
Delhi*

*To
Ms. Salome Singsit
Flat No.807,
Block No.26,
Karnataka
Durga Home,
Sector-12,
Dwarka, New Delhi.*

Sub:-Fixed Term Employment agreement.

This refers to Fixed Term Employment Agreement in Alliance Air as Cabin Crew. During your engagement you were promoted to Sr. Cabin Crew and subsequently as Check Cabin Crew. However the following have been observed from the records.

- *You were found overweight and vide letter No.AASL/IFS/5019 dated 25th March, 2005 you were advised to bring down your weight within permissible range and 30 days leave on loss of pay was granted w.e.f. 26th March, 2005.*
- *You were found overweight by 8 kgs. On 7th March, 2006 and accordingly, you were grounded for 15 days to bring down your weight within permissible limit.*
- *On 22nd March, 2006 you were again grounded for 15 days due to overweight by 8 kgs. And 30th days leave on loss of pay were granted from 22nd March, 2006 to 21st April, 2006.*
- *Vide your application dated 16th June, 2006 you were requested for temporary ground duties which was agreed by the Competent Authority.*
- *Since you were not available for flying duties for a period of more than 6 months continuously, your check-ship was withdrawn vide our letter No. ASSL/PERS/2006 dated 30th June, 2006.*
- *In September, 2006 you were again found overweight by 10.5 kgs.*
- *In November, 2006 also you were found overweight by 10.5 kgs.*
- *You were advised to bring down your weight within permissible limit within 15 days vide letter No.AASL/PERS/2006/1154 dated 8th November, 2006.*
- *On your assurance vide your application dated 29th November, 2006 you were granted three months time to bring down your permissible limit.*
- *Vide your application dated 13th February, 2007 you were allowed to continue to perform ground duties.*
- *Vide your letter dated 6th January, 2009 you asked for three months extension to bring down your weight within the permissible limit which was granted.*

- *You were rostered for Viva on 29th October, 2009 and 13th November, 2009 but you report sick and as such you could not be utilized for flying duties.*
- *You did not collect your uniform after completion of your viva on 17th December, 2009 which was viewed seriously and accordingly, you were advised vide letter No. AASL/IFS/CC/09-694 dated 22nd December, 2009.*
- *Your caution for negligence behavior on flying duties vide letter No.AASL/IFS/CC/09-694 dated 9th December, 2010.*

Based on the above facts, it is cleared that you were not available for flying duties from last more than four years. Therefore, it has been decided not to renew your Fixed Term Employment Agreement beyond 31st December, 2010.

You are advised to surrender all the property of AASL that may be in your possession to enable us to inform the Finance Department to settle your accounts after checking your commitments.

**(CAPT. DEVI SHARAN)
EXECUTIVE DIRECTOR (PER.&OPS)”**

24. Ld. counsel further submitted that in addition to overweight, she remained absent without the prior permission or intimation to the respondent. Therefore, the contract agreement rightly was not further extended beyond 31.12.2010.

25. The petitioner has been in trouble through due to her medical problems. However, the respondent cooperated fully and her requests were acceded every time and at her own request even she was given the ground duties. She underwent three times medical termination of

her pregnancy, one breast surgery, one uterus surgery and Herbes. Because of these medical problems the petitioner was neither able to perform the flying duties nor the ground duties regularly. Therefore, there was no point to further extend the contract. Even prior to that sufficient opportunities were given to her.

26. Ld. counsel further submitted that the ground duties were assigned to her at her own request letter dated 20.06.2006 which is at Annexure P-4, which is reproduced as under:-

*“AIRLINE ALLIED SERVICES LIMITED
(A wholly owned subsidiary of Indian Airlines Limited)*

AASK/IFS...../135

Date:20th June, 2006

*To,
Ms. Salome
Check Cabin Crew
Emp. Code 16066
Delhi Base*

Sub: Request for Ground Duty

This has reference to your application addressed to Executive Director (Airline Ops.) Requesting ground job on temporary basis.

This is to inform that your request has been acceded to by the competent authority. You are hereby advised to join the office of the undersigned on 21st June 2006.

The above is for your information and necessary action.

CHIEF OF IFS

CC-Executive Director(A.O.) - For information please.

Chief of Personnel – For information and necessary records please”

27. Even the petitioner has herself admitted regarding her reinstatement as Check Cabin Crew by communication dated 22.05.2007 which is reproduced as under:-

*“To
Executive Director
Alliance Air
New Delhi.*

Sub: Re-instatement as check cabin crew

This is with regard to letter AASL/PERS/2006 dated 30/06/06 informing me that my check ship stands withdrawn due to my non-availability as check cabin crew for more than 6 months.

I am presently working on ground in cabin crew rostering section.

Northern Region is short of check cabin crew and R/C for cabin crew get delayed. It is therefore requested that if my check cabin crew status is reinstated I will be able to conduct R/C for cabin crew in exigency since my Boeing licence as cabin crew is also current.

*Thanking you in anticipation.
Yours sincerely*

*Salome
Employee Code 160666.”*

28. She has also admitted by her communication dated 20.08.2007 of her being continued on ground duties. Therefore, it is clear that the respondent cooperated with her and made her comfortable through

out. However, at last when they found her unfit for any type of duties, therefore, her contract was not extended beyond 31.12.2010.

29. Ld. counsel appearing on behalf of Respondents has distinguished the case of *Uma Devi (supra)* and submitted that in that case the Supreme Court has discussed the process of selection and accordingly directed the Department to regularize the persons those who have completed 10 years subject to availability of vacancies. However, the case of the petitioner is totally different from the facts of *Uma Devi (supra)*. In that case such type of conditions, as the petitioner herein have, were not there. Therefore, the aforesaid judgment is not relevant in the facts and circumstances of the case.

30. Ld. counsel further submits that even as per the agreement between the petitioner and the respondent dated 07.11.1996 wherein the management of Airline Allied Services Limited offered the contractual appointment on various terms and conditions. The relevant terms and conditions are reproduced as under:-

*“Airline Allied Services Limited
(A wholly owned subsidiary of Indian Airlines Ltd.)*

*Ms. Salome Sings II
D/o MR. A. Sings II
R/I 443 Hawa Singh Block
Asiad Village, New Delhi-110049.
New Delhi.*

*The management of Airline Allied Services Ltd. (the
‘Company’) has the pleasure of offering you
contractual appointment on the following terms and
conditions according to rules of the company, as are*

in force or modified or added to from time to time.

.....

.....

VIII) FITNESS

You will be required to undergo a period weight check once every 3 months. If you are not found to be conforming to the acceptable weight limits you will be grounded. The period during which you are so grounded will be considered 'as reason attributable to crew' and proportionate deductions will be made from your fixed flying allowances.

.....

X CONTRACT EXTENSION/ AMENDMENT

This agreement may be extended or renewed by mutual written agreement between the company and you.

This agreement may only be amended in writing signed by both parties hereto. Any waiver or any provision thereof shall only be effective if in writing signed by the party giving such waiver.

XI TERMINATION FOR CAUSE

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.....

l) You are declared medically unfit to perform you duties as a cabin crew.

XIII TERMINATION WITHOUT CAUSE

The company or you may terminate this agreement and the employment hereunder at any time upon giving ninety days written notice to the other without assigning any reason.

XVII ACKNOWLEDGEMENT

i) You acknowledge and agree that the company will have no liability financial or otherwise with regard to any of your dealings, commitments, contracts and agreements etc., with any previous employer.

ii) You acknowledge and agree that your employment is a fixed term contract with the company, and the emoluments, compensation and benefits to be paid to you hereunder and are in lieu of all other benefits. You expressly agree that you are not 'workman' as the term defined in the Industrial Disputes Act, 1947 of the Union of India or any subsequent Act and you are not entitled, save as expressly provided herein, to the benefits afforded to a 'workman' under such law and you shall not be deemed to be a permanent employee of the company.

..... ”

31. Ld. counsel had relied upon the judgment of this Court in the case of ***Sheela Joshi & Ors. vs. Indian Airlines Ltd, 141(2007) DLT 45***, in which case this Court has observed as under:-

“14. Lastly it is not without rationale that the flying Crew has been subjected to certain standards of height and weight. Their job profile demands it. The aircrafts fly at a very high altitude. Quite often emergency situations arise because of air turbulence or on account of aircraft developing snag. The Cabin Crew including the Air Hostess are expected to handle the situation deftly, with alacrity and presence of mind. All this will be possible only if the Cabin Crew possesses the highest order of physical and mental fitness. And let us not forget that in this era of cut throat competition no Airlines can afford to remain lax

in any department whatsoever, be it the personality of its crew members, their physical fitness in all respects or the air worthiness of the air craft or in relation to other facilities such as catering etc. If keeping in view this kind of job performance the Air Hostesses are asked to battle their bulge, control their girth and keep at desired level the affluence of their body weight as per the norms, it is not understood how it is in any way unfair, unreasonable and insulting to their womanhood. It is not the Air Hostesses alone which are put to these rigours. The other Members of the flying crew are also required to maintain a particular weight standard. If by preservance the snails could reach the ark, why can't these worthy ladies stand on and turn the scale. For the foregoing reasons, I find no merit in the writ petitions, the same are dismissed but without burdening further with costs."

32. Vide order dated 30.04.2012, petitioner was directed to remain present in the court on the next date of hearing. Accordingly, she was appeared and submitted that presently she is fit for the duties. However, since she undergone 3-4 surgeries, therefore, it would be proper and comfortable for the petitioner, if the respondent posts her for ground duties.

33. It emerges from the above narrated facts that right from the date of her appointment, it was known to the petitioner that she was to maintain her body weight, standards as laid down in the agreement signed with the respondent Airline and was reminded time to time. To the conditions of her appointment, she knowingly and willingly accepted the same. Therefore, this condition fructified into a

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consensual contract between the parties.

34. However, the petitioner in the present petition is a lady and at the time of entering into the service, she was not even married and thereafter due to one surgery after the another, not only her body weight increased, but she remained absent from her duties. The respondent cooperated with the petitioner and time to time given her ground duties, when she was not in a good shape.

35. Be that as it may, since 1996 to the year 2005, about 10 years, she was fit for Cabin Crew duties. Moreover, in the year 2003, she was promoted to the rank Check Cabin Crew and also given an additional charge of Inspector of Flight Operations Quality Assurance.

36. In the respondent Airline mainly two types of duties are there (i) Cabin Crew and (ii) Ground Duties. Throughout life, Cabin Crew does not remain as Cabin Crew and after a particular age, respondent Airlines normally take ground duties as well.

37. In the present case, petitioner had to terminate her pregnancy three times at pre-mature stage due to compelling circumstances. It was beyond her control. Respondents were well aware that if a young lady had joined in service, simultaneously, after some time her body structure will deteriorate and her young age fitness would not remain forever. Due to her medication to cure 'phobic anxiety', the chemical as consumed was the contributory factor of overweight.

38. The petitioner entered into an agreement and it was renewed time to time. However, vide communicated dated 25.03.2005, she was

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advised to bring down her weight within permissible range. She did so while remaining on the ground duty. Thereafter, she again gained her body weight and the respondent Airlines again issued a letter asking the petitioner to bring down her weight within 15 days.

39. On 29.11.2006, petitioner made representation to explain her period of performing ground duties owing to her extreme medical condition. Due to two major and one minor surgeries and other medical complications, there was an obvious hormonal imbalance, which made impossible for the petitioner to bring down her weight.

40. I am conscious that the Coordinate Bench of this Court in a case of *Sheela Joshi (Supra)* has dealt with the similar issue and dismissed the same while observing that in view of this kind of job performance the Air Hostesses are asked to battle their bulge, control their girth and keep at desired level the affluence of their body weight as per the norms. It is not understood how it is in any way unfair, unreasonable and insulting to their womanhood.

41. However, on the same issue, though High Court of Calcutta has allowed the issue of the petitioner, but the same has been stayed by the Hon'ble Supreme Court.

42. The case of the petitioner is different from the case before Calcutta High Court and case of *Sheela Joshi (Supra)* before this Court. Her services were not extended beyond 31.12.2010 by impugned order dated 27.12.2010, mainly on the ground that she could not reduce her body weight. There is no dispute to this fact. But the

question arise here is that whether it was within her control? In my view, certainly not. She underwent three times medical termination of her pregnancy, one breast surgery, one uterus surgery and Herbes. Therefore, due to the reasons mentioned above, she was not able to perform flying duties and ground duties as well. But, she is fit now as stated by the petitioner herself when she appeared before this Court.

43. It is part of life. Some events come in life. The human being tackles it. But some events go beyond control. The present case is of that category. After all the petitioner has served for substantial period. Therefore, the respondent should have accommodated the petitioner instead of not extending her contract.

44. Therefore, I am of the considered view that the petitioner has experience of flying duties and ground duties as well. She would be asset to respondent Airlines. In the present circumstances, I direct the respondents to constitute a Medical Board, assess her and give her flying duties or ground duties, as per suitability. After all she has worked more than 10 years with the respondent Airlines. She could not be thrown in the manner the respondent did.

45. I, hereby, make it clear that this judgment shall be complied with within a period of four weeks from the receipt of the copy of the judgment.

46. Accordingly, the instant petition is disposed of on the terms mentioned above.

CM. No. 3031/2011 (Stay)

In view of the above instant application become infructuous and disposed of as such.

SURESH KAIT, J

JULY 03, 2012

jg