

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

+ **LPA No.563 of 2012**

% Reserved on: 13th August, 2012
Pronounced on: 12th September, 2012

AIRLINE ALLIED SERVICES LTD. & ANR . . . APPELLANT

through : Mr. Atul Sharma, Advocate
with Mr. Sarojanand Jha,
Advocate.

VERSUS

SALOME SINGSIT & ANR. . . .RESPONDENTS

through: Mr. Ashwarya Sinha, Advocate
for Respondent No.1.
Mr. Amit Chadha, Advocate for
Respondent No.2/UOI.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. By means of this Letters Patent Appeal under Clause 10 of the Letters Patent Appeal Act, the appellant impugnes judgment dated 03.7.2012 rendered by the learned Single Judge in Writ Petition (Civil) No.1416/2011 filed by the respondent herein. The respondent No.1 was appointed to the post of Cabin Crew in the Operation Department in the year 1996. This contractual period was renewed from time to time and the last renewal was upto 31.12.2012. The appellant, however, passed order dated 27.12.2010 deciding not to renew her Fixed Term Employment Agreement

[hereinafter referred to as 'FTEA'] beyond 31.12.2010, which resulted in discontinuation of her services. The main reason for not doing so was that the respondent was not able to maintain her weight within the permissible range/limit and having regard to the guidelines on the subject, she was not in a position to perform the duties of Cabin Crew for which she was appointed on fixed term basis.

2. She filed the aforesaid petition challenging the validity of the orders dated 27.12.2010. The learned Single Judge has, *inter alia*, noted that the weight problem suffered by the respondent was due to her pregnancy, which became complicated and had to be terminated for which she had to undergo repeated surgeries. Therefore, the appellant should have adopted humane approach and, thus, following directions are given to the impugned judgment:

“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 an 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.”

3. After giving a glimpse of the nature of controversy, we now proceed to state the facts in detail, before taking note of the reasons given in

the impugned judgment and the grounds on which the appellant is disputing the validity of those reasons.

4. The respondent No.1 joined the services of the appellant No.1 as a contractual employee through an FTEA with effect from 07.11.1998. On 01.1.2002, the appellant No.1 introduced the Policy which provided that if a Cabin Crew is found overweight and fails to reduce her weight within permissible limit after sufficient opportunity, then the contract with the Cabin Crew will be terminated.
5. On 07.3.2006, the respondent No.1 was found to be overweight by 8 Kgs. and was grounded for 15 days with effect from 09.3.2006 as per the Policy. The respondent No.1 was called for review weight check on 22.3.2003. On recheck, the respondent No.1 was again found overweight by 8 Kgs. and was further given an opportunity to reduce her weight and thereafter called for a review weight check after 30 days on 04.4.2006. However, as she could not bring down the weight within permissible range, she was again grounded for 45 days and was advised to come for review of weight check on 09.6.2006. Thereafter, at the request of the respondent No.1, the appellants allowed her to join ground duties temporarily with effect from 21.6.2006 till the time respondent No.1 reduced her weight within permissible limits. As the respondent No.1 could not make herself available for flying duties for a continuous period of six months, in terms of the policy of the appellant No.1 dated 16.9.2005, the 'Check-Ship Status' of the respondent No.1 was withdrawn. Caution letter dated 08.11.2006 was issued to the respondent No.1 to

bring her weight within permissible limits within 15 days failing which FTEA would be terminated. The respondent No.1 advised to the appellant No.1 to reduce her weight to bring it within permissible limits within a period of six months and requested that the six months' period be considered to be the maximum limit to resume flight duties. The respondent No.1 admitted herself to be overweight and requested the appellant No.1 to allow her to continue on ground duties for an extended period of 3 months. The respondent No.1 took numerous leaves from the services of appellant No.1 even during her ground duties. The respondent No.1 was advised to resume flying duties and underwent conversion training course on the aircraft CRJ-700. However, she failed in the Viva Examination and thereafter, proceeded on leave from 22.8.2009 to 20.10.2009. The respondent No.1 was again on leave from 28.10.2009 to 14.11.2009 and 17.11.2009 to 30.11.2009.

6. A letter dated 29.12.2009 was issued to the respondent No.1 to show cause within 7 days why action should not be initiated against the respondent No.1. The appellant No.1 issued a notice dated 06.9.2010 to the respondent No.1 thereby requiring the respondent No.1 to show cause within seven days as to why appropriate action should not be initiated in terms of the FTEA. The appellant issued a caution letter on 29.9.2010 to the respondent No.1 informing the respondent No.1 that her performance has been evaluated on parameters of utilization, availability and general conduct and it has been found that the respondent No.1 has been unsatisfactory in delivering satisfactory services and has poor availability record.

7. The respondent No.1 worked with the appellant No.1 for 137 days on 'ground duties'. The FTEA was last amended/extended by the letter dated 30.9.2010 by mutual consent of the appellant and the respondent No.1 for a period of three months. On 27.12.2010, the appellant No.1 informed the respondent No.1 its decision not to renew the FTEA beyond 31.12.2010.
8. In the writ petition, challenging the aforesaid decision of the appellant in refusing to renew the FTEA, the respondent No.1 came out with a plea that at the time when she was given appointment as Cabin Crew, she was unmarried and during this period, she had maintained her weight within the permissible range. In the year 2005, she got married. In the year 2006, she conceived, but unfortunately, she miscarried and she had to undergo operation. Despite extreme medical condition, she reported for work on 07.3.2006, but was grounded for 15 days to bring down her weight within the permissible limit, as she was found overweight by 8 Kgs. Ultimately, she continued to be grounded till she was allowed to join with effect from 21.6.2006. However, problem started since 30.6.2006 when without any notice, the appellant unilaterally and arbitrarily withdrew the petitioner's Check-Ship Status and the further leave on loss of pay was made effective from 22.3.2006 to 21.4.2006. Unfortunately for her, she had to undergo a second abortion surgery, for which she was again hospitalized and a strict medical treatment was prescribed along with bed rest. She continued to orally informing the appellant about her medical condition and the treatments she had undertaken. Thereafter, on

29.11.2006, she made a representation to extend her period of performing ground duties owing to her extreme medical conditions. Her plea was that due to two major surgeries and other medical complications, there was an obvious hormonal imbalance, which made impossible for the respondent No.1 to bring down her weight and she was strictly advised not to undertake any physical activity. On 13/14.2.2007, she again made a request to the appellant to allow her to perform ground duties due to medical reasons and the authorities acceded to her request. Unfortunately, the respondent No.1, who was undergoing continuous medical treatment, was again admitted in Artemis Hospital at Gurgaon, where laparoscopic myomectomy surgery (total reconstructive operation of uterus) was performed. Post operation, she was advised complete bed rest and thorough medication.

9. Taking note of the aforesaid medical history of the respondent No.1, the learned Single Judge has taken a view that it was not within her control to maintain the body weight within the prescribed standard laid down in the agreement between the parties as the same was the result of the aforesaid medical complications which the respondent No.1 faced from time to time. However, at the time of hearing even, the respondent No.1 conceded that she was still not in a position to do the Cabin Crew duties and would be applicable if she is posted for ground duties.
10. Insofar as legal aspects of the issue are concerned, case of the respondent No.1 was that since she had worked for 10 years having regard to the judgment of the Supreme Court in *State of Karnataka*

Vs. Uma Devi [2006 (4) SCC 1]. The appellant could not discontinue her services and she had right to be regularized. Counsel for the respondent No.1 has also placed reliance upon the Calcutta High Court judgment in the case of *Smt. Nipa Dhar (Nee Ghosh) Vs. National Aviation Company of India Ltd. and Ors.* [(2011) 1 Callt. 284 (High Court)]. In that case also, the petitioner, who was working as Cabin Crew, was also grounded. Her submission was that she was suffering from 'Phobic Anxiety' and due to medication for the aforesaid disease and the chemical medicine administered within her body, she was gaining fat. The chemical consumption was the contributory factor of her overweight. The Calcutta High Court had directed the Aviation company to constitute a Medical Board and assess her medical condition and thereafter give the job suitable to her. That judgment was challenged by the Aviation Company in the Supreme Court and the Supreme Court had stayed the order of the Calcutta High Court subject to the condition that the Aviation company should pay her a sum of ₹5,00,000/- lacs and also continue to pay her ₹20,000/- per month with effect from 01.4.2011.

11. The submission of the counsel for the appellant before the writ Court was that the respondent No.1 was engaged on contract basis, that too, specifically as a Cabin Crew; it was incumbent upon her to maintain body weight within the prescribed rule; such a condition, i.e., maintaining weight within the permissible range was held to be valid by the learned Single Judge in the case of *Sheela Joshi & Ors. Vs. Indian Airlines Ltd.* [141 (2007) DLT 45]. That judgment was

upheld by the Division Bench of this Court as well and the matter was taken up to the Supreme Court and the Apex Court also did not disturb the judgment. It was also argued that since the engagement was on contractual basis, judgment of the Calcutta High Court was not applicable where the employee was working on regular basis. Insofar as the contentions of the appellant before the writ Court are concerned, the learned Single Judge has held that the judgment in the case of *Sheela Joshi (Supra)* even *Smt. Nipa Dhar (supra)* of Calcutta High Court would not be applicable giving the following reasons:

“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.”

12. Arguments before us remained the same.
13. From the facts noted above, it is clear that the appellant No.1 has the Policy dated 01.1.2002 which prescribes permissible limits within which Cabin Crew including Air Hostess is supposed to keep her body weight. Insofar as Respondent No.1 is concerned, on 07.3.2006, she was found to be overweight and therefore, she was grounded for 15 days. Thereafter, on review weight checks from time to time, she was always found to be overweight and could not bring down the same within permissible limits in spite of her undertaking. In the meantime, she was issued caution letter as well. She was given ground duties for some time, i.e., 137 days, but for most of the period, she remained on leave. In these circumstances, if one strictly follows the dicta of *Sheela Joshi (Supra)*, it was permissible for the appellants to take off the respondent No.1 from flying duties. However, her plea was that the cause for her weight problem was her medical conditions, which were the result of repeated miscarriages after conception and other medical complications, which even forced her to go through two major surgeries. As per her, there was an obvious hormonal imbalances, which made impossible for the respondent No.1 to bring down her weight and she was strictly advised not to undertake any physical activity. On 13/14.2.2007, she again made a request to the appellant to allow her to perform ground duties due to medical reasons and the authorities acceded to her request. However unfortunately, because

of continuous medical treatment, admission in the hospitals time and again and the surgeries performed upon her, she had to take medical leave.

14. It is this medical condition, which has prevailed with the learned Single Judge in holding that it was not within her control to reduce her body weight and also justifying her act not to perform flying duties and ground duties as well. The learned Single Judge may be right to this extent. However, in the entire process, a very vital fact is ignored. The respondent No.1 was appointed on contract basis, which was for specific period(s).
15. No doubt, this contract was extended from time to time, but the appellants chose not to give any further extension beyond 30.12.2010. The learned Single Judge may also be right in observing that main ground for not giving extension was that the respondent No.1 was not able to reduce her body weight and this should not have been the reason when things were beyond her control. However, what is to be borne in mind, which fact is overlooked, is that the Respondent No.1 was appointed as Air Hostess and her main duties were that of the Cabin Crew, she was supposed to perform flying duties. Because of her medical condition, she was not able to do so after June, 2006, i.e., for a period of 4 ½ years before the appellants took the decision not to extend her contract. If for medical reasons, the respondent No.1 is not in a position to perform flying duties, which was the nature of her employment, it cannot be said that the decision of the appellant in not extending the contract is unjustified, arbitrary or irrational.

Though before the learned Single Judge, she stated that she was now fit to perform the duties, it is pertinent to mention that this statement was made in the context of ground duties. It is not sure as to whether she is still not in a position to undertake the Cabin Crew duties/flying duties. However, her appointment was not that of ground staff. Therefore, the direction of the learned Single Judge that she should be assessed by the Medical Board and given flying duties or ground duties, as per suitability, may not be correct.

16. We, therefore, set aside this direction of the learned Single Judge having regard to our aforesaid discussions. At the same time, we echo the sentiments expressed by the learned Single Judge regarding the medical complications and traumas, which the respondent No.1 suffered. She has worked for more than 10 years. She has also performed duties for some time and has given some experience in that area as well. Though we have set aside the directions of the learned Single Judge as the Court cannot pass these directions, at the same time, we will impress upon the appellants to consider her case if she can be accommodated by re-employing her and giving ground duties.

17. We, accordingly, dispose of this appeal by substituting the following directions:

A) The appellants may constitute Medical Board to assess her medical conditions. If she is found fit for flying duties, then the appellants shall consider extending her contract as a Cabin Crew.

B) In case she is not found medically fit to perform flying duties, then the appellants may consider as to whether she can be accommodated and employed to perform ground duties. However, we clarify that this direction does not give any right in favour of the respondent No.1, though we expect the appellants to be sympathetic in their approach.

18. The appeal is disposed of in the aforesaid terms with no order as to costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

SEPTEMBER 12, 2012

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