

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

% Judgment reserved on: 29.01.2013
Judgment pronounced on: 19.02.2013

+ **LPA No.806/2012**
SHEELA JOSHI & ORS. Appellants

Through : Mr. Arvind Kumar Sharma , Adv.

Versus

AIR INDIA (FORMLY KNOWN AS
NATIONAL AVIATION COMPANY OF
INDIA LTD. (NACIL) THR. GENERAL
MANAGER Respondent

Through : Mr. Lalit Bhasin, with Ms. Ratna
D. Dhingra, Ms. Bhavna, Ms.
Sneha Balkrishnan Advs.

And

+ **W.P.(C) No.6465/2012**
SHEELA JOSHI & ORS. Petitioners

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Ms. Sneha Balkrishnan Advs.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. The petitioners/ appellants are working as Cabin Crew with the respondent Air India. A Memorandum of Settlement (MOS) Form-H was entered into between Air Corporation Employees Union (ACEU) and Air India, on 21.9.1995. The said Settlement, *inter alia*, stipulated the following flight and duty time limitation and rest period for the Cabin Crew of Air India.

“a) “Daily Flight Duty Time (in a period of 24 hours)	11 hours
b) Daily Flight Time (in a period fo 24 hours)	08 hours
c) Monthly Flying Hours	100 hours
d) Rest period	
a) Flight terminating at the Home Base station of Cabin Crew:	
....Flight terminating	10 hours rest
At or before 2200 hours	11 hours rest
After 2200 hours	
.....Flight terminating	
Between 0000 hours and 0600 hours	22 hours rest
....Flight terminating	
Between 0000 hours &	

0600 hours

12 hours rest”

2. On 1.9.2008, a Memorandum of Settlement was executed between ACEU regarding flight duty time and flight time limitations and the said Settlement, *inter alia*, provided as under:

“1. Cabin Crew deployed for operations to long haul international destinations will follow the norms laid down by Regulatory Authority for operation of international flights. However, once the full-fledged long haul international operations are scheduled by the Company discussions on FDTL will be held with the Union. It is also agreed that Management will endeavour to provide from such long haul international flights.

2. For other operations the present network of erstwhile IA including any additional destination in the Middle East and South East Asia, the existing MOS of 1995 will apply.”

3. Vide order dated 4.8.1997, Director General of Civil Aviation issued Civil Aviation Requirements (CAR), regarding Flight and Duty Time Limitation and Rest period of the flight crew engaged in scheduled/ non-schedule air transport operations and general aviation aeroplanes operations. The case of the appellants/ petitioners is that as per CAR of 1997, the flying hours were 8 hours FTL and 11 hours FDTL.

4. By a communication dated 12.9.2012, the respondent communicated, *inter alia*, to the Cabin Crew that FDTL/FTL applicable in case of officers shall be as per the latest DGCA requirements with

immediate effect immediate effect for all cabin crew/attendant for aircrafts of all types.

5. The aforesaid office order dated 12.9.2012 was challenged by the appellants/ petitioners, *inter alia*, on the ground that it was in violation of CAR issued by Director General of Civil Aviation on 4.8.1997 and without taking into consideration the Memorandum of Settlement dated 1.9.2008 and the Memorandum dated 21.9.1995. The respondent filed a counter affidavit opposing admission of the writ petition and took preliminary objection that the petitioners have an efficacious alternate remedy available to them by raising a dispute under Section 36A of the Industrial Disputes Act read with Section 29 thereof. The respondent denied the contention of the petitioners/ appellants that the order dated 12.9.2012 was in violation of CAR and maintained that it is strictly following the statutory requirements and there is no violation of CAR of 1997. It was further submitted in the reply that though FTL and FDTL as per CAR of 1997, may be slightly different from FTL and FDTL, as agreed under MOS of 2008, such variations are permissible, they not being inconsistent with DGCA Requirements issued from time to time. It is also submitted in the reply that the respondent has made a turn around plan to increase productivity and efficiency and accordingly reviewed its working practices and decided that the working practices of employees engaged directly for flight operations be brought in line with the guidelines laid down by DGCA which is being followed by other airlines.

6. The learned Single Judge vide order dated November 26, 2012 impugned in LPA No. 806/2012, dismissed CM No. 17159/2012 which

the petitioners/appellants had filed in the writ petition seeking an *ad interim* stay against the office order dated 12.09.2012 issued by the respondent. Vide order dated December 12, 2012 passed in LPA No.806/2012, we called for the writ petition to be heard along with the appeal. Accordingly, we heard the learned counsel for the parties in the writ petition as well as in the appeal.

7. The first question which comes up for consideration in this case is as to whether the respondent is in any manner violating the provisions of CAR issued by DGCA on 4.8.1997. To the extent it is relevant, the order dated 4.8.1997 issued by DGCA reads as under:

“3.1 FLIGHT DUTY TIME

Flight duty time is the total time commencing from the time of reporting at the airport for the purpose of operating a flight and ending with termination of a flight or a series of flights (Chocks on plus 15 minutes).

3.2 FLIGHT TIME

The total time from the moment the aircraft first taxies out under its own power for the purpose of take off to the moment it comes to rest at the end of a flight.

3.3. REST PERIOD

The period during which cabin attendant is not assigned any duty.

4. DOMESTIC OPERATIONS & OPERATIONS TO NEIGHBOURING COUNTRIES

4.1 FLIGHT TIME LIMITATION

4.1.1 The maximum number of hours any domestic air carrier can schedule its cabin attendant members to do flight shall be as follows:

- i) 30 hrs in any period of 7 consecutive days
- ii) 125 hrs in any period of 30 consecutive days
- iii) 1000 hrs in any period of 365 consecutive days.

4.1.2 No air carrier operating domestic routes and routes to neighbouring countries may schedule a cabin attendant member for more than 8 hrs of flight time during any 24 consecutive hours without a rest period of 16 hrs or more and under the following conditions:

- i) Where flight time is less than 8 hrs a prorata rest period of twice the flight time shall be provided, but the rest period in no case shall be less than 8 hrs.
- ii) No domestic air carrier may assign any cabin attendant to do any duty with the air carrier during any required rest period.

- iii) No air carrier shall require any cabin attendant to operate more than six sectors per day, each sector comprising of one take off and one landing of the aeroplane in which he/she is operating as cabin crew.
- iv) A cabin attendant member is not considered to be scheduled for duty in excess of flight duty time limitation when due to circumstances beyond, the control of air carrier (such as anticipated technical delays, adverse weather conditions, etc.) the flight duty time gets inevitably extended, provided that such extension shall be limited to 4 hrs in any particular case and shall not be more than 6 hrs during any period of 30 consecutive days. In such cases, the rest period shall be extended prorata by twice the amount of time by which the flight time was extended;
- v) Cabin attendant shall neither be detailed nor undertake any duty between period embracing 0000 hrs to 0500 hrs local time if during the previous day he/she performed flight duty between the same period.

4.2.1 No cabin attendant shall be required to exceed 11 hrs Flight Duty Time during any consecutive 24 hrs. If any carrier schedules a cabin attendant to do

Flight Duty Time more than 11 hrs during 24 consecutive hours, the rest period at the end of the flight duty shall be extended by twice the period in excess of 11 hrs.

5. INTERNATIONAL CARRIER

5.1 No air carrier may schedule a cabin attendant to perform duty in an aeroplane for more than 11 hrs of flight time during any 24 consecutive hours without a rest period. Before a cabin attendant is detailed for a flight, his/her rest period since the last flight shall not be less than 22 hrs at base:

5.1.2 If an air carrier schedules a cabin attendant to do flight time of more than 11 hrs during any 24 consecutive hours, the rest period at the end of this flight duty at base shall be extended prorata by twice the amount of time by which the flight time was extended.

5.1.3 No air carrier shall allow any cabin attendant to exceed following limitations:

- a) 45 hrs in any period of 7 consecutive days
- b) 125 hrs during a period of 30 consecutive days.

- c) 1000 hrs during any period of 365 consecutive days.

5.1.4 Where the flight time of a cabin attendant is less than 11 hrs, a prorata rest period of twice the flight time shall be provided at base, but the rest period in no case shall be less than 8 hrs.

5.2 FLIGHT DUTY TIME LIMITATION

5.2.1 No air carrier operating international services shall schedule a cabin attendant to exceed 15 hrs flight duty time during any flight or series of flights during any consecutive 24 hrs. If any carrier schedule a flight attendant to do flight duty time more than 15 hrs during any 24 consecutive hours, the rest period at base at the end of the flight duty shall be extended by twice the period of excess of 15 hrs.

5.2.2 The flight duty time, however, may be extended by a maximum of 4 hrs in case of technical snags, adverse weather or any other unforeseen circumstances to avoid inconvenience to passengers. However, whenever the flight duty time gets extended, the rest period at base shall be prorata increased by twice the amount of extended period of flight duty time, provided that no cabin

attendant shall be asked to extend duty time more than 8 hrs in a period of any consecutive 30 days.”

8. After merger of Indian Airlines with Air India, the respondent is not an air carrier operating only domestic routes and routes to neighbouring countries. It is an international carrier which is also engaged in operating domestic routes. The contention of the petitioners/appellants is that in view of clause 4.1.2 of CAR, the appellants/ petitioners cannot be deputed to work for more than 8 hours of flight time during 24 consecutive hours, as far as domestic routes and routes to neighbouring countries are concerned. The contention of the learned counsel for the respondent on the other hand was that the aforesaid clause of CAR does not prohibit flight time of more than 8 hours in 24 consecutive hours, so long as the rest hours given to the cabin crew are double the flight time rendered by them and the other requirements of CAR are met. We have carefully examined the aforesaid clause. In our view, the said clause does not prohibit flight time of more than 8 hours in 24 consecutive hours, provided that rest period is twice the flight time and there is no violation of other requirements laid down by DGCA in the order dated 4.8.1997. If for example, the flight time is 10 hours, rest period has to be of next 20 hours. It is not as if the respondent can depute the petitioners for 24 consecutive hours of flight time. As per requirement of Clause 4.1.2 (iii), they cannot be asked to operate more than 6 sectors per day and the cabin attendant is not to be detailed nor can he/she undertake any duty between 0000 hrs to 0500 hrs local time if during the previous day he/she

performed flight duty between the same period. Another provision which is beneficial to the petitioners is Clause 4.1.2(vi) which provides that each cabin attendant shall be relieved from all duties for at least 24 consecutive hours during any seven consecutive days. Clause 4.2.1 which deals with FDTL also permits FDTL of more than 11 hours during consecutive 24 hours provided the rest period at the end of the flight duty is extended by twice the period in excess of 11 hrs. Thus, the CAR does not stipulate any upper time limitation either in respect of flight time (FTL) or in respect of flight and duty time (FDTL), so long as the rest period immediately after the duty period is proportionally increased.

9. In respect of international carrier, the requirements of flight time is 11 hours during 24 consecutive hours without a rest period and cabin attendant cannot be detained for another flight unless he/she gets rest period of 22 hours at the base. But even this time limitation of 11 hours of flight time for international carriers is not sacrosanct since Clause 5.2 provides that if a cabin attendant is scheduled to do flight time of more than 11 hours, the rest period is required to be extended. In any case, there is total embargo of more than 45 hours for any period of 7 consecutive days, 125 hours during a period of 30 consecutive days and 1000 hours from any period of 365 consecutive days, as far as international carriers are concerned. The said limitation is 30 hours, 125 hours and 1000 hours respectively in respect of domestic air carriers.

10. It would thus be seen that the emphasis of CAR is on going adequate rest period, before next deployment and so long as there is proportionate increase in the rest period the flight time as well as flight

duty time can be extended by the carrier in its discretion, provided the other norms laid down by DGCA in the aforesaid order are duly complied. Therefore, it would not be correct to say that the respondent is seeking to act in contravention of CAR of 4.8.1997. Moreover, during the course of arguments, the learned counsel appearing for the respondent made an unequivocal statement that the respondent shall not contravene the provisions of CAR as applicable from time to time. In any case, the order dated 12.9.2012, which is under challenge in the writ petition, also envisages application of the requirement of DGCA, which means only CAR dated 4.8.1997 and so long as the respondent conforms to the said requirement stipulated by DGCA, the office order dated 12.09.2012 cannot be challenged on the premise that the said order is in contravention of CAR dated 4.8.1997.

11. The next contention of the learned counsel for the petitioners was that the respondent cannot act in contravention of the Settlement dated 21.9.1995, since the settlement dated 1.9.2008 clearly stipulated that to any operation other than long haul international destination, including destination in the Middle East and South-East Asia, the Settlement dated 21.9.1995 is to apply. In this regard, the learned counsel for the respondent submitted that if the petitioners/appellants are aggrieved on account of contravention of any term of the settlement dated 21.09.1995, the appropriate remedy for them is to approach the Labour Court under the provisions of Industrial Disputes Act and a writ petition is not the appropriate remedy for enforcement of settlement.

12. The case of the petitioners is that under the Settlement dated 21st September, 1995, read with the Settlement dated 1st September, 2008, the flying hours cannot exceed FTL of eight hours and FTDL of 11 hours. The submission of the learned counsel for the respondent, on the other hand, is that in terms of clause 15 of the Settlement dated 1st September, 2008, existing benefits/obligations/agreements/awards/settlements etc. were to continue unaffected, except if the same were specifically modified under the provisions of any law, for the time being, in force and CAR being a statutory provision, there is no violation of the settlement between the parties. Thus, there is dispute between the parties as to whether the respondent by issuing the office order dated 12th September, 2012 was acting in any contravention of the settlements between the parties or not. Since Industrial Disputes Act admittedly applies to the petitioners, it is very much open to them to raise an industrial dispute in this regard and seek adjudication through the mechanism provided in the said Act. Such a dispute if raised by the petitioners can be referred to the Labour Court/Tribunal for adjudication. Reference in this regard may also be made to Section 36A of Industrial Disputes Act which provides that if in the opinion of appropriate Government, any difficulty or doubt arises as to interpretation of any provision of award or settlement, it may refer the same to such Labour Court, Tribunal or National Tribunal, as it may think fit.

13. Ordinarily, writ jurisdiction of the Court is not an appropriate remedy for enforcement of contractual obligations. In **Radhakrishna Agarwal and Ors. Versus State of Bihar & Ors.**, (1977) 3 SCC 457, the

Supreme Court approved the following division of cases in which breach of obligations by the State or its agencies is alleged:-

- (i) Where a petitioner makes “a grievance of breach of promise on the part of the State in cases whereon assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution.
- (ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and
- (iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and the petitioner complains about breach of such contract by the State.

The Court was of the view that in the cases where questions of pure alleged breaches of contract are involved, no writ or order can be issued under Article 226 of the Constitution to compel the authorities to remedy a breach of contract, pure or simple.

14. Even in a case where there is no dispute between the Management and the workmen on the interpretation of a settlement entered into between them, and the Management, arbitrarily and without any justification seeks to act in breach of the obligations created under the

said Agreement, the matter can still be adjudicated through the mechanism provided in the Industrial Disputes Act since the workmen can always raise an industrial dispute challenging the action of the employer and seeking enforcement of the obligations arising under the contract. Section 2(k) of Industrial Disputes Act defines “industrial dispute” to mean any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. The definition given in the Act, therefore, is wide enough to include in its ambit, the dispute which is subject matter of present petition and, therefore, it can conveniently be referred to Labour Court/Tribunals in terms of Section 10 of the Act.

15. It is well settled proposition of law that even in a case where a petition under Article 226 of the Constitution is maintainable for enforcement of a right, the Court may refuse to exercise such a discretion in a case where an equally efficacious alternative remedy is available to the petitioner. Wherever an alternative and equally efficacious remedy is open to a litigant, he should normally pursue that remedy, instead of invoking the writ jurisdiction of the High Court. Though the existence of an adequate legal remedy does not oust the jurisdiction of the writ court, it certainly is a factor to be taken into consideration in the matter of granting writs. In *U.P.State Spinning Co. Ltd. versus R.S.Pandey and Anr.*, (2005) 8 SCC 264, the respondents made claim of 15% of basic pay as interim relief as was being paid to the officers and clerical staff of the

headquarters of the appellant. They filed a writ petition claiming certain reliefs in this regard. The appellant, *inter alia*, took the plea of availability of an alternative remedy to the respondents. The plea relating to existence of alternative remedy was rejected by the Single Judge as well as the Division Bench of the High Court. Holding that the High Court was not justified in entertaining the writ petition despite availability of a remedy, Supreme Court referred the dispute between the parties for adjudication. In **Hindustan Steel Works Construction Ltd. and Anr. versus Hindustan Steel Works Construction Ltd., Employees Union,** (2005) 6 SCC 725, the issue before the Court related to withdrawal of construction allowance by the employer. Questioning the legality of withdrawal of the said allowance, a writ petition was filed before Andhra Pradesh High Court, which was allowed by the learned Single Judge on the ground that there was violation of Section 9A of Industrial Disputes Act. It was also observed by the learned Single Judge that since no factual controversy had been adjudicated, the writ petition was maintainable. The order passed by the learned Single Judge was affirmed by the Division Bench of the High Court. Supreme Court, however, did not agree with the view taken by the High Court and referred the dispute between the parties for adjudication by appropriate Tribunal. In **Uttaranchal Forest Development Corpn. And Another versus Jabar Singh And Others,** (2007) 2 SCC 112, the dispute related to retrenchment of the services of the respondents. The question which fell for determination in the case was as to whether the provisions of Section 25N of the Industrial Disputes Act were attracted or not and whether for non-compliance with the conditions contained in Section 25N, retrenchment

order as well as the award which upheld the retrenchment order to be legal were illegal and *non est*. The High Court took the view that Section 25N had been made applicable to industrial establishments in the State of U.P and, therefore, the question raised was whether the first Corporation was an industrial establishment or not. Holding the forest Corporation to be an industrial establishment, the High Court found the retrenchment to be illegal and quashed the same, directing reinstatement of the writ petitioners with salary/wages. The order was challenged by the Corporation before Supreme Court and it was submitted that the Corporation could not be treated as an “industrial establishment” within the meaning of Section 25L of the Industrial Disputes Act. It was also submitted by the appellant before Supreme Court that writ petitions filed by the retrenched employees directly in the High Court were not maintainable since in 22 cases out of the batch of 38 cases, the petitioners had not gone to the Tribunal and had directly approached the High Court by filing the writ petition. Holding that writ petition directly before the High Court was not the appropriate remedy in the matter, Supreme Court relying upon its earlier decision in *U.P.State Spinning Co. Ltd.* (supra), held that the workmen had not made out any exceptional circumstance to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act.

16. The learned counsel for the petitioner has relied upon *Kumari Shrilekha Vidyarthi And Others versus State of U.P. And Others*, (1991) 1 SCC 212, In that case, the decision of Government of Uttar Pradesh to terminate the engagement of all the Government counsel

engaged throughout the State of UP and making appointment in their place on the basis of a new panel prepared for the purpose was challenged before Supreme Court. Quashing the aforesaid order, it was observed by Supreme Court that the appointment of the State Government counsels was not merely a professional engagement nor was it a purely contractual and a public element was attached to the office or post of District Government Council(DGC). It was further held such appointments could not be terminated at any time at the sweet will of the Government, even without the existence of any cogent reasons during the subsistence of their term. In this context, the Apex Court observed that the State while exercising its powers and discharging its functions, is expected too to act for public good and in public interest. It was further observed to the extent that challenge to the State action is made on the ground of violation of Article 14 of the Constitution by alleging such act to be arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirement of Article 14. The Apex Court held the State action to be arbitrary and violative of Article 14 of the Constitution and, therefore, found no impediment in striking out the impugned act. However, the facts of the case before us are altogether different. The case of the respondent is that in view of the provisions contained in CAR, the settlement between the parties stands modified to the extent it not in consonance with the provisions of CAR. This is also the case of the respondent that the order dated 12th September, 2012 issued by them is in public interest since the respondent Airlines is currently passing through a severe financial crisis and an economic drive

within the organization is underway to come out of the financial crisis, it is facing, and to achieve that objective, co-operation of all employees is necessary so that the Airlines can be turned around by increasing productivity and efficiency. This is also the case of the respondent that the decision to impleadment the CAR of 1997 has been taken to survive in the current industrial/financial situation which is in line with the current industrial practices being followed by other Airliens.

The learned counsel for the petitioner has also referred to **Food Corporation of India And Another versus Seil Ltd. And Others**, (2008) 3 SCC 440, where sugar was supplied to FCI pursuant to statutory orders issued under Essential Commodities Act, 1955 and the directions of Central Government. No factual dispute was involved in the matter. The claim of the respondents in respect of the supplies made by them was sanctioned by Central Government, but the payment was denied by FCI on certain ground. In these circumstances, the Apex Court held that contractual disputes involving public law element are amenable to writ jurisdiction. However, in the case before us, no elements of public law in favour of the petitioners/appellants are involved. This judgment, therefore, is of no help to the petitioners/appellants.

17. We see no reason as to why the petitioners should not invoke the mechanism provided in the Industrial Disputes Act, for redressal of their grievance. In the event of an industrial dispute being raised by them which could be referred for adjudication under Section 10 of the said Act or Central Government making a reference under Section 36A as to the interpretation of the provisions of the Settlement in question, the matter

would be adjudicated by the Tribunal/Labour Court, as the case may be, and the party aggrieved from the order of the Tribunal/Labour Court may, if so advised, take the matter further to the High Court by way of a writ petition. In the facts and circumstances of this case, considering the availability of an equally efficacious alternative remedy available to the petitioners under the provisions of Industrial Disputes Act, we are of the view that this is not an appropriate case for exercise of jurisdiction under Article 226 of the Constitution.

In view of the above, the writ petition as well as the appeal arising therefrom are hereby dismissed. There is no order as to costs.

V.K.JAIN, J

CHIEF JUSTICE

FEBRUARY 19, 2013
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