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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 09.01.2014

Judgment delivered on: 31.03.2014

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WP(C) No. 30/2010

SANGITA GARG

.... Petitioner

Versus

INDIAN AIRLINES LTD.
(NOW KNOWN AS NACIL)

.....Respondent

+

WP(C) No. 6488/2010

PUNITA BAKSHI

.... Petitioner

Versus

NATIONAL AVIATION COMPANY OF INDIA LTD.
(NACIL)

.....Respondent

+

WP(C) No. 8111/2011

SONA CHAWLA

.... Petitioner

Versus

INDIAN AIRLINES LTD.
(NOW KNOWN AS NACIL)

.....Respondent

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioners: Mr Arvind Kumar Sharma, Advocate in WP(C) 30/2010 & 8111/2011.

Mr Amit Bansal, Advocate in WP(C) 6488/2010.

For the Respondents: Mr Kailash Vasdev, Sr. Advocate with Mr Rahul Malhotra, Ms Garima Bose, Ms Ekta Mehta, Mr Shreyans Singhvi & Mr Umrao Singh Rawat, Advocates.

CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. Is fat fit? At least in the context of the job functions, the petitioners, were required to perform - is the question which is raised in these writ petitions. The question, is not raised in the sense of physical well being. Accumulated medical wisdom would have us believe that weight brings with it several health related problems; such as, hyper tension, cardio vascular disease, etcetera. What has to be thus, kept in mind is that, the question posed is, contextual and not generic.

1.1 Having said so, there would undoubtedly be various areas of work which would require maintenance of physical standards, such as, height and weight. The examples which easily come to mind, are, services, which involve the fighting arm of the State; departments/ units in the police, para-military forces, the armed forces; perhaps, even the fire fighters service.

1.2 On the other hand, there could be spheres where weight or even height may not be considered, an impediment. For example, persons who are engaged in professional sports, such as, boxing, wrestling or even sumo wrestlers. These are persons, who are not excluded from their chosen activity, on account of their weight but, get only slotted, in a different category, depending, on their weight and height. Does excess weight (and I am using the expression in a broad sense) then, necessarily, in every situation, impede optimal performance? I believe the answer to this poser, would have to be in the negative as, much would depend on the nature of the work function and, its requirements.

2. The petitioners, are airhostesses, who were employed with the respondent. They were, till their termination from service, deployed as ground staff. Their services were dispensed with, because they have failed to maintain weight within the prescribed limits. In terminating the petitioners' service the respondent has invoked the relevant condition contained in their letters of appointment which, stipulates that their service could be terminated, inter alia, on the ground of, failure to maintain weight within prescribed limits.

3. Admittedly, respondent has prescribed weight parameters for cabin crew, which includes the airhostesses, and in this behalf, issued circulars, from time to time, in the first instance, between 1981 to 1987.

3.1 During this period, there was no discretion conferred upon the respondent in the relaxation of weight. It appears, for the first time, vide circular dated 04.11.1987 (1987 Circular), the respondent provided a revised height and weight chart. This circular, inter alia, indicated that if, the weight of the cabin crew went beyond 10% of the maximum prescribed limit then, he or she could be taken off flying duties and treated on leave or, on leave without pay, till he or she attained the prescribed weight. In other words, if the cabin crew was within the 10% grace allowance, as it were, then, he or she could continue to fly.

3.2 Thereafter, a similar circular, was issued on 11.05.1990.

3.3 On 17.09.1991, evidently, the respondent issued a revised height and weight chart, in which, apart from anything else, it was indicated that the 10% grace or leeway allowed in the prescribed weight vide 1987 circular, was no longer available.

3.4 The aforementioned circular was followed by a circular dated 16.11.1991 wherein, in no uncertain terms, it was provided that all personnel

should ensure that their weight falls within prescribed limits, latest by, 31.12.1991.

3.5 Five years later, the concept of grace allowance in weight was reintroduced with the circular dated 06.06.1996. This was followed by circulars dated 12.08.1998, 13.11.1998, 20.05.1999, 09/10.08.1999, 03.01.2000 and 31.10.2000.

3.6 Pertinently, the circulars issued after 06.06.1996 while, giving a leeway to the cabin crew to undertake flying duties even if, their weight was above the prescribed weight, gradually, proceeded to reduce the grace allowance in weight, till it came to a nil figure.

3.7 To begin with, vide circular dated 12.08.1998, cabin crew was given a leeway of 10 kgs over the prescribed limit, with a caveat that he or she had to undergo a weight check every fortnight. This margin was gradually reduced to 7 kgs vide circular dated 13/17.11.1998; and then, reduced to 5 kgs vide circular dated 20.05.1999. It was further reduced to 4 kgs by virtue of circular dated 03.01.2000. This limit was thereafter, reduced to 3 kgs vide circular dated 31.10.2000 and, finally, the grace allowance, which was pegged at 3 kgs, was withdrawn vide circular dated 04.05.2006.

3.8 As a matter of fact, the circular dated 04.05.2006, was followed by two circulars dated 17.05.2006 and 05.06.2006. Notably, the withdrawal of grace allowance of 3 kg, which was provided for, in the circular dated 04.05.2006, was enforced with effect from 15.06.2006.

3.9 The withdrawal of grace allowance of 3 kgs in weight over and above the prescribed weight, propelled some airhostesses to approach this court. A batch of writ petitions was filed. The lead writ petition was numbered as WP(C) No. 12875-83/2006 and, titled, *Sheela Joshi & Ors. vs Indian*

Airlines Ltd. The other two writ petitions were numbered as: 14443-44/2006, 17318/2006 and 1365/2007.

4. The entire batch of writ petitions were disposed of, by a common judgment dated 31.05.2007, by a Single Judge of this court. It is pertinent to note that, in these writ petitions, the challenge was laid only to the circular dated 04.05.2006. Relief was also sought qua the decision taken by the respondent to deny pay during the period petitioners were grounded after leave accrued to them stood exhausted.

4.1 The Single Judge, however, dismissed the writ petitions and, in substance, repelled their challenge on the ground that their letters of appointment included a condition (which I will be referring to, in some detail, in the latter part of my discussion) which, empowered the respondent to terminate the services of the cabin crew upon, their weight exceeding the prescribed limits.

4.2 The learned Single Judge, was of the view that, right from the time, the 1987 circular was issued, the cabin crew were made aware of the fact that if, their weight, exceeded the grace allowance provided therein, they could be taken off flying duties. The learned Single Judge thus, veered around to holding that since the writ petitioners (in those batch of writ petitions) had not made a grouse all this while, that is, till the issuance of the circular dated 04.05.2006, they could not, now object to, being grounded.

4.3 The learned Single Judge also repelled the argument raised (which is also an argument raised before me), that the services of cabin crew were governed by Regulation 12 of the Indian Airlines Flying Crew Service Regulations (in short Regulations) and, not by clause 9 of the appointment letter, which obliged air hostesses to adhere to the prescribed weight limits, failing which, their services could be terminated.

4.4 It was urged before the learned Single Judge that in terms of Regulation 12, the cabin crew, could not be grounded or deprived of salary, only for the reason that they were over-weight as long as they were "medically fit". In other words, the argument was that, since it was not the case of the respondent that the writ petitioners were not medically fit, they should be allowed to undertake flying duties, till the age of superannuation, in terms of Regulation 12.

4.5 The learned Single Judge, however, rejected this plea by observing that the terms and conditions of employment contained in the appointment letter were in addition to and not in derogation of the Regulation. It was the learned Single Judge's view that the Regulations did not "wash away" the terms and conditions contained in the letter of appointment. It was held that, even if, petitioners were found to be medically fit and, if their weight, was found not to be in consonance with the prescribed weight, the consequences contained in the appointment letter, would follow.

4.6 The learned Single Judge was thus, of the opinion that the "benevolent measures" taken by the respondent from time to time, in the form of, granting grace allowance in weight, did not, affect its power to ground delinquent cabin crew, who were over-weight or, to take measures to deprive such crew of salary if, no leave was available to their credit, as it was in accord with, the accepted terms and conditions contained in their appointment letters.

4.7 The argument of the writ petitioners (in that case) to the effect that, with the repeal of the Air Corporation Act, 1953 (in short 1953 Act) by the Air Corporation (Transfer of Undertakings and Repeal) Act of 1994 (in short 1994 Act); the respondent could not have issued the circular dated 04.05.2006, was also repelled.

4.8 It was argued, before the learned Single Judge that by virtue of the provisions of section 8 of the 1994 Act, the terms and conditions of service of cabin crew, engaged before the coming into force of the 1994 Act, could not be altered. In other words, it was contended that the 1987 circular which, conferred, a grace allowance in weight upto 10% over the prescribed weight would, continue to operate. What was sought to be argued, was that, after the enactment of the 1994 Act, the respondent did not have any power to issue circulars, including, the 04.05.2006 circular, which completely did away with the grace allowance.

4.9 The learned Single Judge though, on the other hand, found a contradiction in the stand of the writ petitioners, in as much as, it was contended that all circulars issued before the 1994 Act would apply, and those, issued after the enactment of 1994 Act (to the extent they took away the grace allowance), would not apply.

5. The learned Single Judge, found an anomaly in this submission of the writ petitioners and accordingly observed as follows:-

"..I need not go into the question whether the Air Corporation Transfer of Undertaking and Repeal Act took away the powers of the Airlines to issue Circulars because the argument proceeds on the basis that Circulars issued prior thereto alone would hold the ground. If that be so, it is not understood how it is the circular of November 1987 which will apply and not the revised chart which was issued in 1991. In any case the petitioners were quiet so long as the grace of over weight upto 10 kgs was allowed and even till date do not find fault with those circulars which were issued after the repeal Act but now when no grace at all is being given and it has been completely withdrawn they are questioning the authority of the Airlines to issue the Circulars. What does this mean? It means that so long as it suited the petitioners the Airlines had the authority to issue the Circulars and when the weight chart is being strictly followed they are finding fault with it.."

5.1 The learned Single Judge's judgement was, however, challenged before the Division Bench.

5.2 The Division Bench, upon hearing the matter at length, sustained the view taken by the learned Single Judge. The Division Bench was of the view that, withdrawal of the grace allowance by circular dated 04.05.2006, was not contrary to law, in as much as, the appellants before them had entered into “consensual” contractual conditions (as reflected in their appointment letters) and therefore, withdrawal of the grace allowance, and the resultant enforcement of contractual conditions was not, contrary to law.

5.3 The Division Bench also observed that withdrawal of concessions granted by the respondent qua the prescribed weight did not confer a legal right in favour of the appellants before them. They sustained the view of the learned Single Judge that neither the terms of the letters of appointment nor the weight chart prescribed from time to time, that is, from 1981 onwards, could not now be challenged by the appellants before them, given the enormous lapse of time in the interregnum.

5.4 The Division Bench, also considered the argument (which is a submission made before me as well), that the circular dated 04.05.2006, issued by the DGM (IFS), under the advice of the Executive Director (IFS), IAL Headquarters, was not backed by due authority of law. The Division Bench, in this regard, made the following observations :-

“..However, we find that on 08.09.1998, an instrument of delegation of financial and administrative powers was issued by which Director (IFS) was included in the list of Headquarters Departmental Heads and the Dy. General Manager (IFS) as Regional Departmental Head. The respondents have been able to give satisfactory explanation in this behalf. Indian Airlines was governed by the provisions of the Air Corporations Act, 1953 till 01.03.1994. Section 45 of the 1953 Act enabled the

Corporation to frame Regulations in respect of terms and conditions of service of officers and other employees of the Corporation. Section 40 of the said Act enabled the Corporations to delegate powers. The 1953 Act was repealed by the provisions of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. The said Repeal Act came into force w.e.f. 01.03.1994. Section 8(1) of the Repeal Act saved remuneration, terms and conditions and obligations in respect of persons who were appointed prior to 01.03.1994. Paras 2.1, 3.1, 3.5.1 and 3.5.4 of the Instrument of delegation of powers dated 14.02.1994 provide for delegation to Regional Departmental Heads etc. That apart, it is stated at the cost of repetition that by impugned circular only the position contained in the terms and conditions of appointment is sought to be enforced and therefore, we find no force in the argument that such a circular is without any authority..."

5.5 The argument advanced based on Regulation 12 was also repelled by the Division Bench and, the reasoning given by the learned Single Judge, was sustained.

6. The appellants before the Division Bench, however, carried the matter in appeal, to the Supreme Court. Evidently, while the matter was pending in the Supreme Court, 11 out of the 13 appellants before it, had reduced their weight, to the extent that it fell within the prescribed weight limits; because of which, they were re-restored for duty. Consequently, the Supreme Court, came to the conclusion that the appeals pending before it, had largely been rendered infructuous and, therefore, those, who had an outstanding grievance qua the respondent either on the ground of termination of service or, non payment of salary / allowances during the period they were grounded, could agitate their grievances, by taking recourse to appropriate measures including legal proceedings.

6.1 The relevant observations of the Supreme Court in this regard are contained in paragraph 9 of the order dated 07.12.2009; which for the sake of convenience, are extracted hereinbelow:-

"..We have considered the submissions made on behalf of both the sides. We are of the opinion that it would be wholly inappropriate to express any opinion on the merits of the controversy in the appeal in view of the fact that 11 of the original writ petitioners have rejoined duties. In case the writ petitioners have any independent grievances with regard to the non-payment or illegal withholding of any of the amounts due, the employees would be at liberty to either approach the Airlines by making a representation or seeking redress by appropriate legal proceedings. In order to further allay any fear of the employees whose services have been terminated on the ground of over weight, it is made clear that the proceedings taken out by the employees challenging the order of the termination shall be decided on merits, without reference to the opinion expressed either by the learned Single Judge in the writ petitions or by the Division Bench in the appeals. The appeals are disposed of accordingly..."

7. The captioned writ petitions before me thus, arise on account of the leave and liberty given by the Supreme Court in its order dated 07.12.2009. As would be evident from my discussion above that, in the batch of writ petitions which were dealt earlier by this court (which I would be referring to as the *Sheela Joshi*'s case), the court was concerned with the circular dated 04.05.2006 whereby, the grace allowance in the prescribed weight, accorded by preceding circulars was withdrawn completely by the respondent. As a matter of fact, both before the learned Single Judge and the Division Bench, the action of the respondent, which was impugned, pertained to grounding of air hostesses on account of excess weight and, consequent denial of salary, in cases, where leave stood exhausted.

7.1 In the present writ petitions, what is assailed is an aggravated cause. The respondent has not stopped at grounding, it has gone further, in as much as, the services of the three petitioners before me, have been dispensed with.

7.2 Notably, the petitioners before me do not seek re-deployment as cabin crew. They seek merely a retention of their employment with the respondent which, have been done away with, according to them unceremoniously, without having regard to the principles of natural justice, and relevant Regulations, applicable to them.

7.3 It may, therefore, be important to briefly, advert to the facts, pertaining to each one of the petitioners, before me. For the sake of convenience, I will be referring to each of the petitioners by their names and, if necessary, refer to them collectively as petitioners.

FACTS PERTAINING TO WP(C) 30/2010

8. On 08.03.1985, Ms. Sangita Garg was appointed as a trainee air hostess, with the respondent. After completion of training, Ms. Garg was appointed as an air hostess, on 09.07.1985. The said appointment letter, inter alia, provided, under clause 3, that her services with the respondent (which at the relevant time was the Indian Airlines), will be governed by the Regulations applicable to cabin crew and the standing orders concerning discipline and appeals, as amended, from time to time.

8.1 Pertinently, clause 4(ii)(b) of the very same appointment letter i.e., letter dated 09.07.1985, provided that her services were liable to be terminated if, she was unable to maintain weight within prescribed limits.

8.2 Ms. Garg, continued to fly till 14.12.1998; a date which emerges from her own application dated 29.06.2001 submitted to the General Manager (Personnel) for the post of Flight Kitchen Supervisor. I may only note that both, in the petition, as well as, in the rejoinder, it has been stated that she

continued to fly till 1999; for which purpose, reliance is placed on the salary slips issued by the respondent.

8.3 She was invited for an interview by the respondent vide communication dated 10.09.2001, for deployment, as a Flight Kitchen Supervisor. Ms. Garg, evidently appeared for the interview and, consequently, she alongwith another colleague of her's, one, Sh. S.K. Tudu, Flight Purser (Sr.), was deployed as a Flight Kitchen Supervisor. This was communicated to the petitioner vide letter dated 17.09.2001. Clause 3 of the said communication indicated that, her deployment would be for a period of three years "***extendable on requirement but with option***". Clause 4 of the very same communication indicated that, during the period of her deployment as Flight Kitchen Supervisor, she would retain her seniority in the parent cadre. In clause 5 of the said communication, it was indicated that she would be paid all allowances relatable to her scale of pay and continue to draw fixed productivity allowance based on the years of service, "***except for flying related incentive payments***".

8.4 Ms. Garg, joined her duties as a Flight Kitchen Supervisor, on 18.09.2001. A joining report to that effect was sent by the Sr. Manager (IFS), to the General Manager (P) of the respondent.

8.5 Though, the stand taken by the respondent in its affidavit was that Ms.Garg was unable to maintain her weight within the prescribed limits between the date she was grounded and the date she was re-deployed as a Flight Kitchen Supervisor, there appears to be an inaccuracy in the date given in the counter affidavit of the respondent vis-a-vis the date on which Ms. Garg was grounded. The date, when the petitioner, according to the respondent, was grounded, as set out in the counter affidavit, is 24.04.1996. This assertion appears to have been based on communication dated

24.04.1996 addressed to Ms. Sangita Bhatnagar (I would assume that this was how Ms. Garg was addressed as, prior to her marriage). By this communication, Ms. Garg appears to have been informed that she was overweight by 24.5 kgs., and that, she would not be rostered for flying duties till she brought her weight within the prescribed limits. The date of grounding referred to in this communication does not accord with the date given in Ms. Garg's application for the post of Supervisor and, the salary slips filed by her. These documents appear to indicate that Ms. Garg, was grounded, only in, 1999.

8.6 It also appears that on 14.07.2003, Ms. Garg was subjected to a weight check when, it was found that her weight was beyond the prescribed limits.

8.7 Evidently, on 19.02.2008, Ms. Garg's weight was checked by Medical Board when, she was found to be over-weight by 32.16 kg. The Medical Board apparently found, no good reason for her obesity. Ms. Garg was thus, declared by the Medical Board as, not fit for flying duties. A document in this behalf was generated by the Medical Department, on 25.02.2008. Apart from what has been mentioned above, this very document records two aspects; first, that at the relevant point in time, Ms. Garg stood re-deployed as a Flight Kitchen Supervisor, since 2001. Second, that she had made a statement before the Medical Board that she was grounded in 1999, on account of the fact that she was over-weight.

8.8 The impugned order terminating the petitioner's service came to be passed on 30.12.2008. By virtue of this order, Ms. Garg's services were "dispensed with" by invoking clauses 9 and 4 of letters of appointment dated 08.03.1985 and 09.07.1985 issued to her as a trainee air hostess, and air hostess, respectively. The impugned communication was accompanied by a

cheque in the sum of Rs.33,888/-; being an amount equivalent to one month's salary.

8.9 Evidently, Ms. Garg, on the very next date, vide communication dated 31.12.2008, wrote to the respondent, seeking reinstatement as permanent ground staff. In the said communication, Ms. Garg etched out, inter alia, her service record; which ultimately led to her deployment as Flight Kitchen Supervisor. It was pointed that, she had joined as a Flight Kitchen Supervisor, on 18.09.2001, and that, since then, she had not been issued any letter by the In- Flight Services (in short IFS) Department, asking her, to re-join as Cabin Crew, even after, she had completed three years as Flight Kitchen Supervisor. It was also asserted, in the very same communication, that no medical check-ups were carried out till 19.02.2008. It was sought to be conveyed that she had continued as Flight Kitchen Supervisor-I, Catering Section, for seven years and, that, her services had been dispensed with after, she had been in employment with the respondent for nearly twenty three and a half years.

8.10 Ms. Garg, however, received no response to her communication dated 13.12.2008 and, therefore, she sent a reminder on 08.03.2009. In this communication, she demanded payment of all benefits, which were payable to an employee, upon completion of twenty years of service.

9. It is evident that since, Ms. Garg, received no response to her demand for re-instatement and, coupled with the fact that the Supreme Court in the meanwhile had passed the order dated 07.12.2009 in *Sheela Joshi's* case, she decided to approach this court by way of the present writ petition, which was filed on 06.01.2010. Notably, before Ms. Garg approached this court, she made yet another representation to the respondent, on 20.11.2009.

FACTS PERTAINING TO WP(C) 6488/2010

10. Ms Bakshi was appointed as a trainee airhostess with the respondent on 24.06.1989. She was put on probation. The appointment letter issued to Ms Bakshi, which is dated 24.06.1989, inter alia, provided by way of clause 12 that, her appointment during the training period was liable to be terminated, if she failed to maintain her weight within the prescribed limits.

10.1 On completion of her probation, the petitioner was appointed as an airhostess, on 18.09.1989. An appointment letter of even date was issued. Pertinently, clause 4 of the letter dated 18.09.1989 also, provided like clause 12 of letter dated 24.06.1989, that her services, were liable to be terminated, inter alia, upon her failure to maintain weight within the prescribed limits.

10.2 Ms Bakshi, in her petition has averred that in 2005-2006, she had to undergo intensive hormonal and other medical procedures, which included injectible medication; to overcome infertility.

10.3 Evidently, on 28.03.2005, in an annual medical check-up conducted, Ms. Bakshi was found to be overweight by 4.5 kgs. This aspect is documented in the report of the medical department of the respondent furnished to the Director, IFS; who is also an officer of the respondent. In this document, however, apart from mentioning the fact that Ms Bakshi was overweight, it is also mentioned that, she was found to be medically fit. Importantly, this document reveals that Ms Bakshi was not advised to present herself for medical review.

10.4 Ms Bakshi was, however, not rostered for flying duties, with effect from 23.03.2005.

10.5 Evidently, on 03.02.2006, the respondent did convene a review medical board, which after noting Ms Bakshi's weight between 17.05.2005 and 03.02.2006 came to the conclusion that since, she had been unable to bring her weight within the prescribed parameters, she should not, henceforth

be considered for flying duties. This report also recorded the fact that no specific medical cause could be found for Ms Bakshi's excess weight.

10.6 In the interregnum, though, that is on 19.01.2006, the respondent had taken out a staff employment notice for filling up six vacancies as Flight Kitchen Supervisors. The broad functions, involved in executing the job of Flight Kitchen Supervisor, were set out in the said notice. It was indicated that the deployment as Flight Kitchen Supervisor, would be for a period of three years, which would be "extendable on requirement but with option". The notice, also clearly indicated that, preference would be given to those members of the cabin crew, who had been declared unfit, broadly, due to excess weight, followed by, such cabin crew, who were desirous of taking a ground job. As indicated by me hereinabove, while discussing Ms Garg's case; notably, the applicants were informed that during the period of deployment as Flight Kitchen Supervisor, they would; firstly, retain their seniority in the parent cadre; and secondly, be paid, all allowances relatable to their scale of pay including productivity allowance sans flying related incentive payments.

10.7 It is this context that Ms Bakshi, on 24.02.2006, requested that her services be utilized as ground staff. This request was reiterated by Ms Bakshi vide communication dated 11.08.2006.

10.8 Finally, Ms Bakshi's request was acceded to; which was communicated to her, by the respondent, vide letter dated 14.08.2006. She was asked to join ground duties subject to conditions stipulated therein; one of which, referred to the fact that, she would not be paid perks and benefits as were applicable in the case of flying cabin crew.

10.9 Ms Bakshi accepted those terms and conditions and communicated the same to the Deputy General Manager, IFS. Based on the above, Ms Bakshi reported for duty, as ground staff, on 17.08.2006.

11. The fact that Ms Bakshi, was assigned ground duties is sought to be demonstrated by her by relying upon office orders issued, in that behalf, by the respondent from time to time. In this context, reference is made to office roster dated 28.11.2006; and office orders dated 28.11.2007, 11.11.2008; and 24.12.2008. These orders show that while, Ms Bakshi was given various ground duties, such as, hotel and restaurant duties including making of special reports, she was not given duties of a Flight Kitchen Supervisor.

11.1 The background to this development, perhaps, is embedded in the office note dated 03.08.2006, written by Deputy General Manager, IFS to Executive Director, Northern Region. A perusal of this note would show that the number of personnel employed as cabin crew in the northern region had increased considerably, and hence, additional manpower, was required for handling job functions, such as: Cabin Crew Administration, Training/Medical, Leave Record etc. Since, selection of Flight Kitchen Supervisors was kept in abeyance, a request was made for permitting some personnel forming part of the cabin crew to perform office duties, from amongst those, who had been grounded permanently and were willing to discharge such duties.

11.2 Accordingly, Ms. Bakshi was, one of those, whose name was recommended for ground duty. It is in this context that the petitioner was deployed on 14.08.2006 as ground staff and not as Flight Kitchen Supervisor, which was the case with the other petitioners.

11.3 Unfortunately, Ms Bakshi, after having worked as ground staff for nearly two and a half years, was served with the impugned letter of

termination on 30.12.2008. The ground articulated in the impugned letter was that she was found to be overweight by 15.92 kgs, on 03.02.2006. Thus, in terms of clause 12 of the letter dated 24.06.1989, appointing her as trainee airhostess read with clause 4 of the letter dated 18.09.1989 appointing her as airhostess, her services were dispensed with, immediate effect. A consolation cheque in the sum of Rs. 33,226/- was handed over to Ms Bakshi, equivalent to one month's salary.

11.4 Being aggrieved, Ms. Bakshi, preferred an appeal dated 06.01.2009, for reinstatement with the Executive Director, Northern Region-India. In the appeal, Ms. Bakshi sketched out the history which, culminated in her being deployed as ground staff. She also adverted to the fact that the reason given in the impugned letter that she was overweight was not applicable to her present service status as she was working as office staff, executing ground duties.

11.5 Ms Bakshi also sought to draw attention of the respondent to the fact that she had put in nearly twenty years of service without any cause for concern and, therefore, she should be reinstated without break in service.

11.6 Ms Bakshi followed her appeal for reinstatement with an addendum dated 14.01.2009. In this addendum she brought to the notice of the respondent that between 2005 and 2006, she had been undergoing hormonal treatment for infertility, which had various side effects including gain in weight. Ms Bakshi sought to bring to fore the fact that, at that point in time, she was around 38-39 years of age and, therefore, it was not advisable for her to delay the treatment.

11.7 Based on these facts she sought to contend that, the medical board was informed about this situation; and the fact that the medical board had failed to consider this crucial aspect, was never communicated to her. In this context,

she further contended that, after she had stopped taking medication, she had been able to bring down her weight within the prescribed limit; a fact which was communicated to the IFS Department. It is based on these pleas that, Ms Bakshi, sought reinstatement.

11.8 The aforesaid communications were followed by another reminder dated 19.01.2009. Vide yet another letter dated 05.02.2009, Ms Bakshi sought a personal hearing in the matter. This perhaps had its desired effect as, for the first time on 17.02.2009, the respondent communicated to Ms Bakshi that her appeal dated 06.01.2009 had been forwarded to its headquarters for consideration at the “*corporate level*”. Ms Bakshi was further informed that she would hear from the respondent after a decision was taken in her appeal.

11.9 Evidently, Ms Bakshi upon finding that she was being stone walled, decided to take recourse to the Right to Information Act, 2005 (in short the RTI Act). Accordingly, an application was filed with the respondent on 05.03.2009, followed by an application dated 25.02.2009. In the first application copies of all papers, letters, documents etc. which formed part of Ms Bakshi's personal file was sought. However, vide application dated 25.03.2009, several queries were raised, including a query seeking to know details of the following cabin crew; these being: Ms Jyotsna Negi, Ms Kusum Lata Nair, Ms Kusum, Ms Sarita, Ms Vibha, Ms Doma Tsering, Mr Yogi and Ms Anup. Inter alia, a query was also raised, as to whether the IFS department had employed personnel from other departments of Air India in the last one year. There was also a query raised with regard to the basis on which the ground cabin crew are absorbed permanently by the respondent.

12. Vide communication dated 23.04.2009, Ms Bakshi's application dated 25.03.2009, was replied to, by the CPIO of the respondent. In so far as the

first query was concerned, which sought details concerning other cabin crew, the same was denied on the ground that it was personal in nature and that it did not relate to any “public activity” or “interest”. The provisions of section 8(1)(j) of the RTI Act were invoked in that behalf. As regards the query pertaining to absorption of cabin crew, who were permanently grounded, it was broadly indicated that only executive cabin crew (these being cabin crew in-flight services or above) were retained in service and, were consequently deployed for administrative and ground duties. It was, however, accepted that in the, in-flight services department, personnel from erstwhile Air India, had been deployed.

12.1 Being dissatisfied, specially, with regard to the fact that details of cabin crew referred to hereinabove was not provided, an appeal was preferred under the RTI Act. The appeal resulted in the same fate, that is, the information vis-a-vis the said personnel was denied, on the ground that it related to third parties and had no relation with public interest. It was also stated that there was a fiduciary relationship between the employees and the respondent and, therefore, the information was rightly denied. This time around, apart from the provisions of Section 8(1)(j), reliance was also placed on Section 8(1)(e) of the RTI Act. The first appeal was thus, disposed of by order dated 01.07.2009.

12.2 Ms Bakshi, however, carried the matter in a second appeal to the Central Information Commission (in short CIC). In the appeal, Ms. Bakshi made a specific prayer that information sought qua query no. 1 and 7 of her RTI application dated 25.03.2009, be furnished to her.

12.3 The appeal, before the CIC, was disposed of by order dated 11.01.2010. By this order it was agreed that the CPIO would furnish a fresh response, within ten working days from the date of the order, in respect of

query nos. 1 and 7 of the application dated 25.03.2009. The order further observed that the CPIO would be free to invoke the provisions of Section 10(1) of the RTI Act so as to withhold information relating to third parties.

12.4 It appears that the respondent to date, has not furnished the information in terms of the order dated 11.01.2010, passed by the CIC.

12.5 Notably, in the interregnum, Ms. Bakshi received two cheques dated 18.03.2009 and 07.01.2010, in the sum of Rs.2,51,724/- and Rs.1,19,805/- towards gratuity and provident fund.

12.6 Ms Bakshi though, vide letters dated 07.04.2009 and 18.02.2010 informed the respondent that she was accepting the said payments under protest, without prejudice to her right to challenge, inter alia, her termination. Importantly, in the letter dated 07.04.2009, she brought to fore the fact that, despite the communication dated 7.02.2009 (wherein it had been indicated that her appeal had been forwarded to the headquarters for consideration at the corporate level), the respondent instead of considering her appeal, had thought it fit to send her cheques towards payment of gratuity and provident fund.

12.7 Ms Bakshi being aggrieved, finally, instituted the captioned petition in this court; which was moved for the first time on 24.09.2010, when notice was issued in the petition.

FACTS PERTAINING TO WP(C) NO. 8111/2011

13. The petitioner in this case is one Ms Sona Chawla. Like in the first two cases Ms. Chawla was employed at first, as a trainee airhostess. She was engaged as trainee airhostess on 03.09.1986. On completion of her probation she was appointed as airhostess w.e.f. 01.09.1986; a fact which was communicated to her vide letter dated 3/4.09.1986. Like in the other two cases the terms of employment provided that her services were liable to be

terminated, inter alia, upon her failure to maintain weight as per the prescribed limits. This provision was contained in clause 4(ii) of the appointment letter dated 3/4.09.1986.

13.1 The petitioner, has averred that in 1990, she was promoted as senior airhostess. Evidently, Ms Chawla proceeded on pregnancy leave w.e.f. 04.07.2003. Her pregnancy was, however, terminated on 05.11.2003, whereupon, she was advised bed-rest from 06.11.2003 to 26.01.2004. She joined duty on 27.01.2004. These facts were, apparently, brought to the notice of the respondent by Ms Chawla vide letter dated 27.01.2004. At the time of joining, the original medical certificates were also submitted. Ms Chawla, apparently, also participated in a refresher course between 27.01.2004 and 30.01.2004. It was around this time that Ms. Chawla was grounded, on account of being overweight. Evidently, Ms Chawla conceived, once again, (upon confirmation by the doctor on the panel constituted by the respondent), and thus, proceeded on pregnancy leave w.e.f 11.03.2004. She delivered a child on 02.11.2004, and remained on maternity leave as per the applicable rules till 16.03.2005. She was on bed-rest from 17.03.2005, on doctor's advice, due to acute cervical spondylosis. She rejoined duty, on 03.04.2006. It is in this background that on 13.04.2006, Ms Chawla, wrote to the Deputy General Manager (IFS) for adjustment and regularization of her leave and, for consequent release of her salary.

13.2 On 28.08.2006, Ms Chawla wrote to the respondent seeking office assignment, since she had been grounded on account of excess weight. The Dy. G.M. (IFS) vide letter dated 30.08.2006 wrote to Ms Chawla that line cabin crew, who are grounded permanently, would be considered for office duty only with prior approval of Executive Director (Northern Region). Accordingly, her request for a ground job, was declined.

13.3 Ms Chawla was, however, detailed for "re-conversion training", at the Cabin Crew Training School at Hyderabad, between 02.04.2007 and 25.04.2007.

13.4 In the background of the above, Ms Chawla on 10.07.2007, wrote to the respondent that though she had been flying since May, 2007, and had, completed her re-conversion course at Hyderabad, her salary for the months of May and June, 2007, had not been paid and hence the same, should be released to her, accordingly.

13.5 A week later though, Ms Chawla vide communication dated 17.07.2007, wrote to the respondent that she should be allowed to take voluntary retirement from service due to severe domestic crisis.

13.6 This request for voluntary retirement, however, was withdrawn by Ms Chawla, on 09.10.2007. By the very same letter, Ms Chawla, requested for rehabilitation under the then prevailing scheme, which was titled as: Indian Airlines Cabin Crew Voluntary Rehabilitation/ Rejuvenation Scheme, 2007 (in short the 2007 rehabilitation scheme).

13.7 A separate application of even date i.e., 09.10.2007 was filed with the respondent. On 09.02.2008, Ms Chawla, amongst others, was called for interview for the post of **“Traffic Superintendent or any other post equivalent to their existing grade in some other department as per the instructions issued vide head quarters letter dated 01.08.2007.”** It was, however, made clear though that the candidature was provisional and, furthermore subject to both approval of the competent authority at the headquarters, as also, fulfilment of eligibility criteria stipulated under the 2007 rehabilitation scheme. It was also made clear that, the applicant's candidature, was liable to be rejected without any further correspondence.

13.8 However, the respondent, on 24.10.2007, declared Ms Chawla unfit for flying duties. Accordingly, Ms. Chawla was called upon to report for fortnightly weight check since, she had failed to do so in the past. This was recorded, in a communication dated 13/15.11.2007, issued by Dy. G.M. (IFS).

13.9 In a communication dated 29.05.2008, the respondent appears to have stated that Ms Chawla was grounded on 04.10.2007 (and not 24.10.2007), as indicated above. The said communication also advised Ms Chawla to report to the medical department for a fortnightly weight check as, a decision regarding her withdrawal of the request for voluntary retirement from service, was awaited.

14. It is in this background, Ms Chawla, on 13.11.2008, applied for rehabilitation under the 2007 rehabilitation scheme. In this communication she, once again, highlighted the fact that she was being subjected to physical abuse by her in-laws, and that, she did not have means to support her son. She also adverted to the fact that in 2007, she had applied for voluntary retirement, and that, since her husband was not supporting the family and she had to live separately. Ms. Chawla in these circumstances sought accommodation, in any administrative section of the department; albeit in the general shift.

14.1 The respondent, however, terminated Ms Chawla's services vide the impugned letter dated 30.12.2008, with immediate effect.

14.2 Ms Chawla, however, preferred an appeal against the said order. The said appeal is dated 13.01.2009. The appeal was followed by communications dated 15.04.2009, 31.10.2010, 30.06.2011 and 14.10.2011, whereby Ms Chawla sought reinstatement in service. What was brought out in these communications was that she had put in twenty years of service and,

also the fact that, she had applied for rehabilitation under the 2007 rehabilitation scheme; whereupon she was interviewed by the respondent on 09.02.2008. She also highlighted the fact that, since the time, she had filed an application under the 2007 rehabilitation scheme, her fortnightly weight checks had been suspended and that, she had been assured of rehabilitation in service by officers of the respondent.

14.3 Being aggrieved by the fact that no response was received to the appeals filed qua order of termination from service, Ms Chawla filed the captioned writ petition; which was moved in this court on 17.11.2011, when notice was issued in her petition.

15. Upon issuance of the notices, in each of these writ petitions, counter affidavits were filed by the respondent. Reply of the respondent on aspects of law was more or less common in all three cases. The difference in the replies was with respect to facts and, dates and events, pertaining to each of the three petitioners. The defence of the respondent veered around the following:

- (i) The petitioners were bound by the terms and conditions stipulated in their respective letters of appointment, both as trainee airhostess and, thereafter, as an airhostess.
- (ii) The relevant terms contained in the letters of appointment required petitioners to maintain weight as per prescribed limits, failing which, their services were liable to be terminated.
- (iii) Despite, the fact that, the petitioners have failed to maintain the prescribed weight for great length of time, the respondent instead of terminating their services, had indulged them, by deploying them for ground duties.

(iv) The respondent was, in fact, entitled to stop payment of salaries to the petitioners, if there was no leave to their credit, but instead it chose to allocate ground duties to the petitioners, so that, they received their remuneration sans the benefits relatable to flying duties.

(v) The fact that the petitioners continued to retain their seniority in the parent cadre, and that their deployment as ground staff, was extendable at the respondent's option, demonstrated that, the petitioners continued to be part of the cabin crew cadre and, were consequently, bound by the terms and conditions of their employment and regulations applicable to cabin crew, which included the requirement to adhere to the prescribed weight limits.

(vi) The deployment as ground staff whether as Flight Kitchen Supervisor, or otherwise, was a temporary arrangement. Therefore, the respondent having exercised its right not to extend the deployment of petitioner's as ground staff, would necessarily have the right to proceed against the petitioner, in accordance with the contractual terms agreed to with them; one of which empowered the respondent to terminate their employment on their failure to adhere to the prescribed weight.

(vii) No right is conferred on the petitioners by virtue of their mere deployment as ground staff, whether as Flight Kitchen Supervisors or otherwise.

(viii) The cabin crew for in-flight duties receive "specific training", for development of specific skill sets and knowledge of processes and procedure. These skills are required to come to fore in times of emergency, such as, air turbulence etc., at which point in time the cabin crew is required to deal with the situation with alacrity and presence of mind and, therefore, physical and mental fitness of crew attains significance.

(ix) The weight limits prescribed by the respondent from time to time took into account factors, such as, height and age and, events which could occur in the life span of a cabin crew, such as, marriage and child bearing etc. The policy formulated, which requires adherence to prescribed weight limits by cabin crew; is based on factors, such as, service standards, safety, security and medical standards.

(x) The circulars issued from time to time had the approval of the Board of Directors. In this regard, it is averred that a revised instrument of delegation of powers was approved by the Board of Directors of the respondent at their meeting held on 28.06.1993, which came into force w.e.f. 14.02.1994. Under the instrument of delegation of administrative powers, provision is made in clause 2.1 as to the authority, which can exercise powers under the said instrument. Similarly, clause 3.5.1 provides that headquarter and departmental heads, shall have administrative jurisdiction over all employees of its department. In consonance with the above, with the approval of the CMD of the respondent, officers have been identified for exercising administrative and financial powers in the headquarter and the regional departments. Director (IFS) and Deputy General Manager (IFS)/ Sr. Manager (IFS), are officers who have been vested with administrative authority to lay down policies and issue administrative instructions, as long as such policies and circulars are consistent with the rules and regulations governing the concerned subject.

(xi) The circular dated 15.07.1998 provides that officers and staff as also cabin crew, whether working in-flight services division, catering division or cabin crew training school Hyderabad, would report to the Director (IFS).

(xii) Since section 8(1) of the 1994 Act provides that the employees serving with the respondent before the appointed date would continue to hold office

or service with the same tenure and remuneration, upon the same terms and conditions, with same obligations and, with same rights and privileges; the petitioners would be bound by the terms of the contract which obliged them to maintain weight within the prescribed limits.

(xiii) The letter of termination had been issued by the competent authority, in terms of the delegation of power conferred upon the concerned officer by the Instrument of Delegation of Administrative Power dated 07.07.2008.

(xiv) The present case falls within the ratio of the *Sheela Joshi's* case and that, this court had, at that stage, examined the issue pertaining to the grounding of the petitioners.

SUBMISSIONS OF COUNSELS

16. Based on the aforesaid broad plank, the arguments, were addressed by counsels for parties. In WP(C) Nos. 30/2010 and 8111/2011 the petitioners, i.e., Ms Garg and Ms Chawla were represented by Mr Arvind Kr. Sharma, while in WP(C) 6488/2010 the petitioner, Ms Bakshi, was represented by Mr Amit Bansal. The respondent was, however, led by Mr Kailash Vasdev, Senior Advocate, instructed by Mr Rahul Malhotra and Ms Garima Bose.

17. Mr Arvind Kr. Sharma, learned counsel for the petitioners, broadly argued that, the petitioners were employed with the respondent at a point in time when the 1953 Act was in operation and, therefore, the Indian Airlines (Flying Crew Service) Regulations which were published in part-II Section 3 of the Gazette of India dated 12.03.1960, would continue to apply to them. More specifically, it was argued that regulation 12 and 13 would apply to the petitioners.

17.1 It was contended that as per regulation 12, the flying crew, which included the cabin crew, were to be retained in service till the age of their superannuation so long as they remained medically fit for flying duties.

There was thus, according to Mr Sharma, no power to terminate the services of the petitioners on the ground that their weight was beyond the prescribed limits. Similarly, based on regulation 13, it was contended that services of employees generally (which included cabin crew) could be terminated without assigning any reasons and without prior notice, only on, stated grounds of misconduct. These grounds, broadly, being: (i) incompetence and unsuitability of the employee and the incompetence and unsuitability being of such a nature that his or her continued employment, was detrimental to the interest of the respondent; (ii) his or her continuance in employment constituted in the opinion of the respondent grave security risk making his or her continuance in service detrimental to the interest of the respondent; and (iii) lastly, if in the opinion of the Board of Directors of the respondent there is a justifiable lack of confidence which, having regard to the nature of duties performed, make it necessary, in the interest of the respondent, to immediately terminate his or her services.

17.2 To buttress this point, it was further submitted that in terms of clause (b) of Regulation 13 there was an embargo on the employee resigning from the employment of the respondent without giving six months' notice in writing to the respondent of his or her intention to resign. The exception to this was, according to the learned counsel for the petitioners, contained in the proviso, which empowered the Managing Director of the respondent to dispense with or reduce the notice period on the grounds of ill health of the employee or, such other compelling or extraordinary circumstances, which in the opinion of the Managing Director, warranted dispensing with or reduction in the period of notice. It was contended that the respondent could refuse to accept termination of employment, if such termination was sought to avoid

disciplinary action contemplated or taken by the management of the respondent.

17.3 In this context, it was contended that Section 8 of the 1994 Act made it clear that all service conditions prior to coming into force of the 1994 Act, i.e., 29.01.1994, continue to apply to the petitioners, while all subordinate regulations and rules, which were not saved under Section 8 of the 1994 Act, would cease to have affect after 29.01.1994. It was submitted that, therefore, circulars issued from 06.06.1996 to 04.05.2006 concerning the issue of reduction of grace allowance in weight from ten kgs to zero kgs, over and above the prescribed weight limit, were not applicable to the petitioner.

17.4 Mr Sharma submitted that as a matter of fact, the respondent has in respect of cabin crew of erstwhile Air India adopted a circular dated 12.01.2006, which gives grace allowance 8% over and above the prescribed weight limit. The contention is that, application of different yardsticks for persons performing the same work, was discriminatory and thus, violative of provisions of Article 14 of the Constitution.

17.5 Specifically, in respect of Ms Garg it was contended that she continued to fly as an airhostess till 1999 and, because, she encountered medical problems, she applied for a ground job as per notification issued by the respondent. He contended that Ms Garg was thus, deployed as Flight Kitchen Supervisor, after due selection and, continued in that position till 30.12.2008, during which period, she was not issued notice for weight check, as is required qua an airhostesses. Since, Ms Garg was positioned as a Flight Kitchen Supervisor, she did not receive any flying allowance. Therefore, Ms Garg's termination on 30.12.2008, based on the examination of the medical board, on 19.02.2008, was bad in law and hence was liable to be set aside. It was also contended that though Ms Garg had preferred an appeal with the

executive director of the respondent, on 31.12.2008, followed by, reminders dated 08.03.2009 and 20.11.2009, no response had been received. It was contended that her services were illegally terminated; after having rendered twenty three years of unblemished service.

18. In so far as Ms Chawla was concerned, Mr Sharma more or less adopted the arguments advanced qua Ms Garg's case. In respect of facts obtaining in Ms Chawla's case, it was sought to be highlighted that after being appointed as a trainee airhostess on 13.09.1986, and thereafter, as airhostess, on 01.09.1986, she continued to have medical problems between 04.07.2003 and middle of 2006, because of which, on 28.08.2006, she had requested for assignment of ground duties; a request which was declined by the respondent, on 30.08.2006.

18.1 It was submitted that though, the petitioner, had taken re-conversation training, pursuant to communication dated 30.03.2007, issued by the respondent, she was not rehabilitated under the 2007 rehabilitation scheme, despite having been called for an interview, in that behalf, on 09.02.2008. The fact that, the request made earlier by Ms Chawla for grant of voluntary retirement from service, had been withdrawn by her, was ignored.

18.2 Mr Sharma said that both requests, one for withdrawal of application for voluntary retirement and the other for rehabilitation was not actioned by the respondent, and that, instead, a show cause notice dated 20/22.08.2008 was issued qua the issue regarding excess weight.

18.3 It was next contended that the dismissal from service on the ground that the petitioner had remained over-weight between the period 24.10.2007 and August, 2008 was unfair and illegal for the reason that several line cabin crew had been rehabilitated by being given ground jobs. The fact that the impugned order had been passed while the petitioner herself had been called

for deployment as a Flight Kitchen Supervisor; and a final decision with regard to the same was pending consideration, was demonstrative of complete non-application of mind.

18.4 In support of his submissions, Mr Sharma relied upon the following judgments: *Air India vs UOI 1995 (4) SCC 734* and *Indian Air Lines Ltd. vs Prabha D. Kanan (2006) 11 SCC 67* at page 87 paragraphs 44 and 45 and page 91 paragraphs 57 to 62.

19. Mr Amit Bansal, learned counsel appearing for the petitioner, i.e., Ms Bakshi in WP(C) 6488/2010, made the following submissions:

19.1 Ms Bakshi was inducted into service as an airhostess on 24.06.1989. Upon being grounded in March 2005, Ms. Bakshi was offered a ground duty job by the respondent vide communication dated 14.08.2006, based on terms and conditions contained therein.

19.2 It was contended that the communication dated 14.08.2006 did not specify that the petitioner had been assigned ground duties on a temporary basis or, that, she was required to maintain the prescribed weight. Therefore, the submission was that the initial appointment letter dated 24.06.1989, was superseded by the appointment letter dated 14.08.2006.

19.3 Mr Bansal submitted that Ms Bakshi continued with her ground duties for nearly two and a half years during which period, no weight checks were carried out. It is also highlighted that during this time span, Ms Bakshi, was not paid flying allowance. There was, according to Mr Bansal, thus, neither any monitoring of weight nor, any notice was issued in that behalf to Ms Bakshi.

19.4 Mr Bansal submitted that, in that sense, the case of Ms Garg [petitioner in WP(C) 30/2010] was different to that of Ms Bakshi, as she was not appointed as a Flight Kitchen Supervisor on terms or conditions stipulated in

the staff employment notice dated 24.06.2001, issued in respect of Flight Kitchen Supervisors. In other words, the respondent could not have terminated Ms Bakshi's services as on account of her alleged failure to maintain the prescribed weight, as she had been permanently grounded, and thereafter, employed as ground staff.

19.5 De hors the above, it was sought to be highlighted that the impugned communication referred to the fact that Ms Bakshi had failed to maintain the prescribed weight between the period 17.05.2005 and 03.02.2006, and that, because, she was over-weight by 15.92 kgs. on 03.02.2006; her services were terminated nearly two and a half years later, rather abruptly by the respondent.

19.6 The order, according to Mr Bansal, was bad on the face of it as in the interregnum neither any weight checks were carried out nor, was Ms Bakshi given notice to maintain weight which, as contended, was for the reason that since August, 2006, she had been appointed as ground staff.

19.7 Mr Bansal submitted that Ms Bakshi's service was terminated after she had completed, nearly, nineteen years and six months in service, and was, just short of pensionable service – an illegal act, which had deprived her of a well earned valuable right.

19.8 It is contended that during the relevant period, i.e., May, 2005 and February, 2006, when Ms Bakshi is said to have failed to maintain her weight within the prescribed limits, was the very period, during which, she had to undergo intensive hormonal treatment for infertility; a fact which was known to the respondent. Since, no show cause notice was issued, these facts could not be brought to fore, and hence, the impugned order suffered from the vice of breach of principles of natural justice. The failure of the respondent to

deal with the appeals made in that behalf, had only exacerbated, Ms Bakshi's grievance.

20. Mr Kailash Vasdev, appearing for the respondent, contended that the petitioners were governed by terms and conditions contained in their letters of appointment. Thus, as per the terms of the contract, in the eventuality of the petitioners failing to maintain their respective weight within the prescribed limits; a right inured in favour of the respondent, to terminate their services. It was Mr Vasdev's contention that the right conferred on the respondent to terminate services for violation of the terms and conditions contained in the contract, was the right which was in addition to and, not, in derogation of, the provisions of Regulation 12.

20.1 In other words, the contention was that even if, the petitioners, were medically fit, to continue with their services; their services, could be dispensed with under the terms of the contract upon their failure to maintain weight as per prescribed limits. Mr Vasdev stated that indulgence over several years was granted to the petitioners, despite which, the petitioners were unable to bring their weight within the prescribed limit, which is why, the respondent had to take, the extreme step of terminating their services.

20.2 It was contended by Mr Vasdev that the respondent was in travel industry, and therefore, pleasing appearance, manners and physical fitness was required of members of both sexes. Both male and female crew were expected to remain smart, alert and energetic. Reliance in this regard was placed on the judgment of the Supreme Court in the case of ***Air India Cabin Crew Association vs Yeshashwinee Merchant & Ors. 2003 (6) SCC 277.*** Reference was also made to the judgement of the Supreme Court in the case of ***Workmen of the Bangalore Woollen Cotton & Silk Mills Co. Ltd. vs The***

Management of the Bangalore Woollen Cotton & Silk Mills Co. Ltd. AIR 1962 SC 1363.

20.3 Mr Vasdev also emphasised the point that the petitioners were deployed on ground duty jobs initially for a period of three years, which was, “extendable on requirement but with option”. The terms of deployment clearly indicated that they would maintain their seniority in the parent cadre; which is the cabin crew cadre. The deployment was temporary in nature, which did not involve, as contended, giving permanent ground duties to the petitioners. In this regard, reference was made to the letter dated 24.02.2006 addressed by Ms Bakshi to the respondent, wherein while making a request that her services be utilized for ground duties on account of the fact that she had failed to maintain her weight within the prescribed limits, she had adverted to the fact that resumption of flying duties would follow, as soon as, she was able to bring down her weight within the prescribed limit. Based on this letter it was argued that the petitioners were always aware of the fact that their engagement for ground duties, whether as a Flight Kitchen Supervisor or otherwise, was temporary in nature, and not, permanent, as was sought to be contended.

20.4 It was also the submission of Mr Vasdev that Section 8 of 1994 Act was clearly indicative of the fact that contractual terms and conditions continued to operate vis-à-vis the petitioners despite the repeal of the 1953 Act. Reliance in this behalf was placed on the judgment of the Supreme court in the case of ***Air India vs Union of India & Ors. 1995 (4) SCC 734.***

20.5 Mr Vasdev further submitted that both, the judgment of Single Judge, and the Division Bench in ***Sheela Joshi's*** case remained undisturbed, having not been set aside by the Supreme Court and, therefore, were binding on this court. To buttress this submission, Mr Vasdev relied upon the following

judgments of the Supreme Court: *S. Shanmugavel Nadar vs State of Tamil Nadu (2002) 8 SCC 361*, at page 367, paragraph 10 and, at page 370 paragraph 17; and *Shanker Raju vs UOI (2011) 2 SCC 132*.

REASONS

21. I have heard the learned counsels for the parties. What clearly emerges from the record in respect of which largely there is no dispute is as follows:

(i) The petitioners were appointed as airhostesses with the respondent. Ms Garg was in fact appointed as a trainee airhostess in 08.03.1985 and, thereafter, as an airhostess on 09.07.1985; while, Ms Chawla was appointed as a trainee airhostess on 03.09.1986, and as an airhostess on 01.09.1986. Ms Bakshi, was, similarly, (as per her averment in the writ petition) appointed as an airhostess on 24.06.1989. There is no dispute that each of the appointment letters referred to herein above provided that the services of the petitioners were liable to be terminated, inter alia, on the ground of failure, to maintain weight within the prescribed limits.

(ii) Between 1981 and till just before 04.11.1987, there was no grace allowance provided by the respondent vis-à-vis the weight which, cabin crew, was required to maintain.

(iii) By the 1987 circular, a 10% grace allowance in the prescribed weight, was provided. It was also provided that those whose weight exceeded even beyond the 10% of the outer limit prescribed, they would be taken off flying duties and, treated as being on leave. In case, no leave was available to the credit of such a cabin crew, he or she would be taken off duty, without pay. This situation was to obtain till the concerned cabin crew, attained the weight, as required by virtue of the said circular.

(iv) This aspect was reiterated by the respondent vide circular dated 11.05.1990.

(v) However, on 17.09.1991, while issuing a revised height-weight chart, the respondent took away the 10% grace allowance, in weight, conferred by the 1987 circular.

(vi) As a matter of fact, by a circular issued on 16.11.1991, the respondent indicated that cabin crew, whether over-weight or under-weight, should ensure that their weight falls within the limit prescribed, by 31.12.1991.

(vii) Admittedly, the aforementioned circulars were issued while, the 1953 Act was in force. The 1953 Act was repealed by the 1994 Act, which came into force on 29.01.1994. The circulars issued thereafter, upon re-introducing the concept of grace allowance vide circular dated 06.06.1996, gradually reduced it to zero vide circular dated 04.05.2006. It may be pertinent to note that 06.06.1996 circular, had introduced a grace allowance in weight of ten (10) kgs.

22. Given these facts, the two crucial questions arise for consideration: First, whether the terms and conditions contained in letters of appointment would continue to apply to the petitioners; second, whether the circulars issued after 29.01.1994, would apply to the petitioners.

22.1 It is argued, on behalf of the petitioners that, with the repeal of the 1953 Act by the 1994 Act, all regulations, rules and circulars, unless specifically saved, would stand effaced. In other words, regulations, such as, regulation 12 and 13 (which are relied upon in the present case by the petitioners) would stand saved as they relate to the terms and conditions of employees, who were in employment immediately before the appointed date stipulated qua the 1994 Act. The submission made was thus, that, in view of the provisions of regulation 12 the services of the employees, which includes the petitioners, could not be terminated if, they were otherwise medically fit till they reach the age of superannuation. It was contended that the services

of an employee of respondent could be terminated only on the grounds of stated misconduct as provided in Regulation 13(a) or, upon submission of resignation by an employee after, giving due notice of his or her intention to resign as prescribed therein. The argument being that, the prescription of maintaining weight within the limits, as stipulated in the various circulars issued by the respondent, had no applicability. This argument was specifically directed vis-à-vis circulars issued after coming into force of 1994 Act.

22.2 In my view, the argument is flawed for the following reason: Under section 40 of the 1953 Act the respondent has been granted the power to appoint committees and delegate its functions and powers. Similarly, under Section 45 of the 1953 Act, the respondent had been granted the power to make regulations which were not inconsistent with the said Act or the Rules made thereunder, for administration of its affairs and for carrying out its functions. Under sub-section (2) clause (b) of section 45 the respondent is empowered to make regulations to provide for terms and conditions of service of officers and other employees of the respondent other than the Managing Director or officers of any other categories referred to in Section 44. Sub-section (3) of Section 45 of the 1953 Act provides that no regulation will be made under clause (b) of sub-section (2) except with the previous approval of the Central Government. It is no one's case before me that regulation 12 did not have the approval of the Central Government.

22.3 Therefore, while regulation 12 provided that an employee could continue in service till the age of superannuation, provided he or she was medically fit; at the time of appointment, offers were made to each of the petitioners on certain terms, which were accepted. The terms of appointment stipulated that the petitioners will be governed by the regulations and

standing orders concerning discipline and appeals as amended from time to time. In addition to the same, it was also indicated that their services were liable to be terminated, inter alia, on the ground of failure to maintain weight within the prescribed limits. It is the argument of the respondent that these contractual terms have continued to bind the petitioners and would be applicable to them as they are in addition to and not in derogation of the regulations. The argument advanced on behalf of the petitioners, on the other hand, is that they are only governed by the regulations, and not, by the terms and conditions contained in their letters of appointment, as terms and conditions qua service could only be provided by way of a regulation in terms of Section 45(2)(b) read with sub-section (3).

22.4 Notably, the 1953 Act has been repealed by the 1994 Act. It is well settled, ordinarily, repeal of an enactment does not, unless a contrary intention appears, affect any right or privilege accrued under that statute. (See *Air India vs UOI* at page 737-738 paragraph 6). It is for this reason that sometimes a repeal enactment, as a measure of abundant caution, specifically inserts such a provision.

22.5 Section 8 of the 1994 Act clearly stipulates that in so far as employees of respondent, who were in employment before the appointed date, shall from the appointed date become the employees of the company, as defined in Section 2(b) of the 1994 Act, and shall, hold his or her office of service on the same terms and conditions with inter alia the same obligations, benefits etc. Therefore, in my opinion, it would be too late in the day to contend that though provisions of regulation 12 apply to the petitioners, the provisions of the letters of appointment, which is in substance a contract entered into between the petitioners and the respondent, would not govern their

employment. With the intercession of Section 8 of the 1994 Act, this position cannot be changed.

22.6 If this argument of the petitioners were to be accepted (and there is a prayer made in writ petition no. 30/2010 seeking quashing of the appointment letter itself), would result in an anomalous situation as, the pay scale, which was to be made applicable to each of the appointees, as also other allowances, as admissible under the Indian Airlines Services Rules, which are referred to in the appointment letter, would also stand set aside. Therefore, in my opinion, in terms of the letter of appointment, read with Section 8 of the 1994 Act, the petitioners, inter alia, were obliged to maintain their weight, as part of the cabin crew, as per prescribed limits.

23. The other argument of the petitioners that the circulars issued prior to coming into force of the repeal Act, would apply to the petitioners, while those issued thereafter would not, is also untenable.

23.1 In making this argument the learned counsels for the petitioners have overlooked the fact that approximately two years and four months before 29.01.1994 (which is when the repeal Act of 1994 was brought into force), i.e., on 17.09.1991, the respondent had taken away the 10% grace allowance allowed by the 1987 circular. Though, by circular dated 06.06.1996, that is, after the enforcement of the repeal Act, the situation was sought to be resuscitated; gradually the situation was brought in line with that which obtained in 1991, upon the issuance of circular dated 04.05.2006.

23.2 Therefore, the submission made on behalf of the petitioners that the 1987 circular should be made applicable to the petitioners cannot be accepted, as this is an argument of convenience, which overlooks the fact that in September, 1991 the grace allowance was withdrawn, which is also, the position which has obtained since 2006.

24. Having said so, let me examine the submission advanced on behalf of the petitioners that, their situation had changed, in as much as, each one of them had been grounded, and had, consequently, not undertaken flying duties for a considerable period of time. While, Ms Garg, was deployed as Flight Supervisor since 17.09.2001, Ms Bakshi had been accorded ground duties since 17.08.2006. Similarly, Ms Chawla, though grounded in and around January, 2004, had not been assigned specific duties. She had though, since then, applied for being assigned a ground job, and in this taken recourse to the 2007 rehabilitation scheme, in pursuance of which, she was called for an interview, on 09.02.2008.

24.1 It is not disputed before me by the respondent that while the petitioners were grounded, they were not paid flying allowance/ incentives. The respondent has also not set up a case that the petitioners were incompetent or unsuitable or their continuation in service presented a security risk or, was detrimental to its interest. The respondent also, did not set up a case that the petitioners had conducted themselves in a manner which put forth a case of justifiable lack of confidence with regard to the nature of services performed by them and, therefore, made it incumbent to terminate their services. It is also not articulated before me by the learned counsel for the respondent that continued deployment of the petitioners, in particular, Ms Garg and Ms Bakshi, as ground staff, presented administrative difficulties or, that they were no longer required in the departments in which they were functioning. Admittedly, the letters of re-deployment clearly stated that their deployment as ground staff was “extendable on requirement but with option”.

24.2 At this stage, it would be pertinent to note, as observed above, that in the case of Ms. Chawla, though she was grounded, she was not assigned any

specific job function. Her application for rehabilitation was, admittedly, pending consideration on the date her services were dispensed with.

25. As a matter of fact, it is the admitted case of the respondent, which is evident from the facts detailed out above by me, that the respondent did absorb for ground duties such cabin crew, who were classified as executive cabin crew. In so far as line cabin crew were concerned, from amongst those who were permanently grounded, they were considered for office duties; albeit with the approval of the Executive Director (Northern Region). (see annexure P-5 communication dated 30.08.2006 addressed by the respondent to Ms Sona Chawla). Pertinently, the basis and parameters for such approval are not articulated by the respondent.

26. As a matter of fact, Ms Bakshi in paragraph 4 (XVII) of her writ petition has given specific instances of certain airhostesses, who have continued in service despite being over-weight. In response to the same, the respondent in the counter affidavit has proffered a bald denial. Information with regard to other personnel can only be available with the respondent.

26.1 As a matter of fact, even when in the RTI route, adopted by Ms Bakshi, she had, inter alia, asked for, specific details pertaining to certain cabin crew, namely, Ms Kusum Lata Nair, Ms Kusum Chakraborty, Ms Sarita, Ms Vibha Bhagat, Ms Doma T. Sering, Mr Yogi and Ms Anu – the information was denied. The details sought qua the aforementioned cabin crew pertained to matters regarding the date of groundings; reasons for grounding; date of medical board held and its findings; current status of employment and the date of last weight check. These details were not supplied, despite, the order of the CIC dated 11.01.2010, which required the respondent to furnish information after adhering to the provisions of Section 10(1) of the RTI Act.

26.2 Importantly, the very same order of the CIC also required the respondent to supply information with regard to the query raised by Ms Bakshi as to: when she was last advised or directed to go for a weight check? The approach of the respondent appears to be to block information on this crucial aspect.

26.3 The respondent has, in effect, defended its action of terminating services of the petitioners on the ground that such power was available under the contract to it. Therefore, the only basis for termination of service of each of the petitioners; which was put forth, was that, they had failed to maintain their respective weights as per the prescribed limits, and since, the petitioners' case fell in the realm of contract, the respondent could trigger the relevant condition which empowered it to terminate services, on occurrence of such an event.

26.4 In my view, it is far too well settled that where a State is party to a contract, its actions are not immune from judicial review. The State's action can be tested on the touch stone of Article 14. [See *State of U.P. vs Ashok Kr. Nigam* (2013) 3 SCC 372 at page 383 paragraph 18 and *Shrilekha Vidyarthi vs State of U.P.* (1990) 1 SCC 212]. The relevant observations made in *Ashok Kr. Nigam's* case, which are apposite in the context of the above, are extracted hereinbelow:

“....In *Shrilekha*, this court expressed the opinion that it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The arbitrary act of the State cannot be excluded from the ambit of judicial review merely on the ground that it is a contractual matter. The expression “at any time without assigning any cause”, can be divided into two portions, one “at any time”, which merely means the termination may be made even during the subsistence of the term of appointment and second, “without

assigning any cause” which means without communicating any cause to the appointee whose appointment is terminated. However, “without assigning any cause” is not to be equated with “without existence of any cause”....”

26.5 It is equally well settled that the principle pertaining to error of law includes furnishing such reasons, which are either bad in law, inconsistent, unintelligible or substantially inadequate. [See *S.N. Chandrashekhar vs State of Karnataka (2006) 3 SCC 208* at page 221-222 paragraph 33].

27. In the light of the aforesaid principles, what has to be seen is whether the reason given for terminating the contract, induced an error of law, which could be corrected by judicial review.

28. Let me first take the case of Ms Garg. Ms Garg applied against a staff employment notice for Flight Kitchen Supervisor. She was called for an interview on 10.09.2001. She was deployed as a Flight Kitchen Supervisor on 17.09.2001. She joined as a Flight Kitchen Supervisor on 18.09.2001, which as per the joining report generated by her Senior Manager (IFS), was a ‘new assignment’. Her broad, job functions, as per communication dated 17.09.2001, entailed the following:

- (a) Monitoring of the flight wise meal orders (Veg. & Non-Veg. & Special meals etc.)
- (b) Monitoring of day-to-day menus.
- (c) Monitoring of quality of meals.
- (d) Random checks of quantity of meals items.
- (e) Availability and cleanliness of the equipment. (!) Inspection of Pre Set Trays.

28.1 Pertinently, while her deployment was for a period of three years, it was “*extendable on requirement but with option*”. Admittedly, the petitioner continued, uninterruptedly, as a Flight Kitchen Supervisor between

2001 and 2008. There is no reference whatsoever in the impugned order to the fact that there was no requirement of services of a Flight Kitchen Supervisor. The fact is that, the petitioner, took up the assignment as a Flight Kitchen Supervisor, with a disincentive, in as much as, her flying related incentives were kept back and, rightly so. The impugned order, while dispensing with her services adverted to, in my view, to an extraneous factor, which is that, her services were not being utilized for flying duties since 24.06.1996, as she was over-weight. It is another matter though, that she continued to fly till 1999. In my opinion, the fact that the petitioner was over-weight after 17/18.09.2001, when she took over as a Flight Kitchen Supervisor, is a factor which in no way could have impeded her job functions as, described in her deployment letter dated 17.09.2001. What makes the matter worse is that the impugned order dated 30.12.2008 refers to an examination carried out qua her, ten (10) months prior to that date, i.e., on 19.02.2008, when she was reportedly found over-weight by 32.16 kgs. The least that the respondent could have done, if at all it had to terminate Ms Garg's services, assuming for a moment it could do so, was to have a weight check done on a date proximate to the date of the impugned order – issued her a show cause notice and, thereafter, proceeded in the matter. This was not done. In any event, as indicated above, for Ms Garg's job function, excess weight was clearly an irrelevant factor.

29. Similarly, in the case of Ms Bakshi even though she had applied for being appointed as Flight Kitchen Supervisor on 19.01.2006, she was accorded ground duties vide offer letter dated 14.08.2006. Ms Bakshi accepted that offer, on 17.08.2006. The respondent though, on 30.12.2008, dispensed with her services based on her weight, taken on 03.02.2006, which was nearly two years and four months after she had taken up ground duties.

The ground duties, which Ms Bakshi performed, pertained to hotel and restaurant billing, stationary procurement, office upkeep, maintenance and medical. To my mind, none of these duties could get impeded, on account of excess weight of the petitioner. Admittedly, in her case as well, respondent had issued no show cause notice. Ms Bakshi has averred that the period referred to in the impugned notice during which she was over-weight was, broadly, the period during which she was undergoing intensive hormonal treatment for infertility. This was the period between 2005 and 2006. According to Ms Bakshi, this fact was in the knowledge of the respondent. Since no show cause notice was issued, Ms Bakshi had no chance to explain her case. The respondent, quite incomprehensibly, took into account a factor which had no bearing on her job function. The impugned order clearly was erroneous in law as it took into account, once again, an irrelevant factor and, supplied no cogent reasons for taking recourse to the stated contractual provisions.

29.1 It may be pertinent to note that despite the fact that respondent vide communication dated 17.02.2009 had indicated that her appeal dated 06.01.2009 had been forwarded to the headquarters for “***consideration at the corporate level***”, no decision was taken. As indicated above, Ms Bakshi’s initial appeal dated 06.01.2009 was followed by a reminder dated 14.01.2009.

30. In so far as Ms Chawla is concerned, while she was not assigned specific ground duties, she was admittedly grounded since January, 2004. Admittedly, Ms Chawla’s application for “rehabilitation” and “rejuvenation” under the 2007 rehabilitation scheme was pending consideration in respect of which she was called for an interview on 09.02.2008 for the post of “***traffic superintendent (SG) or any other post equivalent to existing grade in some***

other department as per instructions issued by the headquarters”. While the decision was pending, Ms Chawla was subjected to a medical board on 13.08.2008, whereupon she was issued a show cause notice on 20/22.08.2008 to explain, as to why, her services ought not to be terminated in terms of clause 4(ii)(b) of her appointment letter, on the ground that she was overweight.

30.1 Ms Chawla replied to the said letter in which she put forth her difficulties including mistreatment by her in-laws and, the fact that, she had to singly look after her only child from wedlock. In the reply to the show cause notice, she had also referred to the fact that she had applied for rehabilitation under the 2007 rehabilitation scheme. The impugned order dated 30.12.2008 did not advert to any of these aspects. In my view, the impugned order is, therefore, completely bad in law as it did not deal with the aspect brought out in the reply regarding her application under the 2007 rehabilitation scheme. Ms Chawla, had also preferred an appeal (post her order of termination), on 13.01.2009, which was followed by reminders dated 15.04.2009, 31.10.2010, 30.06.2011 and 14.10.2011. There has no deliberation, by the respondent, in respect of, the appeal, filed by Ms Chawla.

31. The lack of proportionality in the respondent's action is also evident from the fact that, in taking the impugned decision the respondent disregarded the fact that while Ms Garg had put in twenty three years of service and Ms Chawla had put in twenty years of service; services of Ms Bakshi were terminated when, she was just short of completing twenty years in service, making her eligible for pension. The impugned action of the respondent displays complete non-application of mind.

32. Before I conclude, I must deal with the submission raised by Mr Vasdev that the judgments delivered both by the Single Judge and the

Division bench in the *Sheela Joshi's* case were binding on this court. I must state at the outset, one cannot quibble with the principle set out in *S. Shanmugavel Nadar* case cited in this behalf. The principle, however, will not apply in this case as, in *Sheela Joshi* case, the court, was dealing with a situation where petitioners had only been grounded; their services, however, had not been terminated. The events which transpired between the time when, petitioners were grounded and their services were terminated, clearly distinguish that case, from the instant batch of writ petitions. The reasons based on which I have reached this conclusion have been adverted to in my discussions above. Furthermore, the Supreme Court in *Sheela Joshi's* case did indicate, in so many words, that cases of termination and non-payment of dues during the period when airhostesses were grounded, should be dealt with, without being influenced by the judgments rendered by this Court.

33. Therefore, for the reasons set out above, it is quite clear that the respondent has not applied its mind to germane factors before taking a decision to terminate the petitioners' services. The reasons given had no link with the conclusion reached, which was, to dispense with the services of the petitioners.

34. The circumstances set out above thus, propel me to quash the impugned orders in each of the writ petition. It is ordered accordingly. The petitioners will thus be put back in service with full back wages and all consequential benefits.

34.1 It is noticed that in case of each of the three petitioners, along with the impugned communication, cheques, equivalent to one month's salary were issued. However, in so far as Ms Bakshi was concerned, she was also given two cheques dated 18.03.2009 and 07.01.2010 in the sum of Rs.2,51,724/- and Rs.1,19,805/- towards gratuity and provident fund. Therefore, the

respondent will put her back in service with full back wages and consequential benefits subject to making appropriate adjustments qua money paid to her. The same dispensation will apply to the other two petitioners, in case, dues have been paid, in the interregnum, which require adjustment.

35. The costs will follow the result in the petitions.

RAJIV SHAKDHER, J

MARCH 31, 2014

kk/yg