$~J-1 to 38

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

% **Judgment reserved on: 29.10.2021**
Judgment pronounced on: 17.12.2021

\+ **LPA 246/2021**
AIR INDIA LIMITED ..... Appellant
versus
KANWARDEEP SINGH BAMRAH ..... Respondent

LPA 247/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN ADIL SHAH ..... Respondent

LPA 248/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPT K SAI SASHANKA ..... Respondent

LPA 249/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN SANDEEP LAMBA ..... Respondent

LPA 250/2021
AIR INDIA LIMITED ..... Appellant
versus
NICK MEHTA ..... Respondent

LPA 251/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN JASMINE RAVAIYA ..... Respondent

LPA 252/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPT ADISH M CHAVAN ..... Respondent

LPA 255/2021
AIR INDIA LIMITED ..... Appellant

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versus

CAPT JITENDER SINGH RANDHAWA ..... Respondent

LPA 256/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT REUBEN JAMES ..... Respondent

LPA 258/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT B SUJIMON ..... Respondent

LPA 259/2021

AIR INDIA LIMITED ..... Appellant

versus

AADITYA MAHESHWARI ..... Respondent

LPA 260/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPTAIN VIBHA PARASHAR ..... Respondent

LPA 261/2021

AIR INDIA LIMITED ..... Appellant

versus

ABHINAV GAUR ..... Respondent

LPA 263/2021

AIR INDIA LIMITED ..... Appellant

versus

NITESH GODARA ..... Respondent

LPA 264/2021

AIR INDIA LIMITED ..... Appellant

versus

MOHIT ARORA ..... Respondent

LPA 266/2021

AIR INDIA LIMITED ..... Appellant

versus

PAVAN N LAKHANI ..... Respondent

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LPA 267/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN SNEHA BHANOT & ANR. ..... Respondents

LPA 268/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN AARTI DATTATRAY KURNE & ORS..... Respondents

LPA 269/2021
AIR INDIA LIMITED ..... Appellant
versus
NIPURN AHUJA ..... Respondent

LPA 270/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPT VISHAL V CHANDORKAR ..... Respondent

LPA 271/2021
AIR INDIA LIMITED ..... Appellant
versus
PRADEEP KUMAR ..... Respondent

LPA 272/2021
AIR INDIA LIMITED ..... Appellant
versus
ARJUN AHLUWALIA ..... Respondent

LPA 273/2021
AIR INDIA LIMITED ..... Appellant
versus
DUSHYANT GAUR ..... Respondent

LPA 274/2021
AIR INDIA LIMITED ..... Appellant
versus
CAPTAIN LOKESH RAMPAL ..... Respondent

LPA 275/2021
AIR INDIA LIMITED ..... Appellant
versus

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CAPT JEETENDER YADAV ..... Respondent

LPA 276/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT UDIT NARULA ..... Respondent

LPA 277/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT SHANTANU S SANGIDWAR ..... Respondent

LPA 278/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPTAIN PEHROZ KANGA ..... Respondent

LPA 279/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT ARVIND KUMAR SHARMA ..... Respondent

LPA 280/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT YADAV NANDU GANESH ..... Respondent

LPA 281/2021

AIR INDIA LIMITED ..... Appellant

versus

AMITH SURESH ..... Respondent

LPA 282/2021

AIR INDIA LIMITED ..... Appellant

versus

CAPT VIJAY KUMAR DAHIYA ..... Respondent

LPA 283/2021

AIR INDIA LIMITED ..... Appellant

versus

SHREY MALHOTRA ..... Respondent

LPA 289/2021

AIR INDIA LIMITED ..... Appellant

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versus

VIKRANT JADHAV ..... Respondent

LPA 290/2021

AIR INDIA LIMITED ..... Appellant

versus

BALLALESHWAR S PAWADMAL ..... Respondent

LPA 291/2021

AIR INDIA LIMITED ..... Appellant

versus

RIJUL ARORA ..... Respondent

LPA 292/2021

AIR INDIA LIMITED ..... Appellant

versus

VIGNESH SANGARAN ..... Respondent

LPA 294/2021

AIR INDIA LIMITED ..... Appellant

versus

YOGISH S KATAGIHALLIMATH ..... Respondent

Present: Mr. Tushar Mehta, Solicitor General with Mr. Samir Malik, Mr. Ankit Jain, Ms. Bani Dikshit and Mr. Aditya Vardhman Sharma, Advocates for the Appellant. Mr. Shanker Raju and Mr. Nilansh Gaur, Advs. for respondents in LPA Nos.247/2021, 260/2021, 274/2021 & 278/2021. Mr. Sanjoy Ghose, Sr. Adv. With Mr. Naman Jain and Ms. Urvi Mohan, Advs. for respondents in LPA Nos.248/2021, 252/2021, 255/2021, 258/2021, 270/2021 & 276/2021. Mr. Ravi Raghunath, Ms. Aakashi Lodha, Mr. Madhusruthi Neelakantan and Mr. Yashaswini Venkatadri, Advs. for respondentsin LPA Nos.264/2021,266/2021, 267/2021, 268/2021, 273/2021,281/2021, 289/2021, 291/2021, 292/2021, 294/2021. Mr. Satyabrata Panda, Adv. for respondents in LPA Nos.246/2021,250/2021 & 263/2021. Mr. Animesh Khandelwal, Adv. for respondents in LPA No.277/2021. Mr. Abhishek Bharti and Ms. Aarti Mahto, Advs. for respondents in LPA Nos.259/2021 & 271/2021. Ms. Dipal Ravaiya, Mr. Keshav Sehgal, Mr. Gaurav H Sethi and Mr. Abhinav Tyagi, Advs. for respondents in LPA Nos.249/2021. Mr. Nirad Buch, Adv. for LPA No.251/2021. Ms. Sonali Chopra, Adv. for respondent in LPA 261/2021. Mr. Tushar Ranjan Mohanty with Ms. Payal Mohanty, Advs. for respondents in LPA Nos. 275/2021, 279/2021 and 280/2021. Mr. Bhasker, Adv. for the respondent alongwith respondent Captain Ballaleshwar S. Pawadmal in person in

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LPA 290/2021. Mr. Satish Tamta, Sr Adv with Mr. Shariq Iqbal, Adv for Respondent in LPA 282/2021.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.:

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Preface:-

1. These appeals are directed against a common judgment dated 01.06.2021 [hereafter referred to as "impugned judgment", passed by the learned single judge in various writ petitions.

2. The appellant before us is Air India Limited [hereafter referred to as 'AIL']. The respondents, in each of these appeals, are pilots who were

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employed by AIL. For the sake of convenience, they will be collectively referred to as "pilots", unless the context requires them to be described otherwise.

Background:-

3. Although the record filed before us is huge and expansive, the central issue which arises for consideration veers around the following.

3.1 The pilots had, at one point or other, tendered their resignation, which they subsequently sought to withdraw.

3.2 The withdrawal of resignations by pilots led to the emergence of myriad scenarios. In some cases, the request for withdrawal of resignation was rejected, while in others, the request made for the withdrawal of resignation was accepted. In certain cases, after AIL had accepted the request for withdrawal of resignation, it took a U-turn by accepting the resignation tendered by the pilot, before the request for withdrawal of resignation was made.

4. Thus, except for the aforesaid variation in circumstances swirling around resignation tendered by pilots, arrayed before us as parties, the facts are not in dispute, although the legal implications arising therefrom are contested. It is also important to highlight the fact that the pilots before us fall into two streams i.e., one set of pilots are those who were inducted into service as regular employees [as per prevailing rules and regulations] and are thus permanent employees, while there are others, who gained entry into AIL with the execution of "Fixed Term Contracts" [in short 'FTCs'].

5. Thus, before we proceed further, it would be helpful if we were to segregate the pilots according to the scenarios, in which their cases fall.

(i) Pilots whose resignation was accepted, in the first instance, before the expiry of six months notice period [albeit, without issuance of No Objection Certificate ('NOC')]; followed by service of the impugned letter upon them. In these cases, resignations were accepted the second time around, albeit, after the

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six months notice period expired. **[Table I]**

(ii) Pilots who withdrew their resignation before the end of six months notice period and the request made by them for withdrawal of resignation was accepted by AIL, followed by service of impugned letters. [**Table II**]

(iii) Pilots who withdrew their resignation before the end of six months notice period and their request for withdrawal was rejected. [**Table III**]

(iv) Pilots who withdrew their resignation, after the expiry of the six months notice period, but before the acceptance of resignation by AIL [**Table IV]**

5.1. Pertinently, via the impugned judgment, the learned single judge quashed the letters dated 13.08.2020, 15.08.2020 and 16.10.2020, whereby resignations of pilots were accepted, by AIL. For the sake of convenience, these letters will be collectively referred to as "impugned letters", unless the context requires otherwise.

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Table I

PERMANENT EMPLOYEES								
LPA No.	Name of Pilot	Date of resignation`	Expiry of Notice period	Acceptance of resignation in the first instance	Date of withdrawal of resignation	Response to pilots' withdrawal of resignation request	Acceptance of resignation (Impugned letter)	LD[1] (Rupees in lakhs)
247	Adil Shah 17.06.2009	11.09.2019	10.03.2020	22.01.2020	09.03.2020	Accepted in or around 16.03.2020	13.08.2020	
260	Vibha Parashar 04.07.2005	30.09.2019	29.03.2020	09.01.2020	21/23.03.2020	Rejected on 13.08.2020, via impugned letter	13.08.2020	
269	Nipurn Ahuja 16.06.2010	21.09.2019	20.03.2020	17.02.2020	13.03.2020	Accepted on 19.03.2020.	13.08.2020	
280	Yadav Nandu Ganesh 06.09.2007	10.10.2019	09.04.2020	06.01.2020	12.03.2020	Accepted on 16.05.2020[2].	13.08.2020	

FTCs									
LPA No.	Name of Pilot	Expiry of FTC, based on five [5] years tenure	Date of resignation`	Expiry of Notice period	Prior acceptance of resignation	Date of withdrawal of resignation	Response to pilots' withdrawal of resignation request	Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
246	K.P. Singh Bamrah 13.10.2015	12.10.2020	26.09.2019	25.03.2020	06.01.2020	18.03.2020	Rejected on 13.08.2020, via impugned letter	13.08.2020	
250	Nick Mehta 24.09.2015	23.09.2020	23.09.2019	22.03.2020	29.01.2020	18.03.2020	Rejected on 13.08.2020, via impugned letter	13.08.2020	
251	Jasmine Ravaiya 07.09.2015	06.09.2020	02.12.2019	01.06.2020	22.01.2020	13.04.2020	Rejected on 13.08.2020, via impugned letter	13.08.2020	
263	Nitesh Godara 06.10.2015	05.10.2020	23.09.2019	22.03.2020	29.01.2020	18.03.2020	Rejected on 13.08.2020, via impugned	13.08.2020	

[1] Liquidated Damages
[2] By ED (Operations)

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							letter		
282	Vijay Kumar Dahiya 16.10.215	15.10.2020	25.09.2019	18.03.2020	06.01.2020	17.03.2020	Accepted on 17.03.2020/ 18.03.2020.	13.08.2020	

Table II

PERMANENT EMPLOYEES							
LPA No.	Name of Pilot	Date of resignation`	Expiry of Notice period	Date of withdrawal of resignation	Date of acceptance of withdrawal of resignation	Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
248	K. Sai Sashanka 16.07.2008	22.01.2020	21.07.2020	16.03.2020	18.03.2020	13.08.2020	10
277	Shantanu S. Sangidwar 16.12.2010	15.01.2020	14.07.2020	03.03.2020	03.03.2020	13.08.2020	
283	Shrey Malhotra 21.10.2013	21.01.2020	20.07.2020	16.03.2020	20.03.2020	13.08.2020	26.88

FTCs								
LPA No.	Name of Pilot [Date of release as first officer]	Expiry of FTC, based on five [5] years tenure	Date of resignation`	Expiry of Notice period	Date of withdrawal of resignation	Date of acceptance of withdrawal of resignation	Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
276	Udit Narula 02.04.2018	01.04.2023	05.02.2020	04.08.2020	09.03.2020	13.03.2020	13.08.2020	50

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Table III

PERMANENT EMPLOYEES								
LPA No.	Name of Pilot	Date of resignation`	Expiry of Notice period	Date of withdrawal of resignation	Date of rejection of request for withdrawal of resignation, via impugned letter		Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
256	Reuben James 18.06.2014	03.02.2020	02.08.2020	23.03.2020	13.08.2020		13.08.2020	
258	B. Sujimon 08.10.2010	15.01.2020	14.07.2020	17.03.2020	13.08.2020		13.08.2020	10
259	Aditya Maheshwari 07.11.2013	01.10.2019	01.04.2020	18.03.2020	13.08.2020		13.08.2020	
261	Abhinav Gaur 29.02.2009	15.01.2020	14.07.2020	18.03.2020	13.08.2020		13.08.2020	
267	Sneha Bhanot 06.05.2009 Ayush Mahajan 24.04.2009	31.01.2020 31.01.2020	31.07.2020 31.07.2020	19.03.2020 19.03.2020	13.08.2020 13.08.2020		13.08.2020 13.08.2020	
268	Arti Kurne 2003 Praveen Chandra Bequr 2003 Mayank Yadav 08.05.2010	10.02.2020 30.01.2020 06.02.2020	09.08.2020 29.07.2020 05.08.2020	17.03.2020 17.03.2020 19.03.2020	13.08.2020 13.08.2020 13.08.2020		13.08.2020 13.08.2020 13.08.2020	
271	Pardeep Kumar 2014	01.10.2019	31.03.2020	18.03.2020	13.08.2020		13.08.2020	
272	Arjun Ahluwalia 19.04.2008	06.02.2020	05.08.2020	19.03.2020	13.08.2020		13.08.2020	
274	Lokesh Rampal 20.05.2008	06.02.2020	05.08.2020	19.03.2020	13.08.2020		13.08.2020	
FTCs								
LPA No.	Name of Pilot	Expiry of FTC, based on five [5] years tenure	Date of resignation`	Expiry of Notice period	Date of withdrawal of resignation	Date of rejection of request for withdrawal of resignation, via impugned letter	Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
252	Adish Chavan 31.08.2015	30.08.2020	19.08.2019	18.02.2020	13.01.2020	13.08.2020	13.08.2020	
255	J. S. Randhawa 19.09.2015	18.09.2020	01.01.2020	30.06.2020	12.03.2020	13.08.2020	13.08.2020	
264	Mohit Arora 30.01.2018	29.01.2023	02.12.2019	01.06.2020	18.03.2020	13.08.2020	13.08.2020	50
266	Pawan Lakhani 19.11.2015	18.11.2020	02.12.2019	01.06.2020	16.04.2020	13.08.2020	13.08.2020	

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270	Vishal Chandorkar 27.09.2015	26.09.2020	05.08.2019	04.02.2020	10.01.2020	13.08.2020	13.08.2020	
273	Dushyant Gaur 30.09.2018	29.03.2023	04.01.2020	03.07.2020	20.03.2020	16.10.2020	16.10.2020	
281	Amith Suresh 06.11.2015	05.11.2020	30.01.2020	29.07.2020	18.03.2020	16.10.2020	16.10.2020	
289	Vikrant Jadhav 08.05.2018	07.05.2023	22.11.2019	21.05.2020	20.03.2020	13.08.2020	13.08.2020	50
290	Ballaleshwar Pawadmal 12.01.2017	11.01.2022	21.10.2019	20.04.2020	20.03.2020	13.08.2020	13.08.2020	28
291	Rijul Arora 30.01.2018	29.01.2023	14.11.2019	13.05.2020	18.03.2020	13.08.2020	13.08.2020	50
292	Vignesh Sangaran 16.02.2018	15.02.2023	02.12.2019	01.06.2020	18.03.2020	13.08.2020	13.08.2020	50
294	Yogesh S Katagihallimath 16.04.2018	15.04.2023	18.12.2019	17.06.2020	17.03.2020	13.08.2020	13.08.2020	50

Table IV

FTCs								
LPA No.	Name of Pilot	Expiry of FTC, based on five [5] years tenure	Date of resignation`	Expiry of Notice period	Date of withdrawal of resignation	Response to pilots' withdrawal of resignation request	Acceptance of resignation (Impugned letter)	LD (Rupees in lakhs)
275	Jeetender Yadav 01.08.2016	31.07.2021	05.07.2019	04.01.2020	27.01.2020	Accepted on 28.01.2020	13.08.2020	28
278	Pehroz Kanga 12.02.2017	11.02.2022	10.07.2019	09.01.2020	03.03.2020	Rejected on 15.08.2020, via impugned letter	15.08.2020	50
279	Arvind Kumar Sharma 15.06.2016	16.06.2021	18.07.2019	16.01.2020	28.01.2020	Accepted on 29.01.2020	13.08.2020	28
249	Sandeep Lamba 29.06.2016	28.06.2021	31.07.2019	Initial expiry of notice period- 31.01.2020 Extension of one month, in the first instance, to 29.02.2020 and subsequently to 28.03.2020	18.03.2020	Rejected on 13.08.2020, via impugned letter	13.08.2020	28

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6. As would be evident on a perusal of the tables above [something which AIL has also highlighted in its appeals], that the resignations were tendered by the pilots in the period spanning between July 2019 and February 2020.

6.1. It is AIL's case that these resignations were tendered by the pilots, as certain commercial airlines had expanded their business and were, looking out for trained pilots to handle their aircraft(s). The pilots, according to AIL, were wanting to seize this opportunity, and therefore, had tendered their resignations.

6.2. However, one cannot dispute, [an aspect that we can take judicial notice of], after March 2020, the situation changed drastically with the Covid-19 pandemic, erupting with venom, across the world including India. This resulted in the shutdown of businesses and cost-cutting measures as also rationalization of salaries across industries, including the airline industry. AIL was no different. It claims that it took similar steps to bring about rationalisation in the conduct of its business.

6.3. Therefore, the gravamen of AIL's case is that the pilots, having realised that there were no opportunities left for employment, decided to withdraw their resignations. Demonstrably [as is evident upon perusal of the "details" given in the aforementioned tables], AIL did not adhere to a uniform policy or pattern in dealing with the request for withdrawal of resignations.

7. That being said, it is, at the present juncture, AIL's stand that once the resignation is submitted, it operates, in praesenti, and therefore, the subsequent acts concerning acceptance of resignation or acceptance of withdrawal of resignation and the U-turn made thereafter in accepting the resignation would not impact the legal position, which is, that the employer-employee relationship snapped insofar as the employee was concerned the moment the resignation was tendered. The arguments made, in this context, which has several layers, will be touched upon in the latter part of the judgment, however, in a nutshell, this is the stand taken by AIL before us.

7.1 Insofar as AIL is concerned, the submissions were advanced by Mr Tushar

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Mehta, learned Solicitor General, instructed by Ms Bani Dixit for AIL, while the pilots were represented by various counsels i.e., Mr Sanjoy Ghose and Mr Satish Tamta, Senior Advocates, along with Mr Ravi Raghunath, Mr Satyabarata Panda, Mr Tushar Ranjan Mohanty, Mr Shanker Raju, Mr Nirad Buch, Ms Aarti Mahto, and Mr Keshav Sehgal.

Submissions on behalf of AIL

8. Mr Mehta's submissions can be, broadly, paraphrased as follows:

(i) AIL is a national carrier. It employs pilots, both permanently as well as on contract. The pilots, who are permanent employees of the AIL, are governed by the Service Regulations, whereas those who are engaged on contract are required to adhere to the terms and conditions contained in the FTCs.

(ii) Both, over and above the Service Regulations and the FTC, the pilots are governed by the Civil Aviation Requirement, dated 27.10.2009 [in short "CAR"]. CAR has been issued by the Director-General of Civil Aviation [in short 'DGCA'], in the exercise of powers conferred upon it under the Aircraft Act, 1934. Thus, the provisions of CAR have a statutory flavour and is binding on both the pilots and the airline [in this case 'the AIL']. The CAR provides that every pilot, at the time of resigning from an airline, would have to serve a mandatory notice period of six months. During the notice period, the pilot is obligated to undertake flight duties with a corresponding obligation on the airline to preserve the legitimate rights and privileges of the pilots.

(iii) Between July 2019 and February 2020, several pilots employed with AIL tendered their resignation giving six months' notice, as required under CAR. AIL believes that these pilots tendered resignation as they sought "greener pastures" i.e., better offers from other private airlines. [In support of this plea, reliance is placed on the representation dated 10.01.2020, issued by the Indian Commercial Pilots Association i.e., one of the pilots' unions, which, *inter alia*, adverted to the fact that experienced co-pilots employed by AIL, were being

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poached by private carriers and AIL had become a training institute for private airlines.] These co-pilots, according to the representation, are "potential commanders" who had been trained by AIL by deploying its resources.

(iv) With the advent of the Covid-19 pandemic in March 2020, DGCA/Ministry of Civil Aviation (MOCA) imposed onerous conditions on the functioning of airlines, which included a ban on international and domestic air travel, w.e.f. 22.03.2020 and 24.03.2020, respectively. In most cases, the notice period(s) which the pilots were required to serve under their respective resignation letters, was ending in March 2020. Therefore, in some cases, resignations were accepted when a request was made by pilots seeking to withdraw the resignation, while in other cases, the decision was kept pending.

(v) Once AIL's offices opened up after easing the national lockdown, the request made by pilots to withdraw their resignations was rejected, *vide* letter dated 13.08.2021 [sic 13.08.2020, 15.08.2020 and 16.10.2020]. In cases where the decision on acceptance of resignation had been pending, the same were accepted while rejecting their request seeking withdrawal of resignation. It is these letters that AIL sent (whereby resignations were accepted) that were challenged by the pilots by way of various writ petitions, from which the above-captioned appeals have arisen.

(vi) Since a large number of pilots had resigned, AIL had made efforts to retain some of them, and, therefore, some requests for withdrawal of resignation made by the pilots were 'allowed', however, when, on 13.08.2021 [sic 13.08.2020] the withdrawal of request of remaining pilots was rejected; the decision taken to accept the request for withdrawal of resignation in the case of few pilots was recalled, to maintain uniformity and consistency. Consequently, these pilots were also released from the services of AIL; the details of these candidates have been provided in the impugned judgment under the head "Category C" [adverted to in the impugned judgment].

(vii) CAR encapsulates a peculiar regulatory regime under which the end of

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service is immediate and effective on tendering the letter of resignation. In support of this submission, reliance is placed on the judgment of the Supreme Court rendered in ***Air India Express v. Gurdarshan Kaur Sandhu*** (2019) 17 SCC 169[3].

(viii) The stipulation of the notice period in CAR is premised on the principle of public interest, and is, therefore, different from all other rules and regulations relating to resignation and its withdrawal, in service jurisprudence. Therefore, the judgments relied upon by the pilots and also discussed at length by the learned Single Judge in the impugned judgment have no applicability to the instant appeals, as they do not deal with the issue of public interest; a factor, which is required to be considered in respect of resignations, their withdrawal and end of service of employees, employed by AIL. Therefore, the legality of resignations, withdrawal and their acceptance will have to be examined *de novo*, keeping in mind the framework of CAR and its intended purpose.

(ix) Paragraphs 1.1, 3.3 and 3.4 of CAR provide that once the resignation is tendered by a pilot, it *de jure* ends the service of the pilot with the airline from the date of resignation. However, *de facto* the pilot continues to serve the airline, in the public interest, as alluded to in the ***Sandhu*** case. The resignation, thus, becomes effective *de jure* from the date it is tendered, with a request to be relieved from service although, *de facto*, the pilot is required to perform her or his functions till the end of the notice period. Paragraph 3.7 of CAR which gives the right to the airline to accept the resignation, before the end of the six months' notice period by furnishing the No-Objection Certificate (NOC) to the pilot, fortifies this submission.

(x) Thus, insofar as the pilot is concerned, once she/he tenders the resignation, the service stands terminated/ended even though the notice period is extended to ensure necessary replacement and training of the inductee pilot.

[3] In short 'the ***Sandhu*** case'

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Thus, the notice period is not for the benefit of the pilot but for the benefit of the airline and that too, to further the public interest. This interpretation is confined to the provisions of CAR and the "highly regulated" airline industry which cannot be applied to other services and employments'. The following observations in the ***Sandhu*** case emphasize the unique nature of the job performed by a pilot :

> *".....by very nature of the job profile a replacement for a pilot does not come so easily and therefore, the period of six months....."*

(xi) The observations of the learned Single Judge in paragraph 26 of the impugned judgment, to the effect, that there is no rule prescribing either that withdrawal of resignation can be made only with the prior permission of the employer or that withdrawal needs acceptance under a given set of rules, misconstrues the true impact of CAR. Every aspect of the aviation sector is regulated by the DGCA, and, therefore, it would be perilous to allow pilots to withdraw their resignation at their whim and fancy at the n^{th} hour i.e., just before the end of the six months' notice period.

(xii) Given the fact that CAR has been notified to further the public interest, it is axiomatic that it impliedly bars unilateral withdrawal of resignation. Withdrawal of resignation, thus, can only be made with the concurrence of the airline. In this context, it is important to note the language employed by the pilots in their letters seeking withdrawal of resignation; which was couched as a request to AIL to allow them to continue as pilots with AIL. Such a language was employed by the pilots as they were aware that aviation is a "heavily regulated" sector.

(xiii) Given this background, AIL treated the pilots' communication(s) seeking withdrawal of resignation, as a request, and, therefore, in most cases had conveyed that such request will be evaluated later and that they would not be utilized for flying duties after the end of the six months notice period. This position taken by AIL was never challenged by the pilots.

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(xiv) The pilots acquiesced to the position taken by the AIL, which was to treat the letter(s) seeking withdrawal of resignation as a request, and not a unilateral action of the pilots. It was when the AIL rejected the pilots' requests seeking withdrawal of resignation that they took the stand before the learned Single Judge that there was no bar in the pilots unilaterally withdrawing the resignation tendered by them. The "legal, contractual or constitutional bar" to the unilateral withdrawal of resignation as envisaged in paragraph 50 of the judgment rendered by the Supreme Court in the case of ***Union of India v. Gopal Chandra Misra*** (1978) 2 SCC 301, would cover such cases as well.

(xv) The observations made by the learned Single Judge in paragraph 26 of the impugned judgment that AIL could not accept the resignation which was withdrawn before its acceptance as it was non-existent and *non-est* in the eyes of law is inaccurate, insofar as pilots (who are respondents) in the following appeals are concerned:-

LPA Nos. 246/2021, 250/2021, 251/2021, 263/2021, 260/2021, 269/2021 and 280/2021.

(xvi) These are cases where resignation was accepted before the request for withdrawal of resignation was tendered. Therefore, the findings contained, inter alia, in paragraphs 26 and 31 are inaccurate, as it does not take into account the peculiarities of different cases placed before the court.

(xvii) The learned Single Judge has "wrongly interpreted" the decision rendered by the Supreme Court in the ***Sandhu*** case. The learned Single Judge has confined the interpretation of the judgment to the facts of that case. The learned Single Judge failed to appreciate the ratio of the case and apply the same to the facts of the instant case.

(xviii) As indicated above, the Covid-19 pandemic caused mayhem in the country when the pilots were serving their notice period. As a result of this situation obtaining, AIL had reduced its operations drastically which resulted in AIL having surplus pilots. The surplus pilots would have stepped into the shoes

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of pilots who had tendered their resignation. Therefore, in the given situation, replacements were not required to be found outside AIL.

(xix) In any event, the ratio of the judgment in the ***Sandhu*** case is that CAR represents the entire regulatory scheme concerning resignations and that notice period is prescribed keeping public interest in mind and, in particular, to prevent disruption of flights. The learned Single Judge needed to keep this aspect in mind while examining the circumstances that led to the acceptance of resignation by AIL.

(xx) The observation made by the learned Single Judge in paragraph 60 of the impugned judgment that the action of the pilots of withdrawing their resignation [just before the end of the notice period] was in the larger public interest, while the acceptance of resignation by AIL was against public interest – is a legally unsustainable finding. AIL's decision to reject the requests made by pilots for withdrawal of resignation, and, simultaneously, accepting the resignations which had not been accepted earlier was made, keeping the commercial viability of AIL in mind which had been hit hard by the Covid-19 pandemic. The impugned decision was taken on 13.08.2020 [sic 13.08.2020, 15.08.2020 and 16.10.2020] when domestic flights were operating on 45% capacity. Therefore, the decision which was taken to reject the request for withdrawal of resignations was part of a series of steps taken by AIL to maintain its financial viability, during the Covid-19 pandemic. Hence, the observation of the learned Single Judge that the decision taken by AIL was against the public interest, is an untenable finding.

(xxi) In sum, the decision of the learned Single Judge is flawed for the reasons stated above, and, therefore, should be set aside.

8.1. The submissions advanced on behalf of AIL were confined to aforesaid. In particular, no submissions were advanced with respect to imposition of damages and encashment of bank guarantee.

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Submissions on behalf of the pilots:-

9. The aforementioned counsel for the pilots, broadly, made the following submissions :

(i) It is well-settled that an employee can withdraw his resignation at any time before it becomes effective or operational. [See ***Union of India v. Gopal Chandra Misra,*** (1978) 2 SCC 301 (paragraphs 41, 50).]

(ii) The Supreme Court and this court in various judgments have quashed the orders of acceptance of resignation after the resignation was withdrawn. [See ***Union of India v. Wing Commander T. Parthasarathy,*** (2001) 1 SCC 158 (paragraphs 1, 2, 4, 8, 9); ***Prem Prakash v. Air India Corporation,*** (1996) 38 DRJ 532 (DB) (paragraphs 1, 2, 8, 13)***;*** and ***Secretary, Home Department, Government of Maharashtra Mantralaya v. Sanjay Pandey,*** (2005) SCC OnLine Delhi 1366 (paragraphs 2, 3, 4 and 9)]

(iii) The submission advanced on behalf of AIL that the provisions of CAR are emblematic of the fact that resignation once tendered in law i.e., *de jure*, operates in praesenti, and that *de facto* the link between employer and employee expires only after completion of the notice period of six months' is flawed in law, besides the fact that this submission was not articulated before the learned Single Judge. It is for this reason that no such ground has been raised in the appeals by AIL.

(iv) Furthermore, this submission is contrary to and inconsistent with the following :

(a) The internal notes found on the files of AIL when the matter was under consideration, at various levels in AIL. [See paragraphs 44 & 45 of the impugned judgment.]

(b) Clause 1.34(ii) of the Operations Manual.

(c) The impugned communications dated 13.08.2020/16.10.2020 that emanated from AIL in no uncertain terms gave away AIL's position and

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understanding of the regime, which was in place, that the resignations had to be accepted for terminating the employer-employee relationship.

(d) The ***Sandhu*** case, on which reliance is placed by AIL, was one where resignation had been accepted before its withdrawal, coupled with the fact that a substitute pilot had been drafted in by AIL.

(v) The impugned communication(s) dated 13.08.2020, 15.08.2020 and/or 16.10.2020 flies in the face of the aforementioned provisions of the Operations Manual, inasmuch as the resignations were accepted with retrospective effect i.e., from the date, when the notice period came to an end. As per the provisions of the Operations Manual, the period of six months was to commence only from the date of acceptance of the resignation.

(vi) The AIL had submitted before the learned Single Judge that resignation could not be withdrawn unless there was a provision put in place, allowing for such an eventuality. This submission is misconceived, both, on facts and in law, as under the extant regime there is no prohibition on withdrawal of resignation. There is, thus, neither any requirement for seeking permission to withdraw a resignation nor is there any provision that requires AIL to accept [the communication for withdrawal of resignation], for it to take effect. [See ***Punjab National Bank v. P.K. Mittal,*** 1989 Suppl. 2 SCC 175 (paragraph 8).]

(vii) In the absence of any statutory rule or contractual provision, the provisions of Section 5 of the Indian Contract Act, 1872 would be applicable. Thus, the employee/pilot had absolute right to withdraw her/his resignation before its acceptance. [See ***Bank of India v. O.P. Swarnakar,*** (2003) 2 SCC 721 (paragraphs 50, 75, 76 & 121).]

(viii) An employee/pilot has the fundamental right to continue in employment which cannot be taken away, except in the manner known to law. Since there is no bar on the withdrawal of resignation before its acceptance, the impugned letters issued by AIL are legally untenable.

(ix) AIL has misconstrued the ratio of the judgment rendered by the Supreme

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Court in the ***Sandhu*** case. It is well-established that what is binding is the ratio of the decision, and not every observation found therein or what logically follows on the observations made in the decision [See ***Quinn v. Leatham,*** [1901] UKHL 2 and ***State of Orissa v. Sudhanshu Sekhar Misra,*** AIR 1968 SC 647 (paragraph 12)]

(x) The decision in the ***Sandhu*** case is distinguishable. [See paragraphs 4.4 to 4.8, 10 and 16 of the ***Sandhu*** case.]

(x)(a) This was a case where the pilot resigned on 03.07.2017 and a replacement was put in place on 14.08.2017. The airline accepted the pilot's resignation on 02.09.2017. It is only, thereafter, that the pilot sought to withdraw the resignation on 18.12.2017 which was followed by a legal notice sent through her lawyer on 29.12.2017. The airline in a response dated 04.01.2018 took the position that the resignation had become effective with its acceptance, and, hence, the situation could not be reversed. Pertinently, the pilot had joined another airline after she refused allocation of duties by the employer airline.

(x)(b) It is in these circumstances that the Supreme Court in the ***Sandhu*** case concluded that it fell within the exceptions adverted to in ***Gopal Chandra Misra*** case and those adverted to in ***Balram Gupta v. Union of India and Anr.*** 1987 (Supp.) SCC 228. [See paragraph 14 of the ***Sandhu*** case.]

(x)(c) In contradistinction, the pilots in the instant cases have withdrawn their resignation before it was accepted; during the notice period, the pilots were discharging their duties; AIL did not put in place substitutes/replacements either at the time when resignations were submitted or at the stage of withdrawal of resignations; and lastly, the pilots on the rolls of AIL are not in excess as claimed by AIL.

(xi) The impugned letters were not an outcome of a well-thought-out commercial decision as portrayed by AIL, but was an arbitrary decision, taken in undue haste when writ petitions were pending before the learned Single Judge and the matter was *sub judice*. These aspects are demonstrable from the

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following facts and events :

(a) Resignations were submitted to AIL between November 2019 and February 2020, however, no steps were taken during the notice period.

(b) MOCA, having regard to the position of AIL, had issued circulars dated 15.07.2020 and 17.07.2020, whereby allowances payable to the pilots were reduced with retrospective effect i.e., 01.04.2020.

(c) On 15.07.2020, in W.P.(C) No.4203/2020 titled ***Arjun Ahluwalia v. Air India Ltd.***, notice was issued by the court. The issue raised in the said writ petition concerned withdrawal of resignation, and, thus, sought a declaration that the same as *non-est* in law.

(d) In another writ petition i.e., W.P.(C)No.4420/2020 titled ***Sneha Bhanot v. Air India Ltd.*** which raised a similar issue as the one, which obtained in W.P.(C)No.4420/2020, notice was issued by the court.

(e) Substantial arguments were addressed in the aforementioned petitions and the matter was adjourned to for further arguments. In the interregnum, another set of writ petitions were filed i.e., W.P.(C) Nos.5184/2020, 5227/2020, 5229/2020, 5240/2020, 5195/2020, 5230/2020 and 5232/2020 wherein similar issue was raised. The court issued a notice in these petitions as well and directed that the same be listed on 14.08.2020, along with connected matters.

(f) It is at this juncture i.e., on the night of 13.08.2020, at about 10.30 p.m., the impugned letters were issued, whereby resignations were accepted. The intimation to the concerned pilots was sent by AIL, *via* e-mails to render the writ petitions infructuous.

(xii) That, the impugned action was taken without application of mind apart from being arbitrary and hasty, is demonstrable from the following facts :

(a) The impugned letter(s) dated 13.08.2020 were cyclostyled.

(b) The impugned letters bear the same reference number i.e. Ref.No.HPDO1/O-2701.

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(c) The impugned letters were issued even in those cases where withdrawal of resignation by the pilots had been accepted by AIL. [See LPA Nos. 247/2021, 248/2021, 269/2021, 275/2021, 276/2021, 277/2021, 279/2021, 280/2021, 283/2021 (sic and 282/2021).]

(d) Impugned letters were issued to even those pilots who according to AIL had been served with letters accepting their resignation between January 2020 and March 2020 [See LPA Nos. 246/2021, 247/2021, 250/2021, 251/2021, 260/2021, 263/2021, 269/2021, 280/2021 (sic and 282/2021).]

(e) In the case of two pilots i.e., Dushyant Gaur and Amith Suresh [who were petitioners in W.P.(C) Nos.8625/2020 and 8626/2020 respectively], impugned action was not taken on 13.08.2020, although, they had submitted their resignations followed by withdrawal of the same. These two pilots were issued impugned orders on 16.10.2020, *albeit*, without any explanation.

(f) Impugned action (i.e. acceptance of resignation) was taken even *qua* the pilots who were served by AIL with letters calling upon them to pay liquidated damages to enable AIL to process their resignations. The pilots, *vis-à-vis* whom this step was taken, were the following: Vignesh Sangaram (LPA No.292/2021); Rijul Arora (LPA No.291/2021); Vikrant Jadhav (LPA No.289/2021); Yogish S. Katagihallimath (LPA No.294/2021); and Mohit Arora (LPA No.264/2021).

(xiii) Financial constraint which is given by AIL as defence qua the impugned action does not align with the following actions or deliberate inactions, taken by AIL.

(a) None of the other employees or cabin crew have been retrenched. AIL is unable to demonstrate as to how the impugned action taken against the pilots involved in the instant litigation is, thus, even-handed and would help AIL substantially in dealing with its financial difficulties.

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(b) AIL renewed between July 2020 and August 2020, contracts of 19 pilots whose FTCs had expired. [See averments made in paragraph 31 in W.P.(C) No.8626/2020, titled ***Amith Suresh v. Air India Ltd..***] AIL has not controverted this assertion.

(c) AIL has given promotions to numerous employees. [See rejoinder filed in W.P.(C) No.5614/2020 titled ***Abhinav Gaur v. Air India Ltd.***]

(d) AIL has failed to discharge the onus concerning the defence raised, as regards financial constraints. It has failed to cite any judicial precedent in support of its defence that would establish that the law concerning resignation, its withdrawal and acceptance is required to bear in mind the financial constraints of the employer. Financial difficulty cannot be cited as a ground for frustration of a contract, and, therefore, the State or its instrumentalities such as AIL cannot refuse to perform their obligations by adverting to weak financial position, in defence of its actions.

(e) Since pilots were prevented from joining their duty and because AIL's actions have been held by the learned Single Judge as being contrary to law, reinstatement, full back wages and consequential benefits should follow as a matter of right.

(xiv) FTCs are renewed and/or are extendable by a further period of five years, as a matter of course. At the point in time, when pilots governed by FTCs [while they were subsisting] had approached the court, they were assured that impugned orders qua them would not be given effect to and that renewal of FTCs will be subject to the outcome in the writ petitions; while in the case of 19 pilots who were similarly circumstanced, contracts were extended for five years and others were denied extension.

(xiv)(a) It is in this background that, via order dated 03.11.2020 passed in W.P.(C) No.8626/2020, titled ***Amith Suresh v. Air India Ltd.***, the learned Single Judge ordered that release/renewal of the petitioner and/or renewal of his FTC would be subject to the outcome in the writ petition.

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(xv) AIL cannot contend that writ petitions filed by pilots who had executed FTCs had been rendered infructuous, given AIL's communication dated 28.10.2020 wherein AIL took the stand that since the issue concerning the resignations was *sub judice*, the matter concerning the renewal of FTC had to be deferred. [See Annexure-A, appended to CM No.29306/2020, filed in W.P.(C)No. 5371/2020 titled ***Pavan N. Lakhani v. Air India Ltd***.]

(xvi) In some cases, even after the impugned letter dated 13.08.2020 had been issued by AIL, they were rostered for flying till 21.08.2020. [See LPA No.277/2021, titled ***Air India Ltd. v. Capt. Shantanu S. Sangidwar***]

(xvii) The pilots were on duty even after the expiration of six months notice period [in some cases, up to six months after the expiry of the notice period]. Illustratively, the flying duty roster issued to the pilot concerned in LPA No.248/202 i.e., Capt. K. Sai Sashanka went beyond the date when the notice period expired i.e., beyond 22.07.2021.

(xviii)The submission advanced on behalf of AIL that the step taken by the pilots to withdraw their resignations was triggered due to adverse conditions created with the spread of the Covid-19 pandemic is inaccurate since the withdrawal of resignation and acceptance of withdrawal of resignation are instances which occurred before declaration of pandemic and implementation of nationwide lockdown.

(xix) The provisions of the Operations Manual would bind AIL. Although averments to that effect were made in the writ petitions, the same was not denied. [See paragraphs 4.6 and 4.7 of the writ petition concerned in LPA No.248/2021, alongside paragraphs 4.6 and 4.7 of the counter-affidavit filed by AIL, in the writ petition.]

(xx) In the case of trainee pilots/first officers as well, the invocation of bank guarantees by AIL is flawed once they had withdrawn their resignation. [See LPA No.290/2021.] The assertion made by the pilot concerned in the said LPA is that he has not been paid his salary w.e.f. 20.04.2020.

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(xxi) In a nutshell, the impugned judgment of the learned Single Judge deserves to be upheld, and, consequently, the appeals preferred by AIL should be dismissed.

Analysis and Reasons:-

(I) WHETHER RESIGNATION OPERATES IN PRAESENTI?

10. Before we proceed further, it may be relevant to put forth the legal landscape concerning the date on which the resignation becomes effective, and its impact on snapping the link between the employer and employee. In other words, the event which determines the relinquishment of office/post of an employee, upon the resignation being tendered.

10.1 In this context, the first aspect to be noticed is that resignation is a voluntary act in contradistinction to termination/removal from service or even retirement/superannuation, which occurs as per the applicable rules as also the delinking which occurs by efflux of time in consonance with the provisions of the contract, obtaining between the employer and employee.

10.2 Therefore, since resignation is a voluntary act, the concerned employee can ordinarily determine the date when she/he wishes to part company with the employer. Resignation can, thus, be instantaneous or be configured to take effect, at a future date. As to whether or not the resignation operates in praesenti or in futuro would depend upon the language employed in the resignation letter. [See ***Union of India Vs Gopal Chandra Mishra*** 1978 (2) SCC 301; ***Balram Gupta*** case; and ***Punjab National Bank*** case]

10.3. Although the trigger for snapping the link between the employer and the employee is placed in the hands of the employee, the link will get snapped based on the nature of the office/post held by the employee and/or the contract entered into between the employer and the employee. Thus, ordinarily, where the offices/posts are held by persons, which have special attributes, then, persons who hold such office(s)/post(s) can unilaterally relinquish their

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office/post; as against this, most of the other office(s)/post(s) have a bilateral attribute attached to them. In other words, these are offices and posts which cannot be relinquished, unless the employer accepts the resignation. Illustratively, offices that fall in the first category i.e., office(s) and post(s) that can be relinquished unilaterally, are the offices of the President, Vice-President, Speaker, Judge of the Supreme Court and Judge of the High Court. Likewise, the offices or posts which can be relinquished only upon the resignation being accepted are offices held by government/public servants and by employees in private enterprises. This, though, will depend on the rules and regulations, which govern a government or a public servant or the terms of engagement that are agreed upon by an employee or a private employer. [See ***Moti Ram vs Pram Dev & Anr*** 1993(2) SCC 725]

10.4. Insofar as pilots employed by the AIL are concerned, they are, broadly, governed by a regime that is contained in certain provisions embedded in the following documents : Air India Employees Service Regulations [hereafter referred as "Service Regulations"; Air India Operations Manual Part-A [hereafter referred as "Operations Manual"]; CAR, issued by the Director-General of Civil Aviation [in short "DGCA"] in the exercise of powers under Section 133A of the Aircraft Rules, 1937; and the provisions of the Fixed Term Contract [in short" FTC"] wherever executed between the pilots and AIL.

10.4(a) For the sake of brevity, the Service Regulations, Operations Manual and CAR would hereafter, collectively, be referred to as ‘documents’ unless the context requires otherwise.

10.5 Therefore, before one moves further it would be relevant to advert to the specific provisions in each of these documents that would lend clarity to the approach to be adopted for dealing with the issues at hand.

(i) Service Regulations

“Resignation

18. ***<u>No employee shall resign from the employment of the</u>***

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Company without giving six months notice in writing to the Company, in case of licence/approval categories.

In all other cases, employee shall give three months notice in writing to the company or pay compensation in lieu of the notice period. *Such compensation shall be equivalent to the pay and allowances the employee would have drawn during the relevant period.* ***Provided that Chairman and Managing Director/Managing Director in case of licence/approval categories and the Competent Authority in other cases may dispense with or reduce the period of notice on grounds of continued ill-health of the employee or such other compelling or extraordinary circumstances which in the opinion of the Chairman and Managing Director/Managing Director/Competent Authority warrants such dispensing with or reduction in the period of notice;***

During the notice period, the employee is required to be on duty and serve the company. *The notice period will not run concurrently with leave unless specifically permitted under exceptional circumstances by the Competent Authority.*

Provided further that the Company shall have the right to refuse to accept the resignation/termination of services by an employee where such resignation/ termination of service is sought in order to avoid disciplinary action contemplated or taken by the management or such employees who are on bond obligations and/or other obligations to serve for a specified period of time. Where the Company decides to accept the resignation of an employee who is under an obligation to serve the Company for a specified period of time after training, the Company shall also have the right, as a precondition to acceptance of the resignation, to advise the employee to reimburse to the Company expenses on imparting training and the other payments made to the employee during the training."

(emphasis is ours)

(ii) Operations Manual

"1.34 SUBMISSION OF RESIGNATIONS BY FLIGHT CREW

i) ***Pilots who wish to resign must first deposit the training cost with the Finance Department, if applicable. After receipt of which, the resignation will be considered for acceptance by***

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the office of the CMD.

ii) ***Once the resignation is accepted by the office of the CMD, the crew would be informed accordingly and the six months notice period will then commence.***

iii) During the notice period of six months, the crew should be available for normal flight duties.

iv) ***A pilot, seeking NOC from the Company, will be issued such a document on completing all monetary and procedural formalities.***

v) ***The 'No Objection Certificate' (NOC) whenever issued to a flight crew, must indicate the reason(s) for the resignation.*** *Issues related to any incident/accident, CRM etc. must be mentioned, if applicable."*

(emphasis is ours)

(iii) CAR issued by the Director-General of Civil Aviation("DGCA")

"1. INTRODUCTION

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

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

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

2. APPLICABILITY

2.1 This Civil Aviation Requirement shall be applicable to the pilots in regular employment of any air transport undertaking as

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defined in clause (9A) of rule 3 of the Aircraft Rules, 1937.

2.2 Provision of this CAR shall be subject to the outcome of WP© 12387/2009 pending before Hon'ble High Court of Delhi.

2.3. This CAR is issued with the approval of the Ministry of Civil Aviation vide their letters No.A2012/08/2005-A dated 1st September 2005, No.A.60015/024/2008-VE dated 21st October 2009, No. AV.14011/1/2016-A dated 12th May 2017 and AV.32018/1/2017-DG dated 14th Aug 2017.

3. REQUIREMENTS

3.1 It takes about eight to nine months to train a pilot to operate an aircraft used for airline operations, as he has to pass technical and performance examinations of the aircraft, undergo simulator & flying training and has to undertake 'Skill Test' to satisfy licence requirements before he is released to fly.

3.2 Pilots are highly skilled personnel and shoulder complete responsibility of the aircraft and the passengers. They are highly paid for the responsibility they share with the airlines towards the travelling public and are required to act with extreme responsibility.

3.3 In view of the above, it has been decided by the Government that any act on the part of pilots including resignation from the airlines without a minimum notice period of one year in respect of commanders and six months in respect of co-pilots, which may result into last minute cancellation of flights and harassment to passengers, would be treated as an act against the public interest.

3.4 It has, therefore, been decided that pilots working in an air transport undertaking shall give a 'Notice Period' of at least one year in respect of commanders and six months in respect of co-pilots to the employer indicating his intention to leave the job. During the notice period, neither the pilot shall refuse to undertake the flight duties assigned to him nor shall the employer deprive the pilot of his legitimate rights and privileges with respect to the assignment of his duties. Failure to comply with the provisions of the CAR may lead to action against the pilot or the air transport undertaking, as the case may be, under the relevant provisions of Aircraft Rules, 1937.

3.5 In case an air transport undertaking resorts to reduction in

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the salary / perks or otherwise alters the terms and conditions of the employment to the disadvantage of the employee pilot during the notice period, the pilot shall be free to make a request for his release before the expiry of the notice period and the air transport undertaking shall accept his request.

3.6 It shall be mandatory for the air transport undertaking to issue NOC to the pilot on expiry of the notice period as indicated in Para 3.3 of this CAR*, failing which it shall be liable to penal action by DGCA.*

3.7 The 'Notice Period', however, may be reduced if the air transport undertaking provides a 'No Objection Certificate' to a pilot and accepts his resignation earlier than the requisite notice period."

(emphasis is ours)

(iv) Since provisions with regard to FTCs are contained in different contracts executed in different periods, what is set forth hereafter is a sample of a termination clause [concerning LPA No.246/2021], which is more or less similar in all FTCs.

"……

XI. TERMINATION OF FIXED TERM CONTRACT

You will maintain strict discipline, integrity and good behavior during the course of your Fixed Tenn Contractual engagement and shall be governed by the terms and conditions of this Fixed Term Contract and applicable Rules and Regulations of the Company as framed and amended from time to time in this regard.

The Management reserves the right to terminate your Fixed Term Contract by giving one months notice· or an amount equivalent to one months' salary (excluding Flying related allowances) in lieu thereof for unsatisfactory conduct, dishonesty, fraud or any other act which in view of the Company is contrary to its interest.

Your performance, conduct, flying techniques etc. will be adjudged for a minimum period of one year from the date of your release as First Officer. If during this period of one year, your work, conductor progress with regard to your performance, flying techniques is not found satisfactory or if you fail to qualify in any Refresher Course/Test at C.T.E. and/or at any Base, your Fixed Term Contractual engagement are liable to be terminated without any notice and such termination of Fixed Term Contractual engagement will be considered as final.

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In the event of your unsatisfactory progress or behaviour or due to any act of omission or commission on your part which in the estimation of the company amounts .to a misconduct your FTC engagement will be terminated.
In the event you abandon or leave the Fixed Term Contractual engagement of the Company before expiry of this Fixed Term Contract or extended contract, you will be liable to pay to the Company the amount of training spent by the Company……"

11. A perusal of the aforementioned documents would show that, as per the Service Regulations, an employee can resign only if he has given six months notice in writing, in case he falls in the licence/approval category; a period which is reduced to three months with an alternative to paying compensation in lieu of notice, qua employees falling in all other categories.

11.1 Furthermore, the Service Regulations confer on, the Chairman and Managing Director/Managing Director [in short "CMD/MD"] in the case of employees falling in licence/approval categories [and the competent authority in other cases], the discretion to dispense with or reduce the notice period on the ground of continued ill-health of the employee or such other compelling or extraordinary circumstances, which, in the opinion of the CMD/MD/competent authority, warrants dispensing with or reduction in the notice period.

11.2 Likewise, Clause 1.34 of the Operations Manual, which applies to the flight crew[4] [which would include a pilot], stipulates that pilots who wish to resign would be required to deposit training cost with the finance department, wherever applicable, and only after receipt of such cost, would the resignation be considered for acceptance "by the office of CMD".

11.3 It is only after the resignation is accepted by the office of the CMD, and information in that behalf is communicated to the crew, would the six months notice get triggered.

[4] Section 2(21) of the Aircraft Rules, 1937:-"Flight crew member" means a licence[d] crew member charged with duties essential to the operation[of] an aircraft during a flight duty period;

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11.4. Both, under Regulation 18 of the Service Regulations and Clause 1.34 of the Operations Manual, the concerned employees are required to be available to carry out their duties, during the notice period. Pertinently, under sub-clause 5(v) of Clause 1.34 of the Operations Manual, wherever a No Objection Certificate (NOC) is issued to a flight crew, it is required to indicate the reason(s) for resignation and state therein, the issues, if any, related to the incident(s) or accident(s). The NOC is also required to mention CRM etcetera, wherever applicable.

11.5. Significantly, under Regulation 18 of the Service Regulations, AIL has been, *inter alia*, conferred with a right to refuse to accept, the resignation of an employee, where resignation is tendered to avoid disciplinary action contemplated or taken by the management or of such employees, who, have undertaken obligations under a bond executed by them and/or other obligations which require them to serve AIL, for a specified period. Where an employee is obliged to serve AIL for a specific period after receiving training, and if AIL decides to accept the resignation of such an employee, AIL has the right [as a precondition to acceptance of the resignation], to advise the employee to reimburse such expenses that may have been incurred on training or other payments made to the employee during his/her training.

11.6. Likewise, DGCA, *via* CAR, albeit, in "public interest" has stipulated a notice period. Insofar as the pilots involved in the appeals are concerned, AIL has taken a firm stand that applicable notice period fixed is six months and that provisions of CAR apply to both permanent employees as well as those employees who have executed FTCs.

11.7. As is evident upon a plain reading of paragraphs 3.2 and 3.3 of the CAR, the stipulations *qua* notice period has been made to prevent last-minute cancellation of flights and harassment to passengers; in a nutshell, to further public weal. Thus, in line with the provisions contained in the Service Regulations and the Operations Manual, during the notice period, the pilot is

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obliged to undertake the flight duties assigned to her/him with a corresponding obligation placed on the employer (in this case AIL) not to deprive the pilot of her/his legitimate rights and privileges concerning assignment of duties.

11.8. CAR states in no uncertain terms in paragraph 3.4 that, the failure to comply with its provisions may lead to action against the pilot or the air transport undertaking, as the case may be, under the relevant provisions of the Aircraft Rules, 1937. CAR also provides that, in case the air transport undertaking resorts to a reduction in salaries/perks or otherwise alters the terms and conditions of employment to the disadvantage of the pilot, during the notice period, the pilot shall be free to request, her/his release, before the expiry of the notice period, and upon such request being made, the air transport undertaking shall be bound accept her/his request in such circumstances.

11.9. There is a further obligation placed upon the air transport undertaking, which is, that it is duty-bound to issue a NOC to the pilot on expiry of the notice period, failing which it shall be subjected to penal action by the DGCA. Furthermore, the air transport undertaking can reduce the notice period, if it provides a NOC to the pilot and accepts "his resignation earlier than the requisite notice period".

12. In sum, what emerges is that, although, Regulation 18 of the Service Regulations and Clause 1.34 of the Operations Manual are confined to the employees (in this case the pilots) of AIL, the Directives issued by the DGCA apply to the employees, including the pilots, of the all transport undertakings, including the AIL.

12.1. The common thread which runs through all these documents is that a pilot who wishes to resign, would necessarily have to give six months notice in writing.

12.2. As emphasized in CAR, the requirement of giving six months notice to the air transport undertaking is founded on public interest i.e., to prevent last-minute cancellation of flights and harassment to passengers. It is, however,

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balanced with the right of the pilot to terminate the employer-employee relationship by tendering, in writing, a minimum notice period of six months. The CAR requires air transport undertaking to issue a NOC to the pilot once the notice period expires. Whenever the air transport undertaking resorts to a reduction in salaries/perks or otherwise alters the terms and conditions of employment to the disadvantage of the employee-pilot during the notice period, she/he shall be free, to request, her/his early release. In such circumstances, the air transport undertaking is obliged to accept the request.

12.3. Besides this, in case, the air transport undertaking accepts the resignation earlier than the notice period, the notice period is automatically truncated, and the air transport undertaking is, thereafter, obliged to provide a NOC.

12.4. Therefore, what surfaces is that, broadly, Regulation 18 of the Service Regulations and Clause 1.34 of the Operations Manual are in line with the provisions of CAR, inasmuch as all three documents require the issuance of a prior notice of six months to trigger the resignation. Once the notice period expires, the AIL would have no option but to let the pilot go, save and except, where resignation is tendered to avoid disciplinary action contemplated or taken by its management or where the pilot has to fulfil bond or other obligations, albeit, for a specified period.

12.5. Barring these circumstances, AIL would have to issue a NOC to the pilot, once the notice period expires. The notice period, however, can be curtailed, as indicated above, if AIL chooses to accept the resignation at an earlier date. In such circumstances, the NOC will have to be issued by the AIL with the acceptance of resignation.

13. Therefore, the argument advanced on behalf of the AIL by Mr. Tushar Mehta, learned Solicitor General, that once the resignation is tendered by a pilot, it operates in praesenti irrespective of the date mentioned in the resignation letter, is untenable. The pilot in each case, upon tendering his resignation, would have to serve AIL for the stipulated notice period i.e., six

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months.

13.1. The pilot in a given case can provide for an effective date of resignation, which goes beyond the stipulated period of six months. The AIL on its part can curtail the notice period, which could be six months or more, by accepting the resignation at an earlier date. In such eventuality, the NOC would have to be issued by AIL at a point in time, when it accepts the resignation.

13.2. Therefore, when CAR is read along with the Service Regulations and the Operations Manual, it highlights the fact that there are three terminal points that lead to snapping, the employer-employee relationship: first, upon completion of the six months notice period; second, on the end date provided in the resignation letter of the pilot, which can be a date when the six month notice period ends or beyond the date when the six months period ends; in no case, can the end date fall on the day, which is short of the stipulated six months notice period; and third, AIL can, if it so wishes, put an end to the employer-employee relationship while accepting the resignation before the stipulated six month period.

(II) WHETHER THE RESIGNATION TENDERED REQUIRES ACCEPTANCE?

14. The question which arises for consideration is: whether the acceptance of resignation by AIL (as day follows night) is the logical sequitur i.e. the next step once the resignation is tendered by an employee pilot?

14.1. The answer to the aforesaid poser is embedded in the intersectionality of Regulation 18 of the Service Regulations, Clause 1.34 of the Operations Manual and paragraphs 3.1 to 3.7 of the CAR. The commonality between all three documents is the obligation cast on the pilots, to serve upon AIL a minimum notice period of six months, in case they intend to resign.

14.2. As noticed above, the Service Regulations and Operations Manual is specific to the employees of AIL [in this case, the pilots], whereas the provisions of CAR apply to the pilots who are employed by air transport

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undertakings, which includes AIL.

14.3. Thus, insofar as the pilots of AIL are concerned, not only Regulation 18 of the Service Regulations and Clause 1.34 of the Operations Manual would be applicable, but paragraph 3 of the CAR would also apply to them. A conjoint reading of these documents would show that the other common feature of these documents is the obligation on the part of the AIL/air transport undertaking to issue a NOC, once the notice period expires. Qua this aspect, the slight departure in the language, concerning the issuance of NOC in the Operations Manual, is that, the obligation to issue the same by AIL gets triggered once a pilot asks for the same, upon completion of all monetary and procedural formalities, whereas Paragraph 3.6 of the CAR links it to the expiry of the notice period, as indicated in paragraph 3.3 of CAR.

14.4. In this context, it may be relevant to note that, in a case where the air transport undertaking/AIL accepts the resignation tendered by the pilot earlier than the required notice period and issues a NOC in line with this action, the notice period gets truncated, and, thus, terminates on the day of acceptance of resignation. This is evident on a perusal of paragraph 3.7 of the CAR, which points in the direction that the obligation on the part of the air transport undertaking/AIL to issue a NOC, is coterminous with the expiration of the notice period.

14.5. Besides this, what is required to be noticed is that, under Regulation 18 of the Service Regulations, the AIL, as adverted to above, has, *inter alia*, the right to refuse to accept the resignation of a pilot or termination of the services of a pilot, where resignation is tendered to avoid disciplinary action, which is either contemplated or taken by the management of the AIL or where pilots are required to adhere to obligations undertaken by them, under a bond executed by them and/or any other obligation which requires them to serve AIL for a specific period.

14.6. In a case, where AIL decides to accept the resignation of an employee [in

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this case, a pilot] who is under an obligation to serve AIL for a specific period, post his training, AIL is vested with the right to impose a pre-condition for acceptance of the resignation to advise such an employee i.e., a pilot to reimburse the AIL—the expenses incurred on imparting training or other payments made to the employees/pilots, during the training period.

14.7. Likewise, Clause 1.34 of the Operational Manual provides that, the six months' notice period will commence only after the resignation tendered by a pilot, is accepted by the office of CMD/MD. It also provides that, wherever applicable, the pilot wishing to resign must first deposit the training cost with the Finance Department, before the resignation can be considered for acceptance by the office of the CMD/MD. These provisions [to which we have referred to hereinabove] do not find mention in the CAR.

14.8. As noticed above, the CAR speaks about the minimum notice period and the obligation on the part of the air transport undertakings/AIL, to issue a NOC. There is, therefore, to that extent, no dissonance as regards the fundamental aspects, which are etched out in Regulation 18 of the Service Regulations, Clause 1.34 of the Operations Manual and paragraphs 3.3 to 3.7 of the CAR.

15. The CAR, as adverted to hereinabove, operates in rem *qua* all air transport undertakings, which includes the AIL, while the Service Regulation and Operations Manual are specific to the employees i.e., the pilots, in this case, of AIL.

15.1. The variation concerning the provisions for acceptance [to which we have referred to hereinabove] is in no way inconsistent with the provisions contained in paragraphs 3.3 to 3.7 of the CAR.

15.2. Therefore, what it boils down to is that the pilot has the right to tender his resignation, which should be in writing; with a minimum notice period of six months. The pilot can, however, provide in her/his resignation letter, a terminal date when she or he wishes to exit the AIL, which can be a date beyond the period of six months. The CMD/MD/competent authority of AIL can dispense

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with or truncate the notice period to less than the stipulated minimum notice period of six months on the grounds of ill health or extraordinary circumstances; which, in the opinion of the CMD/MD/competent authority warrant dispensing with or reduction in the notice period.

15.3. Therefore, once the pilot has served the notice period, a right emerges in his favour to exit from the AIL, and seek issuance of a NOC from the AIL, upon completion of all monetary and procedural formalities, save and except in the following circumstances:

(i) where resignation is tendered to avoid disciplinary action **contemplated** or **taken** by the management

(ii) where a pilot is required to fulfil obligations undertaken under a bond executed by her/him or other obligations to serve AIL for a specific period, in which case, the AIL can advise reimbursement of charges incurred by it on training and/or other payments made by the AIL, during the training, before it takes a decision to communicate the resignation to a pilot, placed in such circumstances.

15.4. Thus, what follows is that, although there is an obligation on the part of the pilot to serve a minimum notice period of 6 months, the employer-employee relationship does not dissolve till such time a decision is taken at AIL's end as to whether or not the pilot tendering his resignation falls in the excepted categories, adverted to hereinabove. This hoop [as a figure of speech], AIL will have to cross in every case. This can happen only, upon AIL taking a conscious step and reaching a firm conclusion whether or not the resignation tendered, in a given case, is to be accepted.

15.5. As indicated above, AIL can refuse to accept the resignation tendered by a pilot not only in cases where disciplinary action has been taken by the management but also in those cases where disciplinary action is contemplated; the other excepted category being the obligation cast on the pilot to serve on the

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AIL for a specified period, in consonance with bond obligations or other obligations undertaken by the pilot.

15.6. The excepted categories, to our minds, serve a larger public interest as, apart from anything else, they also secure the financial interest of the AIL. The AIL, on its own showing, undertakes huge expenses in training the pilots at every level, which AIL may want to be reimbursed if it decides to let go of the pilot.

16. Bearing in mind the structural framework of the aforementioned documents and the legal principles enunciated by the judgments referred to hereinabove it is clear that : resignations tendered by the pilots did not operate in praesenti and for them to be effective they had to be accepted, albeit, with two caveats:

(i) First, AIL had the right to truncate the notice period.

(ii) Second, upon completion of the notice period which could be six (6) months or more, AIL would have to allow the pilots to exit [with the a corresponding obligation, inter alia, to issue a NOC] excluding those cases which fell in the excepted category.

(III) INCONSISTENT CONDUCT OF AIL

17. The fact that resignations had to be accepted and that was the understanding of AIL as well, is evident from its conduct i.e., in issuing the impugned letters, the majority of which are dated 13.08.2020; except in LPA Nos.273/2021, 281/2021, and LPA No.278/2021. The impugned letters are dated 16.10.2020 in LPA Nos.273/2021 and 281/2021, while the impugned letter is dated 15.08.2020 in LPA No. 278/2021.

17.1. The argument advanced on behalf of AIL that acceptance of resignations, submitted by the pilots, was not required; is completely inconsistent with the conduct of the AIL in the cases referred to in LPA Nos. 247/2021, 248/2021, 269/2021, 275/2021, 276/2021, 277/2021, 279/2021, 280/2021, 282/2021 and

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283/2021. These are cases in which AIL after accepting the plea put forth by the pilots that they were desirous of withdrawing their resignations, proceeded to accept the resignations which were tendered in the first instance.

17.2. Thus, the argument advanced on behalf of AIL that acceptance of resignation was not mandated in law is contrary to their own conduct and understanding, both, at the time of issuance of the impugned letters and also, at the stage when AIL was contemplating action in the matter concerning resignations tendered by the pilots.

17.3. The learned Single Judge, while observing that notings in files maintained by the AIL cannot ordinarily form the basis of a decision by the Court, came across internal discussions, which disclosed that the position taken by the officers of AIL was—that where letters withdrawing resignations had been accepted, those pilots had to be taken back in service. This discussion is contained in paragraph 44 of the judgment rendered by the learned Single Judge.

> *"44.....The notings are indicative of the fact that the respondent (i.e. the appellant AIL herein) was fully aware of the position of law that, if resignations were withdrawn within the notice period of six months, prior to their acceptance by the respondent, it shall have no jurisdiction to act on the said resignations. The respondent was fully conscious that, with respect to the pilots, whose withdrawals were accepted, the orders could not be recalled and there are repeated notings on the file against acceptance of these resignations. In fact noting dated 13.07.2020 records that the cases of such pilots cannot be treated similar to other categories as there is a contract of employer and employee, which must be honoured by Air India. Succeeding this, the noting dated 23.07.2020, recording that any action to the contrary could lead to a challenge in court of law....."*

17.4. There is neither any ground in the appeals preferred before us, nor was any argument advanced that the finding returned in the impugned judgment qua notings made in AIL's file was incorrect and/or inaccurate. The reason that the aforesaid extract has been adverted to by us is not that the noting in the file by itself would determine the outcome of the litigation pending between the

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parties, but only, to highlight the fact that AIL has set up a case which is contrary to its own understanding of the various provisions of the documents adverted to hereinabove.

(IV) RELEVANCY OF REASONS IN ASCERTAINING THE LEGAL TENABILITY OF RESIGNATIONS

18. Therefore, if the legal and factual position which has emerged is taken to be correct, the argument advanced on behalf of AIL as to what motivated the pilots to tender the resignations, in our view, would be irrelevant.

18.1. The submission made that the pilots tendered their resignations because they sought "greener pastures" i.e., better offers from private airlines, has no relevance. We may, however, point out, in passing, that none of the impugned letters, via which resignations were accepted, was this, given as a reason.

18.2. As a matter of fact, AIL adverted to its own strained financial position, which had become, according to it, worse during Covid-19 pandemic; as one of the reasons why it had chosen to accept the resignations. According to AIL, the concomitant consequences of this circumstance was truncated operations [which were not likely to improve in the foreseeable future], leading to redundancies.

18.3. In sum, AIL had portrayed that it had been suffering losses, and did not have the financial ability to make payments. These reasons were, though, prefaced with AIL's understanding of the decision rendered by the Supreme Court in the ***Sandhu*** case. Based on its appreciation of the ratio in the ***Sandhu*** case, AIL concluded that the pilots could not recall their resignations, and hence went on to apply the same dicta to even those cases, where it had accepted the pilot's communications for withdrawal of resignations.

18.4. As noticed above, similar letters were issued in LPA Nos. 273 and 281/2021 as well as LPA No.278/2021, which are dated 16.10.2020 and 15.08.2020.

18.5. At this juncture, it is, however, relevant to point out [something which

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emerges even upon reading the impugned letters issued by AIL to the pilots] that AIL's financial position was precarious, even before Covid-19 pandemic broke out and that because it exacerbated during pandemic, following steps were taken by AIL :

(i) Via notification dated 15.07.2020, issued by the Government of India, Ministry of Civil Aviation (MOCA), the flying allowance was reduced to 20 hours [i.e., actual flying hours or 20 hours, whichever is higher], as against 70 hours, and the rate of flying allowance per hour was reduced by 40% w.e.f. 01.04.2020, which incidentally constitutes 70% of the salary paid to a pilot.

The fact that pilots were getting flying allowances for 70 hours, and that the same constituted 70% of their salary, is discernible from a perusal of the assertions made in W.P. (C) 5330/2020 [concerning LPA No.264/2021]; an aspect which has not been rebutted by AIL.

(ii) Furthermore, vide notification dated 17.07.2020 [which was on similar lines as aforementioned notification dated 15.07.2020], MOCA rationalised allowances of other employees as well i.e., those who were not pilots, having regard to the reduction in the load factor and the instructions issued by MOCA, concerning flight capacity.

19. The argument, propounded on behalf of the AIL, that the pilots had taken a decision to withdraw their resignation letters because travel restrictions had kicked-in on account of Covid-19 pandemic, disregards the reason(s) tendered by each pilot in her/his resignation letter; pertinently most of the reasons were personal to the concerned pilot . It is possible that the financial wherewithal of the pilots' became untenable because of Covid-19 pandemic kicking-in, but that by itself, in our opinion, cannot form the basis of denuding them of their legal right to revisit their decision to resign from AIL.

19.1. In this behalf, it would be relevant to refer the judgment rendered by the Supreme Court in the ***Balram Gupta*** case. This was a case where the appellant before the Supreme Court sought to withdraw his letter, whereby he had

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indicated his decision to voluntarily retire from service. The letter, which was dated 24.12.1980, stated that he would retire from service w.e.f. 31.03.1981, and since he was required to give notice, he also averred that the notice would commence from 01.01.1981. The Government of India, vide letter dated 20.01.1981, accepted the appellant's offer. However, upon being advised by relatives and staff members, he decided to continue in government service and gave notice in that behalf, via communication dated 31.01.1981. The Government of India, however, took the position that the appellant i.e., Balram Gupta could not change his position, and, therefore, his decision to voluntarily retire from service, could not be altered.

19.1(a). The Supreme Court on the aspect of the right of an employee to revisit his decision to exit from service because of changed circumstances made the following apposite observations :

> *"12.* ***In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given****. In the facts of the instant case such indication has been given.* ***The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom.*** *If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.*
>
> *13.* ***We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that***

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> ***there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize the Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude.*** *The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees."*
>
> (emphasis is ours)

19.2. Thus, in our view, to find fault with the pilots that they decided to change their position cannot be held against them, in the facts and circumstances which have arisen in the present cases. The reason that we say so is that, if AIL had altered its position from that which obtained on the date when request for withdrawal of resignation was submitted to AIL, as for example in the ***Sandhu*** case, then, perhaps, one could have taken a different view in the matter.

19.3. On behalf of the AIL, during the course of hearing, nothing has been shown to us which would show that its position stood altered on the date when resignations were withdrawn by the pilots; the only aspect which, as noticed above, was brought to fore, concerned its financial position. This argument, in our view, cuts both ways for the reason that if AIL's operations got truncated during Covid-19 pandemic, the impact of the same on the employees was no less.

19.4. The State and its instrumentalities are obliged to act as a model employer, and, therefore, cannot be seen to deprive the pilots of, the right to serve the organization [i.e., AIL, in this case], at a point in time when finding jobs in the private sector is a difficult proposition. The State and its instrumentalities are expected to look at myriad aspects and not just profits. Welfare of employees in

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times when jobs are difficult to come by should form a crucial ingredient of its decision making process. The State cannot be seen to cast off its social responsibility towards its employees and their families when it expects the private sector to bear that burden.

(IV) IMPORT AND SCOPE OF CAR.

20. This brings us to the argument advanced on behalf of AIL that CAR encapsulates a "regulatory scheme" which is *sui generis*.

20.1. It was argued that the regime incorporated in CAR, which is binding on pilots who are permanent employees and those, who had executed FTCs was founded on subserving public interest, and not the interest of an individual pilot. According to us, this argument misses a crucial point, which is, that AIL will not be able to serve public interest without the aid and assistance of its employees, which includes the pilots.

20.2. A close perusal of the framework of CAR would show that the emphasis is on ensuring that aircrafts owned by air transport undertakings are not grounded only, because the pilots take a sudden decision to exit- as it takes about eight to nine months to train a pilot to operate an aircraft, coupled with the fact that she/he has to pass technical and performance examinations, and also undertake simulator and flying training and various skill test, before she/he is issued a licence. It is because of this reason that CAR provides that, during the notice period, the pilot shall not refuse to undertake the flight duties assigned to her/him.

20.3. Furthermore, it is in recognition of the fact that this public interest can be furthered only with the active assistance of the pilots, that countervailing obligations have been placed under the CAR on the employers i.e., the air transport undertaking. The countervailing obligations cast on the employers, *inter alia*, requires them to maintain the pilots' rights and privileges *qua* the duties assigned to them, and also ensure that there is no reduction in

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salaries/perks or alteration in terms and conditions of employment, to the disadvantage of the pilot serving the notice period. The consequences, of either side [i.e., the pilot or the air transport undertaking] not adhering to what is provided in CAR, are also set forth therein.

20.4. Thus, the argument advanced on behalf of AIL that the public interest aspect adverted to in CAR does not take into account the interest of the pilots, does not emerge on a plain reading of the provisions of CAR.

20.5. That said, it has to be recognised that the notice period stipulation put in CAR is to ensure that no inconvenience and/or harassment is caused to the passengers because of flights being grounded, on account of unavailability of pilots.

21. We are, however, unable to agree with the argument advanced on behalf of AIL that the provisions contained in paragraphs 1.1, 3.3 and 3.4 of CAR would show that once the resignation is tendered by the pilot, it *de jure* brings to an end the employer-employee relationship on the date of resignation, although, *de facto* in public interest, she/he continues to serve the airline.

21.1. According to us, nothing of the kind, which has been suggested, emerges on the plain reading of the aforesaid provisions of CAR. The issuance of CAR, as discussed above, has a specific purpose, which is, to incorporate a minimum notice period for pilots, wishing to exit the air transport undertaking, so that operations are not brought to an abrupt halt to the detriment of the passengers. This purpose has been balanced by conferring certain valuable rights on the pilots, which includes the right to exit after notice period is served and to demand the issuance of a NOC.

21.2. The fact that a jural relationship subsists between an employer and an employee, is clearly evident from the need to accept the resignation letter and to issue a NOC, almost simultaneously, in case the employer i.e., the air transport undertaking [which, in this case, includes the AIL], were to truncate the notice period. [See paragraph 3.7 of CAR.]

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22. As discussed above, the acceptance of resignation is an integral part of the process put in place for a pilot seeking to exit from AIL. If the argument put forth on behalf of AIL were to be accepted, it could lead to serious difficulties for AIL, if it was inclined to bring a delinquent pilot to book i.e., hold her/him accountable. In our opinion, the power to take disciplinary action against the pilot would subsist, till there is a snapping of the employer-employee relationship, and that delinking of this relationship can happen only, once the resignation tendered is accepted.

22.1. This ties in, with our discussion adverted to hereinabove, which is, that the resignation letters tendered by the pilots did not operate in praesenti, and that they were entitled to indicate the date of their exit, bearing in mind that they had to serve a minimum notice period of six months.

22.2. Furthermore, the argument advanced on behalf of AIL that the letters seeking withdrawal of resignation were couched in the form of request, as the pilots had no legal right to withdraw their resignations, is totally misconceived.

22.2(a)Since each letter depicts the personal tryst of the pilot, the language of these letters is not similar. For a better sense of this aspect of the matter, by way of illustration, extracts of two letters are set forth hereafter:

Sample I

"TO
THE GENERAL MANAGER,
OPERATIONS DEPARTMENT,
SOUTHERN REGION,
AIR INDIA LTD.,
HYDERABAD
Dear Sir,
Subject: Withdrawal of my Resignation
This is with reference to my letter of resignation, dated 05th Feb' 2020. I am hereby informing you that I am withdrawing my resignation with immediate effect.
Thanking you
Yours sincerely
sd/-
F.O. Udit Narula

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SAP. No. - 80038149"

Sample II

"Resignation withdrawal
Respected Sir,
This is to inform and request you that Myself F/O Jeetender Yadav emp. No. 81033012 have resigned on 5 July 2019 and completed 6 months notice period on 3rd Jan 2020. As the company is now taking into account my issues, Company permitting I am willing to take my resignation back and continue services with AIR INDIA.
Request to adjust days marked as "Resigned" after 3rd Jan with PL for the month and maintain my Seniority as original for any upgrade and training as well.
Hoping for a positive and asap response.
Request let me know if anything else is needed.
Thank you.
Best regards
F/O Jeetender Yadav
#81033012 "

22.2(b)A careful perusal of the first letter [corresponding to LPA No.276/2021] shows that the first letter is, clearly, not a request for withdrawal of resignation, while the second letter [corresponding to LPA No.275/2021] is polite but firm, indicating that the pilot wishes to withdraw the resignation.

22.2(c) The argument advanced by AIL misses the point that once withdrawal of resignation had been triggered, then nothing was left for AIL to accept. In our opinion, the view taken by learned Single Judge on this score is correct.

22.3. Thus, logically, what follows is that, before resignations tendered by the pilots were accepted, they had every right in law to withdraw the same as their jural relationship with AIL remained unimpaired till their resignations were accepted.

(V) CASES WHERE RESIGNATIONS WERE ACCEPTED PRIOR TO EXPIRY OF NOTICE PERIOD

23. The cases referred to in Table I above would show that, the resignations tendered by the pilots were sought to be accepted, before they had been

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withdrawn. Insofar as these nine cases are concerned, what has surfaced is that AIL through its General Manager (Operation), issued letter(s), which purportedly accepted their resignation prior to expiry of the notice period. The relevant parts of one such letter which are similar, are extracted hereafter:

"From, *To,*

General Manager (Pers.)
Air India Limtied
Northern Region
New Delhi

[Name of Pilot]
[Designation]
Air India Limited
Northern Region
New Delhi

Through – GM (Operation)

Ref No.- DPE/Resign/....

Date: --.--.----

Subject: Resignation

This refers to your resignation dated _____ the Competent Authority has accepted your resignation and you will stand released from the services of the Company w.e.f close to working hours of _____ i.e. after the completion of required notice period of 06 months.

Further, your account will be settled after checking your commitments including 'NO DUES' from all concerned departments and submission of AER, BCAS pass and any other Company's properties in your possession.

Please note that you are required to be available for duty during the notice period as per Company's requirement.

[Name of officer]
Assistant Manager (Pers.)
For General Manager (Pers.)

cc: Director (Pers.)
cc: Director (Operations)
cc: Regional Director (NR)
cc: General Manager Pers.(HQ), Airlines House, New Delhi
cc: GM(Fin.), NR
cc: Sr. Manager (Pers./L&P/Estate)
cc: Payroll, AIL, NR"

23.1. A perusal of the aforementioned extract would show the following :

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(i) On the face of it, it shows that the resignation was accepted, although, the pilot concerned was informed that he would have to serve a minimum notice period of six months. This, however, is contrary to paragraph 3.7 of CAR, as once the notice period is truncated, AIL was obligated to let the pilot go and, simultaneously, issue the concerned pilot a NOC; a step which was, admittedly, not taken.

(ii) As noticed above, the communication, that purported to accept the resignation, was issued to the concerned pilot, at the behest of the General Manager (Personnel), AIL, with a copy to other officers.

(iii) The record in each of these cases shows that, prior to the completion of the six months notice period, a communication was sent by the pilot concerned withdrawing her/ his resignation.

23.2. Furthermore, even after the release date, [as stipulated in the above-referenced communication(s)] had been crossed, for reasons best known to AIL, the impugned letters were issued attempting to accept the resignations which stood withdrawn.

23.3. Therefore, it appears that AIL was treating the release date as the date when the employer-employee link would snap. By not issuing the NOC, AIL reneged on its part of the obligation; resulting in employer-employee relationship remaining alive and AIL's attempt at accepting the resignation remained inchoate. The acceptance of resignation in these cases has to be seen, in light of the subsequent conduct of the parties.

23.4. Besides this, in LPA Nos.247/2021, 269/2021, 280/2021 and 282/2021, upon the concerned pilot withdrawing his resignation, AIL accepted the withdrawal of resignation. The pilots in these cases, thereafter, continued to perform their assigned duties till the issuance of the impugned letters, except in LPA Nos.247/2021 and 269/2021, where duties were performed even after the release date mentioned in the impugned letters. Furthermore, it is noticed that in these cases, the resignations were made effective from the date which

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appeared on the impugned letter(s), and not from the date indicated by the resignation letters. As is noticed above, the impugned letters in these cases, were dated 13.08.2020.

LPA No.	Effective date of resignation in the communications, that sought to accept resignation tendered in the first instance	Effective date of resignation in the impugned letter
247/2021	10.03.2020	13.08.2020
269/2021	20.03.2020	13.08.2020
280/2021	09.04.2020	13.08.2020
282/2021	18.03.2020	13.08.2020

23.5. The submission advanced on behalf of the AIL that the learned Single Judge had erred in granting relief, is correct to the extent that the aforementioned facts do not find mention in the impugned judgment. However, as noted by us hereinabove, the circumstances in the instant cases have to be appreciated in the light of the subsequent conduct of AIL.

23.6. At the risk of repetition, it appears that AIL, even in these nine cases, did not consider the communications issued by them as acceptance of resignation, which brought about a dissolution of the employer-employee relationship. As discussed above, there was, both, under the CAR and the Operations Manual, a countervailing duty cast upon AIL to discharge certain obligations, once resignation was accepted; which included issuance of NOC. Under paragraph 3.7 of CAR, if AIL chose to truncate the notice period, it was obliged to issue a NOC. Clearly, there is no reference in the above-referenced letters [a sample of which is extracted hereinabove] that an NOC was issued to the aforementioned nine pilots; rather they were assigned duties even after purported acceptance of resignation by AIL on 06.01.2020, 09.01.2020, 22.01.2020, 29.01.2020 and 17.02.2020. AIL could not have, so to speak, retained the cake and eaten it

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(too).

24 AIL, it appears, was keeping its options open or at least had not firmed up the date when it would bring to an end the jural relationship that subsisted between the pilots and itself. This resulted in a situation where the pilots on a revisit sought to withdraw their resignation letters, in and about March-April 2020. AIL, on its part, allowed this situation to subsist till August-October 2020. The fact that these nine [9] pilots were performing their duties has not been disputed before us. Therefore, the inference that can be drawn in these cases is that the letters dated 06.01.2020, 09.01.2020, 22.01.2020, 29.01.2020 and 17.02.2020 did not intend to snap the employer- employee link before the concerned sought to withdraw their of resignations.

(VI) FTC

25. As noticed above, the provisions for exit available to pilots who had entered into FTCs with AIL are distinct and different, as compared to permanent employees.

25.1. That being said, it is a common case of parties, that FTCs are also governed by the provisions of CAR. The tenure of the contract in each of these cases in the first instance was five years commencing from the date they were released as first officers, pursuant to their training being completed.

25.2. The FTCs were/are extendable by another five years, subject to satisfactory performance. These set of pilots, both, during the initial period and the extended period, were required to be governed by specific terms and conditions contained in the FTC.

25.3. Insofar as termination of the FTCs is concerned, it was/is dependent on the following :

(i) The concerned pilot maintaining discipline, integrity and good behaviour during the course of his engagement. During this period, the concerned pilot stands governed by the terms and conditions of the FTC and applicable rules

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and regulations of AIL, as framed and amended from time to time.

(ii) Termination of FTC could be brought about by AIL upon serving one month's notice or an amount equivalent to one month's salary (excluding flying related allowances) in lieu thereof.

(iii) The termination could be brought about on the ground of unsatisfactory conduct, dishonesty, fraud or any other act, which, in the view of AIL, was/ is contrary to its interest.

(iv) Since the performance, conduct, flying techniques, and the like, concerning the concerned pilot was to be adjudged for a minimum period of one year commencing from his release as a first officer, the FTC could be terminated without any notice; in case his performance or flying techniques were not found satisfactory or if she/he failed to qualify any refresher course/test at CTE or at any base. In such eventuality, the termination was/is considered final.

(v) Furthermore, in the event of unsatisfactory progress or behaviour or due to any act of omission or commission on the part of the concerned pilot, which in the estimation of AIL amounted to misconduct, the FTC was liable to be terminated.

(vi) Besides this, the FTC provided that if the concerned pilot were to abandon or leave her/his engagement before the expiry of the term or the extended term, she or he would be liable to pay AIL the amount incurred by AIL in training the pilot.

(vii) With respect to the last aspect i.e., recovery of training cost, Clause V of the FTC [in this scenario, FTC dated 28.06.2015] is relevant, which, apart from crystallizing the approximate figure that could be recovered, indicates that the recovery would be made while the concerned pilot served AIL by making adjustment in the salary and flying related allowances, albeit in 60 equal monthly instalments, after her/his release as first officer. Furthermore, the training cost, as per the said clause, was secured by the concerned pilot by

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executing a bank guarantee, equivalent to the amount spent on training, over the stipulated period of five years.

(viii) The trigger for invoking the bank guarantee [as provided in the said clause], were the following :

(a) If the engagement of the concerned employee was terminated for any reason whatsoever.

(b) If the concerned pilot were to leave AIL before completion of the stipulated period i.e., five years.

(c) The caveat put in was that the bank guarantee would be invoked by AIL for the "proportionate amount" i.e., after adjusting the amount already recovered from salary and flying related allowances.

25.4. The table pertaining to FTC, which is adverted to in paragraph 5 hereinabove, would show that there are two sets of pilots:

(i) one set comprised those, whose initial tenure has already come to an end, during the pendency of the appeal. These are pilots concerned with : LPA Nos.246/2021, 249/2021, 250/2021, 251/2021, 252/2021, 255/2021, 263/2021, 266/2021, 270/2021, 275/2021, 279/2021, 281/2021 and 282/2021

(ii) The second set consist of, those pilots whose tenure has not as yet expired. These are pilots involved in : LPA Nos. 264/2021, 273/2021, 276/2021, 278/2021, 289/2021, 290/2021, 291/2021, 292/2021 and 294/2021.

26. Notably, in the FTCs executed between 2016 and 2018, a provision for liquidated damages was incorporated to secure the interest of AIL in the event the concerned pilot abandoned or left AIL i.e, brought the FTC engagement to an end, before expiry of the tenure or the extended tenure.

26.1. In four cases i.e., LPA Nos.249/2021, 275/2021, 279/2021 and 290/2021 cases, the liquidated damages have been quantified at Rs.28,00,000/-, while in seven cases i.e., 264/2021, 276/2021, 289/2021, 278/2021, 291/2021, 292/2021 and 294/2021, they have been quantified at Rs.50,00,000/-.

26.2. In this context, in LPA Nos. 264/2021, 289/2021, 291/2021, 292/2021

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and 294/2021 [i.e., cases falling in Category 'D' of the judgment of the learned Single Judge], the concerned pilots approached the writ court and directions were issued by the court, whereby in the first instance, the invocation of bank guarantee was stayed, and, thereafter, a direction was issued to release the same upon proportionate amount towards training cost being deposited by the concerned pilot.

27. In sum, insofar as the pilots who executed FTCs are concerned, their cases stand on a slightly different footing. Since they are not, admittedly, the permanent employees of AIL, their exit would largely be dependent on the terms and conditions provided in the FTC.

27.1. Having said that, the provisions of CAR would apply to even those pilots who had executed FTC, and therefore, to the extent the provisions of the FTC are inconsistent with CAR, the provisions of the former would have to give way to the latter. In other words, the minimum notice period obligation cast on the concerned pilot to exit, will bind them as well.

27.2. The logical sequitur of this construction would be—notwithstanding the fact that say in a given case, less than six months time frame was available before the expiry of initial tenure of five years, in our opinion, the concerned pilot if he chose to tender his resignation, would have to serve a minimum period of six months as provided in CAR, unless AIL decided to shorten the notice period.

27.3. It is pertinent to note that except for the five cases [i.e., LPA Nos.246/2021, 250/2021, 251/2021, 263/2021 and 282/2021], as discussed above, the other pilots who had executed FTCs withdrew their resignation prior to the resignation being accepted in the first instance, *via* the impugned letters. Therefore, logically, on the same principle which we have applied to pilots appointed as permanent employees, their contracts should be allowed to subsist till such time they fall foul of the terms and conditions contained in the FTC.

27.4. The FTC cases cannot, in our view, be dubbed as cases involving

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abandonment or cases where pilots disengaged themselves from AIL; the admitted position is that they continued to perform their assigned duties.

27.5. Furthermore, Clause I of the FTC [which is common to all FTCs] in no uncertain terms says, as alluded to hereinabove, that the initial term of the contract is five years, which is extendable by another five years subject to satisfactory performance. It is not the case of AIL that the performance of any of the pilots who had executed FTC was not satisfactory or that their cases fell within the purview of the clause [under the contract], which deals with the events which can bring about termination of FTC.

27.6. We agree with the learned Single Judge that if the initial term of five years provided in the FTC has come to an end, the concerned pilots can only seek consideration of their case for being re-engaged for an extended term of five years, as provided in the FTC.

(VII) THE SANDHU CASE

28. This brings us to the last aspect which, perhaps, from the point of view of the AIL, is the edifice on which the defence of its actions rest.

28.1 As argued by the learned counsel for the pilots and noticed by the learned Single Judge, the Supreme Court in the ***Sandhu*** case was dealing with the facts, which were peculiar to that case. This was a case where the concerned pilot submitted her resignation to AIL on 03.07.2017. The resignation letter, as required, adverted to the fact that she was giving AIL a notice of six months'.

28.2. The six months' notice in that particular case would have expired in January 2018. However, AIL found a replacement for the pilot and engaged another pilot on 14.08.2017. AIL, it appears, had also incurred cost of Rs.12,00,000/- in training the newly engaged pilot. Within less than a month of engaging a pilot in place of Ms Sandhu, who had tendered her resignation, AIL, *via* communication dated 02.09.2017, accepted Ms. Sandhu's resignation. It is, thereafter i.e., nearly three months later, on 18.12.2017, that Ms. Sandhu sought

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to withdraw her resignation letter tendered on 03.07.2017.

28.3. The aforesaid events would demonstrate that both the engagement of new pilot in place of Ms Sandhu, and the acceptance of her resignation, took place before its withdrawal.

28.4. Given this position, the Supreme Court concluded that Ms. Sandhu could not have withdrawn her resignation. According to the Supreme Court, the facts and circumstances which came to fore in the ***Sandhu*** case placed the matter in the exception carved out in paragraphs 41 and 50 of the ***Gopal Chandra Misra*** case and paragraph 12 of the ***Balram Gupta*** case [which is extracted hereinabove]. The relevant part of ***Balram Gupta*** judgment that the Supreme Court was, perhaps, referring to was the following :

> *"If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter ….."*

28.5. Likewise, insofar as ***Gopal Chandra Misra*** case is concerned, the exception alluded to by the Supreme Court in that case concerned those cases where the employee intended or proposed to resign from a future specified date. The Supreme Court held that the resignation could be withdrawn "at any time before it becomes effective"[5]. The Supreme Court goes on to state in paragraph 50 that the resignation becomes effective, when it "operates to terminate the employment or the "office tenure of the resignor"[6].

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[5] "**41.** The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment."

[6] "**50.** It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation

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28.6. As discussed above, in the aforesaid cases, the resignations were withdrawn, before they became effective. This principle would also apply to the cases referred to in Table I above, as by its conduct, AIL seems to have portrayed that the employer-employee link remained live, which was terminated only, *via* the impugned letters, *albeit*, after the resignation letters were withdrawn. In other words, the resignations in these cases had not become effective.

28.7. To our minds, AIL has a misread of the ratio of the judgment rendered by the Supreme Court in the ***Sandhu*** case. Ironically, the reason d'etre of AIL's defence in the ***Sandhu*** case was that it had accepted the respondent's resignation before, and found a suitable replacement before she had withdrawn her resignation. In that case, AIL did not argue, as it seeks to do in this case, that resignation operates in praesenti, and it need not have been accepted.

(VIII) RATIOCINATION OF THE SANDHU'S CASE

29. At this juncture, it may be relevant to record as to why, according to us, AIL has not been able to glean, in our opinion, the correct ratio decidendi in the ***Sandhu*** case. To reach this conclusion, it has to be borne in mind, firstly, what is the meaning of the expression "ratio decidendi" and secondly, how does one discern the ratio decidendi of a judgement. Frankly, ratiocination is not easy; a judgement could contain multiple ratios- as, say, in judgment rendered by an appellate court comprising more than one member.

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becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (*a*) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns *in praesenti*, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

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29.1. Insofar as the meaning of the expression is concerned, simply put ratio decidendi is the principle or rule of law on which a court's decision is founded. It is that principle or rule of law on which the later court thinks that the previous court founded its decision. [See Black's Law Dictionary 7th Edition page 1269.]

29.2. The importance of ratio decidendi is that it forms a bedrock on which a judicial precedent evolves over a period of time. As far back as in early 20th Century, the Earl of Halsbury LC forged the following tool while rendering an opinion in ***Quinn v. Leathem,*** 1901 AC 495 (at page 506), as to how the ratio of a decision should be discerned:

> *".....Now before discussing the case of Allen v. Flood, (1898) A.C.1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all...."*

29.3. This view has been followed by the Supreme Court as far back as in 1968 in ***Sudhansu Sekhar Misra*** case **,** wherein the Supreme Court observed that a decision is an authority for what it decides. Every casual observation found in the case or what logically follows thereof, not being the ratio of the decision, does not form a binding precedent.

29.4. In this context, one has to bear in mind that a distinction has to be drawn between ratio decidendi and obiter dicta as also a casual observation made by the court in a given case. Casual observations do not form a part of a judicial precedent, and therefore, are not binding. [See ***Mohandas Issardas v. A.N.***

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Sattanathan, ILR 1955 Bom 318/AIR 1955 Bom. 113.]

29.5. Therefore, casual and general observation cannot form the foundation of a particular case. It is only the principle or rule of law, as enunciated in the judgment which can have a binding effect of ratio decidendi.

29.6. The ratio decidendi should be relatable to the facts found or assumed to be true and thus have a tenor of materiality in the context of the decision reached in a matter. [See ***State of Orissa v. Mohd. Illiyas*** (2006) 1 SCC 275.]

30. At this juncture, we may note while there is a cleavage in the view whether or not obiter dicta is binding, there is a consistent and clear view held that causal observations which are not relatable to the facts found or facts proved or assumed to be proved, do not, have the effect of a binding precedent.

30.1. We may also indicate herein that the courts in deciphering what is the ratio decidendi, in a given case, have also applied the "inversion test". This test was propounded by Professor Wambaugh and is noticed in ***State of Gujarat v. Utility Users Welfare Association and Ors***. 2018 (6) SCC 21, in paragraphs 113 and 114. Professor Wambaugh articulated the test in the following words:

> *".....In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also...."*

30.2. Thus, in a nutshell what is important while examining a case, to decipher its ratio decidendi, is to gather which part of the opinion is essential for deciding the matter. Applying the test outlined in the judgments referred to above what emerges, as noticed above, is that the conclusion reached in the ***Sandhu*** case cannot be delinked from the material facts found in the matter, which is, that the

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resignation was withdrawn after it had been accepted and a replacement had been found.

30.3 Therefore, had, the factum of acceptance of resignation and a substitute being found, not preceded its withdrawal, the conclusion, perhaps, may have not been the same.

30.4. Thus, in our opinion, for AIL to conclude that the court in the ***Sandhu*** case enunciated a principle, in the backdrop of CAR, that once the resignation is tendered it operates in praesenti and that the pilot continues in service only in public weal and thereby, in a sense, ends up denuding the pilot of her/his right to withdraw the resignation before it is accepted, is not, an aspect which came up for consideration in the ***Sandhu*** case.

30.5. We, therefore, find it difficult to accept the submission proffered on behalf of AIL that these appeals should be allowed in the backdrop of the decision rendered in the ***Sandhu*** case.

30.6. In our view the court did not appear to expound any such principle or rule of law.

Conclusion:-

31. Therefore, for the foregoing reasons, we find no good ground to disturb the final result arrived at by the learned Single Judge.

31.1. It is pertinent to note that, after the judgment was reserved, several pilots approached the Court with applications, which, in effect, stated that they were no longer seeking reinstatement in service. The reason given, broadly, was that they could not afford being without a job. Since the period of disengagement had continued for far too long, they had taken up other avenues of engagement that came their way and therefore, the only relief that they sought was, payment of back wages till such time they found alternate jobs. The pilots who had put forth this pleas before us are concerned with the following appeals i.e., ***LPA Nos. 266/2021; 273/2021; 289/2021; 291/2021; 292/2021 and***

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applicant/respondent no. 2 in LPA No. 267/2021.

31.2. Thus, the aforesaid employees would not be reinstated but would be entitled to back wages for the period spanning between the date when their resignations were accepted and the date when they found alternate employment.

32. We, thus, dismiss the above-captioned appeals and confirm the directions issued in paragraph 92 (a) to (g) of the impugned judgment with the caveat given in paragraphs 31.1 and 31.2.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

DECEMBER 17, 2021
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