IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: September 26, 2022

\+ W.P.(C) 6080/2021, CM APPL. 19254/2021 & 36130/2021

SATYAM THAPLIYAL

..... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Ms. Prity Sharma, Adv

versus

AIR INDIA LIMITED AND ANR

..... Respondent

Through: Ms. Suruchi Suri and Mr. Varun Singh Thapa, Advs. for Air India

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

> *"a) Issue appropriate writs, orders or directions in the nature of Mandamus or any other writ, quashing the arbitrary Order / letter dated 05.08.2020, Ref. no.: DODIADM/2816119* ***[Annexure- P1]****, passed by Respondent No. 1, terminating the services of the Petitioner as a pilot, for absenteeism during the nationwide lockdown period, issued by the Respondent No. 1, thereby, reinstating the services of the Petitioner with Air India Limited;*
>
> *b) Issue appropriate writs, orders or directions in the nature of Mandamus or any other writ quashing the arbitrary Order / letter dated 07.06.2021, Ref. no.:*

*DPEITerm/296 [**Annexure- P2**] by the Respondent No. 1, imposing an unreasonable liability of Rs. 50,00,000/-;*

c) Direct Respondent No. 1 to disburse the salary due and other financial entitlements including the cost of the bank guarantee encashed, interest on the remaining amount of the bank guarantee, amount deducted from Petitioner's FD No. 06720300044583, deductions made from the Petitioner's salary towards the cost of his in-house training, flying allowances and expenses incurred by the Petitioner for his Flying license renewal, to the tune of Rs. 60,00,000 (Rupees Sixty Lakhs only), as on date or such amounts as may be deem fit in the interest of justice;

d) Direct Respondent No. 1 to pay compensation for mental pain, suffering, hardships, inconveniences and legal expenses incurred by the Petitioner on account of the illegal termination order passed by the Respondent No. 1 to the tune of Rs.50,00,000 (Rupees Fifty Lakhs only) or as deem fit in the interest of justice;

e) Direct the Respondent No. 2 to waive the interest that has already been charged on Rs. 10,68,003.50/- i.e. the remaining amount of the bank guarantee paid to Air India Limited (Respondent No. 1);

f) Pass any such other order/ orders as tills Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner was selected as a Senior Trainee Pilot (with B-777 or B-787 or B-737 endorsement), and served as per the Offer of Engagement dated September 01, 2017, on Fixed Term Contract.

3. By the present petition, the petitioner is challenging the order / letter dated August 05, 2020, issued by respondent No.1 / Air India Ltd., whereby the petitioner's services have been terminated. The

petitioner is also challenging the office order / letter dated June 07, 2021, issued by the respondent No.1 demanding ₹50,00,000/- towards liquidated damages for violating a Surety Bond dated September 06, 2017 whereby the petitioner had undertaken to serve the respondent No.1 for a period of 10 years, as a result of the termination of the Fixed Term Contract.

4. As per the terms / Clause-1 of the said Offer of Engagement, the petitioner was required to undergo a B-787 endorsement course from the Directorate General of Civil Aviation ('DGCA', for short) approved TRTO / ATO from anywhere in the world, at his own cost and expenses. That apart, as per Clause-6 of the Offer of Engagement, the petitioner would receive a stipend of ₹25,000/- per month from the date of acceptance of the terms and conditions of the offer of engagement till the time the petitioner gets himself endorsed by DGCA.

5. On completion of the endorsement and obtaining a B-787 endorsement by DGCA, the petitioner completed the in-house training (as per Clause-15), after submitting a Bank Guarantee ('BG' for short) of ₹14,08,536/- (as per Clause-18) which was treated as a loan. Clause-18 of the Offer of Engagement further stated that if the petitioner failed to complete the in-house training, then the candidature of the petitioner for engagement as a Senior Trainee Pilot (P2) (with B-787 endorsement) will be treated as cancelled and the amount spent by the respondent No.1 on in-house training will be recovered from the BG submitted by the petitioner. Accordingly, a BG bearing No.06721GDER001917 for an amount of ₹14,08,536/-

dated December 22, 2017, valid upto December 25, 2022, was submitted by the petitioner to the respondent No.1.

6. As per Clause-19 of the Offer of Engagement, the cost of training was to be recovered in 60 monthly installments from the petitioner's salary during the period of his Fixed Term Contract engagement with the company/respondent No.1. Moreover, as per Clause-22 of the Offer of Engagement, upon successful completion of the in-house training, the petitioner was to be appointed as First Officer, on Fixed Term Contract for a period of five years, extendable by a further five years, subject to the petitioner's satisfactory performance and the company's requirement.

7. It is submitted that the petitioner underwent training at Training Aviator's Elite (TAE) S.A. Aviation Academy, Greece, for a cost of 40,000 Euros i.e., ₹35,00,000/- approximately. For the said training the petitioner had taken a loan from the Bank of Baroda / respondent No.2 for ₹60,00,000/- after mortgaging his residential house in Mumbai.

8. On successful completion of the Aircraft Training and thereafter undergoing the requisite route checks / supernumerary flights, vide office order dated September 17, 2018, the petitioner was engaged a Pilot in respondent No.1 on Fixed Term Contract for a period of five years from the date of release as First Officer i.e., June 06, 2018.

9. A perusal of the facts in the present case would reveal that the petitioner's service is governed by the following agreements:

a) Engagement Letter / Officer of Engagement dated

September 01, 2017.

b) Recruitment Letter dated December 22, 2017.

c) Surety Bond dated September 06, 2017.

d) Service Agreement dated September 06, 2017.

10. The petitioner was served with a Show Cause Notice dated November 15, 2018, regarding the petitioner's SOD travel on Flight No.AI 102 DEL/BOM of November 11, 2018, for training in CTE, Bombay. It is submitted that the petitioner had mistakenly and unknowingly travelled one day earlier i.e., on November 10, 2018, which led to the delay of Flight No.AI 332.

11. It is also submitted that the petitioner replied to the aforesaid Show Cause Notice vide email dated November 16, 2018, wherein he explained that he travelled on November 10, 2018, only on completion of his printed flights as per the ticket provided from Movement Control. However, when on the next day i.e., November 11, 2018, when the petitioner received a call to operate a last-minute Flight No.AI 332 DEL/BKK/BOM, he was already in Mumbai. Further, after completing his training in Mumbai, the petitioner stayed for an extra day in order to complete his Aviation Security (AVSEC AEP) formalities, since his police verification was not considered valid in Delhi (as the petitioner is born and brought up in Mumbai and has been staying in Delhi / NCR in a rented premise only for work). The petitioner had also informed one Mr. Kaushik about the same. Moreover, when the petitioner returned to Delhi, he was unwell and reported being sick for his flight. The petitioner tendered an apology and also expressed his regret on the events.

12. It is further stated that the petitioner's reply dated November 16, 2018, was discarded by respondent No.1 and he was issued a warning letter dated November 20, 2018, whereby, he was asked to be careful and to avoid recurrence of such instances as happened on November 10, 2018.

13. It is stated that the petitioner received an email dated July 17, 2019, whereby, the petitioner was advised to meet the Executive Director (Operations), Air India Limited, on July 19, 2019, regarding an incident on Flight No.AI-309 on May 24, 2019. The petitioner met with the Executive Director (Operations) on July 19, 2019, and no Show-Cause Notice / warning letter was issued to the petitioner.

14. Learned Senior Counsel appearing on behalf of the petitioner submitted that respondent No.1 has failed to produce any record depicting any indiscipline or lack of responsibility on the part of the petitioner. He submitted that respondent No.1 had incorrectly stated that the petitioner was issued three Show-Cause Notices and two warning letters. The correct factual position according to the learned Senior Counsel is that the petitioner was issued one Show Cause Notice dated November 15, 2018, resulting in the warning letter dated November 20, 2018. The second warning letter as stated by respondent No.1was never issued to the petitioner and there is no proof filed by the respondent in support thereof. The second Show Cause Notice dated July 10, 2020, was issued to the petitioner during the lockdown period, which resulted in the impugned termination order / letter.

15. It is submitted that the petitioner completed the Delhi-London

Flight No. AI-162 on March 13, 2020, and landed in Delhi on the said date. As per the Civil Aviation Requirements, effective: April 01, 2019, from the office of the Director-General of Civil Aviation, the petitioner was entitled for a 'flight rest' of 36 hours (2 Local Nights). Accordingly, after March 13, 2020, the petitioner was entitled for 'flight rest' on March 14, 2020, and March 15, 2020. Thereafter, as per the said Civil Aviation Requirements, the petitioner was also entitled to a 'weekly off' on March 16, 2020, and March 17, 2020. As the petitioner's mother was ill, he left for Mumbai on March 14, 2020. It is also an admitted fact that the petitioner's weekly off was scheduled on March 17, 2020.

16. The learned Senior Counsel also stated that the petitioner was scheduled to operate a flight on March 18, 2020, from New Delhi to Kolkata, but was removed from the roster of the scheduled flight. The departure transport report dated March 18, 2020, reflects that one Capt. Amit Chaudhary was re-scheduled for Aircraft B-787 and not the petitioner. Thereafter, there was an unexpected rise in COVID-19 cases, and in order to deter the spread of the disease, various societies and localities were sealed in view of the official advisories issued from time to time.

17. Moreover, vide circular dated March 23, 2020, Ministry of Civil Aviation, Government of India, directed that all scheduled domestic flights shall cease to operate with effect from 2359 hours IST on March 24, 2020. Learned Senior Counsel submitted that the said circular prohibiting domestic passenger flight operations was further extended vide circular dated May 02, 2020, up to 2359 hours

IST on May 17, 2020. Thereafter, the circular was further extended vide circular dated May 21, 2020.

18. The petitioner received an email on June 16, 2020 stating that he has been scheduled for COVID-19 test on June 17, 2020 prior to the Circuit and Landing Training planned in Amritsar by respondent No.1. The petitioner replied to the said email on June 16, 2020, stating that he will not be able to take the test since he was at Mumbai in his house due to the pandemic and that he has been suffering from a cold and has isolated himself.

19. It is submitted that the ground training and the simulator training at CTE (Central Training Establishment), Mumbai - Hyderabad and Bombay - Delhi were cancelled by the respondent No.1, as evident from the email dated March 23, 2020 from the Executive Director (Training), Air India Ltd., CTE Headquarters. Further, the petitioner also received another email dated April 04, 2020, whereby it was communicated to the petitioner vide DGCA circular dated March 23, 2020, that the validity of all Recurrent Training and Checks of Pilots / Cabin Crew / Ground Instructors / Flight Dispatchers, were extended upto June 20, 2020. The above-stated email dated April 04, 2020, also states that the medical validity of all Cockpit Crew, lapsing after March 10, 2020, has already been extended till June 20, 2020, as per Notice dated March 27, 2020.

20. It is stated that the petitioner vide email dated June 23, 2020, informed respondent No.1, that his residential society in Gurugram has been sealed and he is stuck in Mumbai. The petitioner's only residential place in Delhi / NCR was sealed till July 05, 2020, due to a

steep rise in the number of COVID-19 cases, and as such, the petitioner was unable to take up the flights from Delhi. The petitioner also requested respondent No.1 in the said email to plan for his movement from Mumbai or to provide some accommodation in Delhi.

21. The petitioner returned to Delhi on June 28, 2020, by his personal vehicle as soon as the restrictions at his residential building were relaxed. It is stated that vide email dated July 01, 2020, the petitioner was asked to report to the office of the Executive Director (Operations). Thereafter, upon contacting the said office, he was asked to further contact the Deputy General Manager (Operations), who the petitioner met on July 02, 2020 at 1000 hrs. It is stated that vide email dated July 02, 2020, the petitioner was asked to submit / produce necessary documents as proof since he left the station for Mumbai on March 14, 2020, and had reported back only on July 02, 2020.

22. The petitioner replied vide email dated July 03, 2020, explaining the duration of absence from his base station (after adjusting flight rest / weekly off, March 28, 2020 to March 31, 2020 - CL and May 25, 2020 to June 01, 2020 – PL) was 88 days.

23. The petitioner explained that following the public curfew on March 22, 2020, a nationwide lockdown in the country was announced with effect from March 24, 2020, and this resulted in the cancellation of all flights and restrictions on movement across India. This sudden unforeseen development made it impossible for the petitioner to return to Delhi.

24. Moreover, the lockdown was repeatedly extended due to the rise in the number of COVID-19 cases. The lockdown restrictions

were relaxed only in the month of June, however, the petitioner's residential building in Gurugram was sealed as multiple COVID-19 cases were detected, and hence, was declared as a containment zone.

25. Subsequently, the petitioner received a Show Cause Notice dated July 10, 2020, from respondent No.1 as to why appropriate action should not be taken against him for his absenteeism from work. Consequently, the petitioner replied to the said Show Cause Notice vide reply dated July 16, 2020. It is stated that the petitioner's reply and the explanation provided therein, were not considered satisfactory and the petitioner's services were terminated vide impugned termination order / letter dated August 05, 2020.

26. It is submitted that the impugned termination order dated August 05, 2020, alleges that the petitioner has been *"indulging in various acts of misconduct with regard to which reports have been received by the Management"*. However, the impugned termination order / letter is silent on details of such alleged reports.

27. The petitioner made two representations in the form of a mercy plea with respect to the termination order vide letter dated August 17, 2020 and February 26, 2021 to the Chairman and Managing Director of respondent No.1.

28. It is stated that the petitioner received a letter dated April 17, 2021, from respondent No.2 / Bank of Baroda stating that in response to a letter for invocation of BG from respondent No.1, the Bank had made a payment of ₹14,08,536/- to respondent No.1 on March 31, 2021. Further, an amount of ₹3,43,058/- from margin money held in petitioner's FD No. 06720300044583, has been adjusted towards the

same. It is submitted that respondent No.2 had requested the petitioner to make payment of the remaining amount i.e., ₹10,68,003.50/- along with applicable interest (compound interest @ 17.65%).

29. Subsequently, the petitioner received a letter dated June 07, 2021, by the respondent No.1, demanding ₹50,00,000/- towards liquidated damages for violation of the Surety Bond dated September 06, 2017 whereby the petitioner had undertook to serve the company for a period of ten years.

30. The learned Senior Counsel contended that the action taken by the respondent No.1 in terminating the petitioner in a hasty manner indicates malice since the petitioner's services have been terminated during the pandemic without giving any reasonable opportunity to defend himself, without following the due procedure as prescribed under the Air India Employees' Service Regulations and as such, the order of termination is bad in the eyes of law and is in violation of the fundamental rights of the petitioner as enshrined under Articles 14 and 21 of the Constitution of India.

31. He submitted that as per the Air India Employees' Service Regulations, the petitioner's service could have been terminated only on the grounds mentioned therein, and not otherwise. The relevant clause relied upon by the petitioner is reproduced hereunder:

> *"TERMINATION OF SERVICE:*
> *17. (a) The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the following grounds not amounting to misconduct under these Regulations, i.e.*
>
> > *(i) if he/she is, in the opinion of the Board of Directors of the Company, incompetent and*

unsuitable for continued employment with the Company and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the Company,

or

(ii) if his/her continuance in employment constitutes, in the opinion of, the Board of Directors of the Company, a grave security risk making his/her continuance in service detrimental to the interests of the Company;

or

(iii) if, in the opinion of the Board of Directors of the Company, there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary in the interest of the Company, to immediately terminate his/her services.

Provided however that, in emergent situations for reasons to be recorded in writing, the CMDIMD may terminate the services of employees subject to the subsequent approval of such action by the Board of Directors of the Company.

(b) The services of the employee are liable to be terminated without notice on cancellation or withdrawal of licence /endorsement approval in case of categories where licence/endorsement/ approval is a mandatory requirement."

32. It is his submission that none of the grounds as indicated above in the Air India Employees' Service Regulations have been taken by the respondent as the ground for terminating the services of the petitioner. The impugned termination order / letter does not mention that the petitioner is *"incompetent and unsuitable for continued employment with the Company"* a that, the petitioner's

"employment detrimental to the interest of the Company" or that, there is a *"grave security risk"* or that there is a *"justifiable lack of confidence"* with regard to the nature of the duties performed by the petitioner.

33. He stated that it is an admitted fact that the Service Regulations for Flying Crew have been repealed. However, a similar clause for termination of the services of the employees as in the Air India Employees' Service Regulations can also be found in Service Regulations for Flying Crew (Clause 13).

34. The term misconduct, which finds mention in the termination order / letter, has been dealt with in Clause 99 of the Air India Employees' Service Regulations, as under:

> *"99. MISCONDUCT:*
> *Without prejudice to the generality of the term 'misconduct' it shall be deemed to include the following acts of omission and commission, including abetment or attempt at abetment of any of them:*
> *………*
> *(13) Habitual absenteeism, absence without leave, absence from place of work without permission or sufficient cause, or, overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation."*

As per the learned Senior Counsel, above-stated clause would reveal that if there is a sufficient cause or sufficient ground for absenteeism, then, such an act does not amount to 'misconduct'. It is an admitted fact that the petitioner's absence from work was completely on account of unavoidable and unforeseen circumstances due to the onset of COVID-19. Thus, the petitioner's termination is completely illegal and such an order / letter deserves to be set aside.

35. That apart, Clause 103 of the Air India Employees' Service Regulations, clearly lays down the procedure for awarding punishments, which mandatorily has to be done in accordance with Schedule I thereof. In this regard, it is submitted that the petitioner's termination is bad in the eyes of law as the due procedure laid down in the Regulations for imposing penalties for misconduct such as absenteeism has not been followed by the respondent No.1.

36. It is contended that for non-deliberate absenteeism due to the nationwide lockdown beyond the control of the petitioner, the petitioner is not liable to undergo a 'major penalty' as per Clause 100(B)(1) of the Air India Employees' Service Regulations, and be removed from the services of the Company.

37. It is also alleged that the termination order / letters is merely a tool to dispense with the services of the petitioner on account of the financial violability of the respondent No.1 during the pandemic. In this regard, reliance has been placed upon the judgment of this Court in the case of ***Arjun Ahluwalia vs. Air India Limited, W.P. (C) No. 4203/2020***, wherein it has been held that: *"State or its Agencies under Article 12 of the Constitution cannot claim financial constraints or impact of the pandemic as a ground for dispensing the services of it employees"*. It is further submitted that the said judgment has been upheld by the Division Bench of this Court in the case of ***Air India Limited vs. Kanwardeep Singh Bamrah, LPA No. 246/2021***.

38. It is further submitted that, as has been held by the Supreme

Court and High Courts in several cases, an order of termination can be granted on grounds of unsatisfactory performance or when the officer is ineffective or such other ground that would reflect the inefficiency or ineffectiveness of the concerned officer. However, in the case of the petitioner, no such reason has been specified and therefore, the arbitrary and illegal termination has put a blemish on the service career of the petitioner wherein any future opportunity for applying to any other department is no longer available, despite the fact that the services rendered throughout by the petitioner were impeccable and he has an outstanding qualification and experience to be eligible for any post that may arise. He stated that respondent No.1 has violated the basic principles of natural justice in passing the arbitrary order / letter causing extreme and grave injustice to the petitioner. In this regard, he has also referred to the judgment of the Supreme Court in the case of ***State Bank of India v. Palak Modi and Another, (2013) 3 SCC 607*** and a decision of this Court in ***Lalita Kumari v. Delhi Social Welfare Board & Anr., W.P.(C) 944/2020, decided on February 25, 2021.***

39. It is further submitted that both the Surety Bond and the Service Agreement dated September 06, 2017, were executed between the petitioner and the respondent No.1.

(a) The relevant clauses in the Surety Bond dated September 06, 2017, relied upon by the petitioner are as under:

> *"**Clause E:***
> *... In the event, after successful completion of the training, the Sr. Trainee Pilot abandons or leave the company and fails to serve the company for the Fixed*

Term or he abandons leaves the company before expire of 1 0 years Fixed term contract (including 05 years of extended period of Fixed term contract), the Sr. Trainee Pilot will be liable to pay a sum of Rs.50,00,000/- (Rupees Fifty Lacs Only) as liquidated damages to the Company which shall be in addition to the invocation of bank guarantee for the training cost, if valid.

Clause 4:

That the Sr. Trainee Pilot and Sureties agree that they shall be bound by the decision of Managing Director/General Manager or an officer nominated by the Managing Director of the company as to the correct interpretation of the bond, rules and regulations of the Companv and as to whether the Sr. Trainee Pilot has not observed and complied with the obligations herein contained and the same shall be final and binding."

Clause 5:

This Bond and the rights and obligations shall in all respect be governed by the laws of the Union of India and shall be subject to the exclusive jurisdiction of Delhi Courts."

(b) The relevant clause of the Service Agreement dated September 06, 2017, relied upon by the petitioner are reproduced hereunder:

"Clause 12:

In the event, after successful completion of the training, the Sr. Trainee Pilot abandons or leave the company and fails to serve the company for the Fixed Term or he abandons leaves the company before expire of 10 years Fixed term contract (including 05 years of extended period of Fixed Term contract), the Sr. Trainee Pilot will be liable to pay a sum of Rs. 50,00,000/- (Rupess Fifty Lacs Only) as liquidated damages to the Company which shall be in addition to the invocation of bank guarantee for the training cost, if valid.

Clause 25:

> *That for matters not provided for in this Service Agreement, the Sr. Trainee Pilot governed by the terms and conditions of Offer of Engagement contained in 01.09.2017 and the Rule and Regulations of the Company enforce from time to time."*

40. It is submitted that Clause E of the Surety Bond, Clause 12 of the Service Agreement, and Clause 25 of the Offer of Engagement are not applicable in the present case, as the said clauses state the circumstances under which they can be evoked, which are: (i) *"abandons or leaves the Company and fails to serve the serve the Company for the Fixed term"* and (ii) *"abandons or leaves the Company before the expiry of 10 years of the Fixed Term Contract."* It is further submitted that only upon the said two events, is the petitioner liable to pay damages to respondent No.1, and not otherwise. However, none of the events have taken place in the present case, and thus, it is wholly illegal to impose liquidated damages on the petitioner.

41. It is further submitted by the learned Senior Counsel that Clause No. V of the Recruitment Letter dated December 22, 2017, is arbitrary as it entitles respondent No.1 to impose liability if the Fixed Term Contract engagement is terminated *"for any reason"*. The impugned action of respondent No.1 is completely illegal and arbitrary and is not in consonance with the well-settled principles of termination, enunciated by the courts through various judicial pronouncements.

42. In addition, the learned Senior Counsel further contended that it is not right to say that a Fixed Term Contract is not subject to

Service Regulations and the Service Agreement executed between the parties and that it is limited in terms to secure the employment of the pilot for a specified period of time. He further stated that as per the clauses mentioned above, a Fixed Term Contract employee is without doubt governed by the Rules and Regulations of the Company (Air India Employee's Service Regulations). Countering the averments made by the respondents, he stated that it is therefore incorrect to say that no enquiry is to be held with regard to termination. Therefore, even though the contract between the petitioner and the respondent was a Fixed Term Contract, respondent No.1 cannot shy away from its obligations under the governing Air India Service Regulations.

43. That apart, it is submitted that the Air India Employees' Service Regulations are applicable to the petitioner because the contract between the petitioner and the respondent No.1 i.e., Service Agreement at Clause 25, itself states that the Senior Trainee pilot shall be governed by the terms and conditions of the Offer of Engagement contained in the letter dated September 01, 2017, and the Rules and Regulations of the company in force from time to time, for matters not provided in the Service Agreement.

44. He submitted that since the Service Agreement dated September 06, 2017, is silent on the procedure to be adopted in case of termination of an employee, recourse to the Air India Employees' Service Regulations cannot be said to be bad in law. In addition, Clause 4 of the Surety Bond dated September 06, 2017, as relied upon by the respondent No.1 shows that the Senior Trainee Pilot and sureties agree that they shall be bound by the decision of the

Managing Director / General Manager or an officer nominated by the Managing Director of the Company as to the correct interpretation of the Surety Bond, rules and regulations of the company / respondent No.1 and as to whether the Senior Trainee Pilot has not observed and complied with the obligations contained therein and the same shall be final and binding. Further, Clause 5 of the Surety Bond states that *"this Bond and the rights and obligations shall in all respect be governed by the laws of the Union of India and shall be subject to the exclusive jurisdiction of Delhi Courts."*

45. That apart, it is also pleaded that upon his termination the Flying License of the petitioner has lapsed, and an amount of ₹60,00,000/- be paid to the petitioner by the respondent No.1, towards the expenses incurred by him for renewal of his License. He seeks the grant of prayers as made in the petition.

SUBMISSIONS OF RESPONDENT NO.1

46. According to the learned counsel appearing on behalf of respondent No.1 / Air India Limited, the petitioner was selected as a Senior Trainee Pilot (P2) on September 01, 2017, and served on a Fixed Term subject to the petitioner finishing his training and obtaining his ALTP License. The petitioner has already executed a Surety Bond as well as a Service Agreement on September 06, 2017. Thereafter, the petitioner, after having received the ALTP License was given in-house training by respondent No.1 and was engaged on a Fixed Term Contract as Senior Trainee Pilot for 5 years (extendable by another 5 years) as per the terms and conditions mentioned in the Recruitment Letter dated December 22, 2017.

47. He submitted that the petitioner was then released as a First Officer by respondent No.1 on June 06, 2018, and vide office order dated September 17, 2018, he was engaged as a Pilot on a Fixed Term Contract for 5 years with Delhi as his base.

48. It is further submitted that a Fixed Term Contract Employee is not subject to Service Regulations and the Service Agreement executed between the parties and the same is limited in terms to secure the employment of the Pilot for a specified period of time. No enquiry is to be held and the decision of the Management is final in regard to termination. That apart, the petitioner has concealed the fact of non-application of Air India Service Regulations to him as he was a contractual employee.

49. It is submitted that as per the Fixed Term Contract of Employment the petitioner in terms of the Surety Bond, Service Agreement, Engagement Letter, and Recruitment Letter, the petitioner was well aware of the following terms and the consequences of any breaches of same:

a) The total cost of the in-house training would be recovered from the salary and Flying Allowances in 60 equal monthly installments after release as First Officer. A BG equivalent to ₹14,08,536/- was required to be furnished by the petitioner for the cost of the in-house training.

b) If the petitioner failed to serve the respondent No.1 for the Fixed Term or if he leaves or abandons the service before the expiry of 10 years, or if the Fixed Term Contract engagement is terminated for any reason, the petitioner would be liable to pay the respondent No.1 a sum of ₹50,00,000/- as liquidated damages, in addition to invocation of the BG.

c) The Fixed Term Contract engagement may be terminated without any notice, at any time by respondent No.1, for reasons including the employee's unsatisfactory progress or behavior or due to any act of omission or commission, which in the opinion of respondent No,1 amounts to 'misconduct'. In such an event, the petitioner was required to reimburse respondent No.1 the amount of training spent on the petitioner, and accordingly the BG submitted by the petitioner would be invoked.

d) The management of respondent No.1 reserved the right to terminate the petitioner's Fixed Term Contract by giving one month's notice or an amount equivalent to one month's salary, in lieu thereof for unsatisfactory conduct, dishonesty, fraud, or any other act, which in the view of the company is contrary to its interest.

50. On November 15, 2018, the petitioner was issued a Show Cause Notice for 'insubordination' for travelling to Mumbai on November 10, 2018, for his scheduled training instead of the scheduled date of November 11, 2018, without informing the Crew Management System of respondent No.1 thereby causing a delay of a flight on November 11, 2018, for the want of crew. Thereafter, on November 12, 2018, the petitioner failed to travel back to Delhi and overstayed in Mumbai without the concurrence of the Crew

Management System. Respondent No.1, after deeming the reply of the petitioner to Show Cause Notice No.1 (SCN No.1) dated November 16, 2018, to not be satisfactory, issued the Warning Letter No.1 dated November 20, 2018, thereby informing the petitioner to be careful and avoid the recurrence of the instance.

51. It is submitted that on May 24, 2019, the petitioner was involved in an incident on Flight AI-309. On July 17, 2019, the petitioner was advised to meet the Executive Director (Operations) of respondent No.1 on July 19, 2019, to discuss the incident. Subsequently, the Warning Letter No.2 dated July 19, 2019 was issued to the petitioner.

52. As regards the contention of the petitioner that he left for Mumbai on March 13, 2020, on a weekly off, it is stated that the petitioner did not inform the Crew Management System of his itinerary. Further, as per the petitioner's own documents, the petitioner's weekly off was scheduled only for March 17, 2020, and the petitioner could have been assigned any flight to operate between March 14, 2021, and March 16, 2021.

53. It is further submitted that it is an admitted fact that the petitioner was scheduled to operate a flight on March 18, 2020, from New Delhi to Kolkata as per the Duty Roster of the petitioner. However, the petitioner availed a casual leave and therefore did not operate the said flight. Thereafter, on March 24, 2020, a nationwide lock-down was imposed in the country due to the spread of COVID-19.

54. On June 16, 2020, the respondent No.1 scheduled a COVID-

19 test for the petitioner in Delhi for June 17, 2021, however, the petitioner vide an email dated June 16, 2020, informed that he could not take the scheduled test since he was in Mumbai isolating himself as he had been suffering from a cold.

55. On June 23, 2020, the petitioner informed respondent No.1 that his residential society in Gurugram had been sealed till July 05, 2020, and that he would not be able to operate flights from Delhi.

56. An additional affidavit has been filed by the respondent No.1, detailing a chart regarding the dates of absence of the petitioner, the reasons for such absence and the status of flights. The same is reproduced as under: -

S. No.	Date	Flight Scheduled and assigned to Petitioner	Final Status of Flight	Reasons
1.	18.03.2020	FLIGHT DUTY Delhi – Kolkata	Operated	Petitioner on approved leave.
2.	19.03.2020	FLIGHT DUTY Delhi – Singapore	Operated	Petitioner on approved leave.
3.	21.03.2020	FLIGHT DUTY Singapore – Delhi	Operated	De-rostered since Pilot did not travel to Singapore on 19.03.2020
4.	23.03.2020	FLIGHT DUTY Delhi – Amritsar	Cancelled	Operational / Government Restrictions
5.	24.03.2020	FLIGHT DUTY Amritsar – Birmingham	Cancelled	Operational / Government Restrictions
6.	26.03.2020	FLIGHT DUTY Birmingham – Delhi	Cancelled	Operational / Government Restrictions
7.	03.04.2020	FLIGHT DUTY	Cancelled	Operational /

		Sydney – Delhi		Government Restrictions
8.	07.04.2020	FLIGHT DUTY Delhi – Frankfurt	Cancelled	Operational / Government Restrictions
9.	09.04.2020	FLIGHT DUTY Frankfurt – Delhi	Cancelled	Operational / Government Restrictions
10.	12.04.2020	FLIGHT DUTY Delhi – London	Cancelled	Operational / Government Restrictions
11.	13.04.2020	FLIGHT DUTY London – Delhi	Cancelled	Operational / Government Restrictions
12.	15.04.2020	SELF MEDICAL (Scheduled at Air Force Central Medical Establishment, Subroto Park, New Delhi)	Did not attend	Pilot Not Available
13.	18.04.2020	FLIGHT DUTY Delhi – Kolkata - Delhi	Cancelled	Operational / Government Restrictions
14.	19.04.2020	FLIGHT DUTY Delhi – Amritsar - Delhi	Cancelled	Requested by Petitioner
15.	21.04.2020	SIM TRAINING	Did not attend	Pilot Not Available
16.	23.04.2020	FLIGHT DUTY Delhi – Amritsar	Cancelled	Operational / Government Restrictions
17.	24.04.2020	FLIGHT DUTY Amritsar – Birmingham	Cancelled	Operational / Government Restrictions
18.	26.04.2020	FLIGHT DUTY Birmingham – Delhi	Cancelled	Operational / Government Restrictions
19.	17.06.2020	COVID TEST	Did not attend	Pilot Not Available
20.	17.06.2020	TRAINING	Did not	Pilot Not

		Circuit & Landing (Aircraft Training in Amritsar)	attend	Available
21.	20.06.2020	STAND BY DUTY	Not Available	Pilot Not Available
22.	21.06.2020 to 30.06.2020	NO DUTY ASSIGNED AS PILOT NOT AVAILABLE	Not Available	Pilot Not Available

57. It is stated that the petitioner was scheduled to operate more than ten flights between March 21, 2020 and June 17, 2020 to destinations including Frankfurt, Birmingham and London. Admittedly the flights planned and scheduled for the petitioner listed above were cancelled due to operational restrictions and government guidelines, which, during the time, were changing frequently. The above mentioned flights were in fact cancelled only hours before their scheduled departure and the petitioner was required and expected to be available for operating the same from Delhi. In fact, the respondent No. 1 was required to keep all its Pilots and Crew on standby since numerous flights were being operated at the last minute as part of and under the Government's Vande Bharat Flight Scheme of rescue flights to bring Indian nationals from various countries around the world including flights to and from Frankfurt, Birmingham and London.

58. The aforementioned chart also reveals that the petitioner was scheduled for his Simulator Training on April 21, 2021 which he failed to attend. The petitioner neither underwent the COVID-19 Test planned for him nor attended the Circuit and Landing Training scheduled by the respondent No.l. Further, the petitioner failed to be available for the standby duties assigned to him on June 20, 2020.

59. Further, *vide* an email dated July 01, 2020, the petitioner was directed to meet the Deputy General Manager (Operations) of respondent No.1 on July 02, 2020, to explain the unauthorised absence of 3.5 months along with supporting documents. Consequently, on July 02, 2020, the petitioner was advised to submit supporting documents to support his reasoning for the absence, travel proof, permission to leave the Base Station, and any other documents to support his case.

60. The petitioner vide email dated July 03, 2020, admitted his absence of 88 days from his Base Station in Delhi after removing his casual leaves, privilege leaves, and sanctioned leaves. However, he did not provide any proof for the same and instead explained he was unable to travel because of the restrictions on travel and movement due to the lock-down as well as the sealing of the petitioner's residence in Gurugram and Mumbai.

61. On July 10, 2020, respondent No.1 issued another Show Cause Notice bearing Reference No. HOP/2020/SHOWCAUSE to the petitioner for leaving his place of posting on March 14, 2020, without informing the Crew Management System or the office of respondent No.1 and sought an explanation for the same. Thereafter, a response was issued by the petitioner to the said Show Cause Notice (Reference No. HOP/2020/SHOWCAUSE) on July 16, 2020, claiming that there was no deliberate absenteeism on his part.

62. Consequently, on August 05, 2020, the impugned letter/order was issued to the petitioner terminating his employment with the respondent No.1 considering his past disciplinary record and the

present unauthorised absenteeism.

63. In addition, learned counsel for the respondent No.1 also explained in brief as to why the claim of the petitioner needs to be dismissed, in the following manner:

a) Firstly, the petitioner fell within the definition of an 'Essential Worker' and was therefore exempt from any kind of embargo preventing him from reporting for duty. Therefore, despite being an 'Essential Worker', the petitioner chose not to fly 'Vande Bharat Flights' and instead stayed in Mumbai without permission.

b) Secondly, the petitioner has failed to explain his absence or give any proof explaining the same, particularly for the periods from March 14, 2020, to March 16, 2020, and from March 18, 2020, to March 21, 2020, since the petitioner's own Roster illustrates that the petitioner was in fact only given March 17, 2020, and March 22, 2020, as his weekly offs and the national lock-down was only imposed on March 23, 2020. Therefore, the petitioner had ample time and opportunities to return to his operating base i.e., in Delhi.

c) Thirdly, the petitioner has erroneously placed reliance on the Air India Employees' Service Regulations to claim that his termination through the impugned letter / order is bad in law. Though the respondent No.1 offers employment to its Pilots on Fixed Term Contracts as well as on a permanent basis, in the present case, the petitioner was granted employment with respondent No.1 as per the Engagement

Letter admittedly for a period of 5 years under the terms of a Fixed Term Contract and not as per the Air India Employees' Service Regulations. Clause No.4 of 'Chapter 1 – General' of the Air India Employees' Service Regulations reads as under:

> *"4. These Regulations shall apply mutatis mutandis to all employees on whole time regular employment of erstwhile Air India Ltd. and erstwhile Indian Airlines Ltd. on the rolls of Air India Ltd. as on date as also to all employees who may be recruited in the whole time regular employment of Air India Limited in future. These Regulations do not apply to part-time, casual, badlis or daily-rated employees, apprentices/trainees and those under contract agreement who shall be governed by special terms of appointment in each case. These Regulations shall also apply to employees on deputation from other public sector, State/Central Government except in so far as specifically excluded."*

64. He also contended that the reliance placed by the petitioner on the Service Regulations for Flying Crew is also wholly misplaced in as much as the said Regulations were repealed on the adoption of the Air India Employees' Service Regulations. Clause No.5 of Chapter 1 – General of Air India Employees' Service Regulations which came into effect on April 01, 2013, reads as under:

> *"5. On and from the date of coming into force of these Regulations, the following Service Regulations and Standing Orders will stand repealed:*
> *a) Air India Employees Service Regulations,*
> *b) Air India Certified Standing Orders*
> *c) Indian Airlines (Flying Crew) Service Regulations*
> *…………."*

65. Furthermore, the petitioner in any case, cannot use the

aforementioned Regulations in his favour since not only have the Indian Airlines (Flying Crew) Service Regulations already been repealed and replaced by Air India Employees' Service Regulations, but the petitioner is also not governed by Air India Employees' Service Regulations as he was a Fixed Term Contract employee with respondent No.1.

66. Even otherwise, the petitioner's employment with respondent No. l was at the pleasure of the respondent No.l, the petitioner having engaged on a Fixed Term Contract, the terms of which clearly state that the petitioner could be terminated by the respondent No.1 at any point in time without any notice, for reasons including the petitioner's unsatisfactory progress or behavior or due to any act of omission or commission on part of the petitioner.

67. Additionally, it is submitted that the impugned letter/order dated August 05, 2020, has not been made in haste and has been issued correctly detailing the petitioner's past disciplinary record.

68. According to the respondent No.1, the petitioner's BG for a sum of ₹14,08,536/- was invoked on March 31, 2021 as per the terms and conditions of the petitioner's Fixed Term Contract, and the same was credited to respondent No.1.

69. On June 07, 2021, respondent No.1 issued the impugned office order to the petitioner seeking liquidated damages of ₹50,00,000/- for violating Clause No.25 of the Offer of Engagement, Clause V of the Recruitment Letter, Clause E of the Surety Bond and Clause No.12 of the Service Agreement. In this regard, it is submitted that the invocation of the BG of the petitioner, as well as the direction to

deposit ₹50,00,000/- as liquidated damages through the impugned office order to the petitioner, are valid and legal. Thus, since the petitioner's employment has been terminated by respondent No.1 on disciplinary grounds vide impugned letter before the expiry of the period of 10 years, the petitioner is liable to pay liquidated damages of ₹50,00,000/- to respondent No.1. The documents namely Surety Bond, Service Agreement, Engagement Letter, and Recruitment Letter clearly depict that respondent No.1 was well within its rights to issue the impugned order / letter and terminate the petitioner's employment as the same was based on the petitioner's disciplinary record over the past three years.

70. It is further contended that the petitioner is misleading this Court by erroneously placing reliance on the judgment in the case of ***Arjun Ahluwalia (supra)*** by claiming that respondent No.1 has been terminated from his employment on account of the financial viability of the respondent No.1. The said judgment is not applicable in the present case as, in the present case, the impugned letter, in clear terms, details the incidents of indiscipline of the petitioner in the last 3 years as the ground for the petitioner's termination and the same has no relation to the financial viability of respondent No.1.

71. That apart, the Court in ***Arjun Ahluwalia (supra)*** records that a Fixed Term Contract could be terminated any time for *"reasons such as unsatisfactory progress or behavior or any act of omission or commission amounting to misconduct, in the opinion of the respondent"*. Similarly, in the present case, the petitioner's past disciplinary behavior not being satisfactory, is the only grounds on

account of which the petitioner's employment with respondent No.1 has been terminated.

72. As far as the contention of the petitioner regarding the renewal of the ALTP License is concerned, he submitted that respondent No.1 is not responsible for the renewal of the ALTP License of any of the pilots employed with it and the onus is on the petitioner to ensure his License renewal. Therefore, the petitioner is not entitled to claim any monies in respect of the expiry of his License.

RESPONDENT NO.2 / BANK SUBMISSIONS

73. On the other hand, the learned counsel appearing on behalf of respondent No.2 submitted that the respondent No.2 i.e., Bank of Baroda, a public sector bank, a body corporate constituted under the Banking Companies (Acquisition and transfer of undertaking) Act 1970, submitted that the petitioner along with his father Mr. Shailendra Thapliyal approached respondent No.2 for sanction of BG limit of ₹14,08,563/- for issuance of a BG favouring Air India Limited / respondent No.1 against the security Flat Number 1004, 10th Floor, B Wing Building No 2, N G Complex, Military Road, Marol Maroshi Road, Andheri East, Mumbai -72 and cash margin of 20% on the basis of joint application dated December 16, 2017.

74. It is submitted that the petitioner had executed all the required documents for obtaining the sanction of BG including a counter indemnity dated December 22, 2017. Consequently, respondent No.2 issued the BG on December 22, 2017, for ₹14,08,536/- in favour Air India Limited / respondent No.1.

75. It is further submitted that the petitioner was engaged as the

Senior Trainee Pilot on Fixed Term Contract with respondent No.1 as per terms and conditions stated in the Offer of Engagement letter dated September 01, 2017. The said letter provided that the petitioner shall furnish a BG for an amount of ₹14,08,536/- dated December 22, 2017, which was valid up to December 25, 2022.

76. He stated that respondent No.2 again received a reminder from respondent No.1 on March 15, 2021, for the payment of the BG, and in furtherance of the same, a subsequent request was made as a reminder for the payment of BG, however, the petitioner did not take any steps.

77. Since the petitioner did not make the payment for the BG, respondent No.2 was compelled to create a Temporary Over Draft in the account of the petitioner and pay the BG amount of ₹14,08,536/- to respondent No.1. That apart, respondent No.2 further adjusted the amount of ₹3,43,058/- from the margin money held in the petitioner's FD No. 06720300044583.

78. Moreover, it is submitted that respondent No.2 vide letter dated April 17, 2021, informed the petitioner regarding the request made by respondent No.1 for the invocation of BG and requested him to pay the remaining amount of ₹10,68,003.50/- along with applicable interest.

79. In addition, it is submitted that as per its guidelines, the respondent No.2 has adjusted the cash margin of 20% (with the interest) to adjust the dues as the same was held as security for the BG and interest on the outstanding amount is charged as an unsecured loan.

CONCLUSION

80. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the orders dated August 05, 2020 and June 07, 2021 passed by the respondent, terminating the services of the petitioner and also demanding an amount of ₹50,00,000/- towards liquidated damages for violating the Surety Bond dated September 06, 2017, are justified.

81. It is the conceded case of the parties that the petitioner was selected as Senior Trainee Pilot *vide* letter dated September 01, 2017. Pursuant thereto, the parties herein have executed four agreements, the details of which are already given in paragraph 10 above. In terms of Clause 15, the petitioner was to undergo an In-House Aircraft Training after submitting a BG for ₹14,08,536/-. Though, Clause 18 of the Offer of Engagement states that if he fails to complete the In-House Aircraft Training, the candidature of petitioner as Senior Trainee Pilot would be cancelled.

82. Be that as it may, the petitioner had undergone In-House Aircraft Training and on completion of successful Aircraft Training, was engaged as a Pilot in the respondent No.1 organisation for a fixed term contract for a period of five years. It is the case of the petitioner that after completing the Delhi-London Flight No. AI-162 on March 13, 2020, and landing in Delhi, he was entitled to 'flight rest' on March 14, 2020, and March 15, 2020. It is also his case that he was entitled to 'weekly off' on March 16, 2020, and March 17, 2020. However this has been contested by the respondent No. 1 by stating that March 16, 2020 was not a 'weekly off'. In other words, only

March 17, 2020 was a ''weekly off'. It is an admitted case of the petitioner that he left Delhi, i.e., his place of posting/Base Station, for his hometown of Mumbai on March 14, 2020. It is not his case that while leaving Delhi which is his place of posting, he has informed the superiors about the fact of going to Mumbai. He has also conceded that he remained in Mumbai till June 28, 2020. The justification given by the petitioner for going to Mumbai, on March 14, 2020, was that his mother was unwell. He has also taken a plea that on March 18, 2020 and March 19, 2020 he was indisposed, and was on leave. Thereafter, he continued to remain in Mumbai because of lockdown imposed throughout the country. He has relied upon the circulars issued by the Ministry of Civil Aviation, Government of India dated March 23, 2020, May 02, 2020 and May 21, 2020 whereby it was directed that all the scheduled domestic flights shall cease to operate.

83. Suffice to state, the petitioner cannot take benefit of these orders as he could have returned to Delhi before March 23, 2020. This plea of petitioner appears to be an afterthought. In any case, the petitioner did not inform his superiors about his going to Mumbai and continued to stay there. He intimated the respondent No.1, about him being in Mumbai only on June 16, 2020, when the respondent No.1 had scheduled a COVID-19 test for the petitioner as he was to undertake a Circuit and Landing Training planned in Amritsar on June 17, 2020. The reasoning given by the petitioner for not undertaking the test was that he was in Mumbai at his house due to the pandemic and he was also suffering from cold and had isolated himself. It is the case of the respondent No.1 that the petitioner had also not undertaken

the scheduled simulator training at the Central Training Establishment, Mumbai - Hyderabad and Bombay – Delhi.

84. It is also the case of the respondent No. 1 that the petitioner was assigned flight duty of Delhi-Kolkata on March 18, 2020, but on that day he was on approved leave. Similarly, the flight duty assigned to him for Delhi-Singapore on March 19, 2020 was not operated by the petitioner because he was on approved leave. On March 21, 2020, the petitioner was de-rostered from flight duty of Singapore-Delhi, as he had not travelled to Singapore on March 19, 2020. It is important to note, on April 16, 2020 when the petitioner was called upon to appear in a medical examination at Subroto Park, New Delhi, he did not attend the same as he was not available in Delhi. Even the flight duty of April 19, 2020 was cancelled as per the request of the petitioner. Similarly, the petitioner could not undertake COVID test on June 17, 2020, Training of Circuit and Landing on June 17, 2020.

85. Even, on June 20, 2020 when he was on standby duty, he was not available. No doubt, the chart given in paragraph 51 of the judgment do reflect that many flights were cancelled because of operational/government restrictions, however the fact remains that all these flights originated from Delhi/Amritsar and return flight from the place of destination. During that period, the petitioner was admittedly not in Delhi, and could not have made himself available for duty, even if such flights were not cancelled. Similarly, between June 21, 2020 and June 30, 2020, no duty was assigned as he was not available.

86. The above facts clearly demonstrate that the petitioner, having left Delhi for Mumbai without informing his superiors, resulted in the

petitioner not undertaking the Medical Test, Simulator Training and duties which otherwise could have been assigned to him had he been in Delhi. It is the case of the respondent No. 1 that during that period it was required to keep all its Pilot crew on standby since numerous flights were being operated last minute as part of and under the Government's Vande Bharat Flight Scheme to operate rescue flights to bring Indian nationals from various countries around the world including flights to and from Frankfurt, Birmingham and London.

87. Hence, the Show Cause Notice issued to the petitioner seeking his explanation for remaining absent without permission and unsatisfactory conduct, cannot be faulted. The plea of the learned Senior Counsel for the petitioner is that the petitioner should have been subjected to the process as laid down in the Air India Employees Service Regulations including Clauses 13 and 99 which have been reproduced in paragraph 36 above.

88. Suffice it to state, the appointment of the petitioner was on a contractual basis for five years, and the same being a contractual appointment, he does not have lien on the post. The said Regulations primarily govern the employees who are regular and have lien on post, unlike the petitioner, who being a contractual employee, does not have a lien on the post.

89. The respondent No. 1 was within its right to take action against the petitioner, in view of Clause 11 of the Recruitment Letter, which clearly states that his appointment can be terminated by giving one month notice or an amount equivalent to one month salary. The said clause is reproduced as under:-

> *"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."*

90. Insofar as the plea of the petitioner that in the absence of any procedure laid down in the Service Agreement / appointment letter, the respondent No.1 was required to follow the Regulations, is also not appealing for the reason already stated, i.e., the appointment of the petitioner was purely contractual without there being any lien to hold the post. The terms of the agreement which I have reproduced above clearly stipulates, the termination can be effected by giving one month notice or payment of one month's salary in lieu thereof, and the petitioner having not challenged the terms of appointment, cannot contend contrary to the terms. The relevant part of the Regulations on which reliance has been placed, clearly states that the same shall be applicable for regular employees, which the petitioner was not.

91. At this juncture, it is apposite to refer to judgment of Supreme Court in the case of ***Brij Mohan Lal v. Union of India, (2012) 6 SCC 502***, wherein it was held as under:-

> *"78. Normally, there are three kinds of posts that may exist in a cadre—(1) permanent posts; (2) temporary posts; and (3) quasi-permanent posts. Accordingly, there can be a temporary employee, a permanent employee or an employee in quasi-permanent capacity.*
> *79. In Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] this Court, while elucidating upon the distinction*

between temporary and permanent employees stated that such distinction is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only the permanent employee who has a right to continue in service till the age of superannuation. As regards a temporary employee, there is no age of superannuation because he has no right to the post at all.

xxxx xxxx xxxx

83. A Constitution Bench of the Supreme Court allowed the appeal, while holding as under: (Parshotam Lal Dhingra case [AIR 1958 SC 36] , AIR p. 42, para 12)

> *"12. ... In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. <u>An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive</u>*

> *appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."*
>
> *xxxx xxxx xxxx*
>
> *85. Therefore, the above principles clearly show that there should be a right vested in an employee, which is duly recognised and declared in accordance with the Rules governing the conditions of service of such employee before such relief is granted. Unless the government employee holds any status as aforeindicated, it may not be possible to grant relief to the government employee, particularly when such relief is not provided under the relevant Rules."*
>
> *(emphasis supplied)*

92. I have seen the reply filed by the petitioner to the Show Cause Notice, though a justification is sought to be given by the petitioner that he had applied for casual leave for the period of March 28, 2020 to March 30, 2020 and privilege leave from May 25, 2020 to June 01, 2020, but in his e-mail dated July 03, 2020, he has conceded that even after adjusting leaves, his absence is still of 88 days. It is important to note that his absence is during the time of the COVID-19 pandemic, when the presence of all Pilots was required to undertake rescue missions. In fact, the petitioner was an essential worker exempted from any restrictions on travel. This makes the unauthorised absence of the petitioner more serious, justifying the decision of the respondent No. 1 to terminate his services. It is seen that in his reply to the Show Cause Notice, the petitioner has also tendered an unconditional apology in the following manner:-

> *"Once again, I hereby give my unconditional apology for the allegedly act on my part of remaining absent which is caused due to the reasons stated hereinabove. I sincerely apologize for the whole episode that unexpectedly and unintentionally turned against the requirement of the company for which, I request for your sympathetic consideration. Sir, I hereby assure that I will abide by the rules of the company always in the future."*

This would show that the petitioner has accepted his absence without due permission.

93. A plea has been put forth by the learned Senior Counsel for the petitioner that the impugned termination order is premised on the incidents that transpired in 2018 and 2019 and as the Show Cause Notice of July 10, 2020 does not mention either of these incidents, the impugned termination order is unsustainable. He also stated, the said issues have attained finality on the issuance of the letters dated November 20, 2018 and July 19, 2019 respectively. Though this submission looks appealing on a first blush, but as on deeper consideration, a bare perusal of the impugned termination order would reveal that the same is also on the ground of absenteeism of the petitioner for a long period of 88 days in the year 2020 which is a very serious misconduct and as such would independently justify the termination. Insofar as the plea of the petitioner that he was not required to inform his superiors before leaving his Base Station is concerned, the same is also not appealing. It is conceded case of the petitioner that his Base Station was in Delhi, from which he remained unauthorisedly absent for a period of 88 days. It cannot be denied that

being a First Pilot, the petitioner is under the supervisory jurisdiction of a senior officer to whom the petitioner is required to report. In that sense, the senior officer supervises the working of the petitioner including sanctioning the leave of the petitioner. The petitioner is required to take the permission of the superior officer for leaving the Base Station for the reason, the senior officer should be aware of the same to accordingly prepare the flight duties. Unfortunately, as the petitioner did not inform his superior officer, his leaving Delhi, resulted in the petitioner not being available for the standby duty / flight duties. That apart, an employee, for all purposes, is required to be at the Base Station, which is in a way, his headquarters, and cannot leave unless permitted to do so. The plea of the petitioner, if accepted, shall lead to indiscipline/insubordination, affecting public interest.

94. Now, insofar as the encashment of the BG by the respondent No.1 is concerned, the same is in terms of Clause 18 in the Offer of Engagement which reads as under:-

> *"You will be required to submit Bank Guarantee from a Nationalized Bank, of an amount equivalent to the cost of above in-house Training at the time of joining for the same. The total cost of in-house training has been estimated to be Rs.14,08,536/- (Rupees Fourteen Lacs Eight Thousand Five Hundred Thirty Six Only) which may vary/change in accordance with your in-house training requirements. The final cost will be advised to you on your reporting back to Air India after Type endorsement on your CPL/ ATPL by DGCA, India and ascertaining the requirement for any other Recency (e.g., renewal of IR, etc.) or training, if required, as per Regulatory requirements, to make you fly on line, after verification of your Technical*

> *Qualification. If you are unable to successfully complete the in-house training, then your candidature for engagement as Sr. Trainee Pilot (P2) (with B-787 endorsement) will be treated as cancelled and the amount spent on your in-house training will be recovered from the Bank Guarantee submitted by you."*

95. It is also not disputed that the petitioner had undergone training at the expense of the respondent No. 1. By invoking the BG *vide* letter dated March 15, 2021, the respondent No.1 had only implemented the stipulation as has been agreed to by the petitioner. Hence the said invocation cannot be faulted.

96. Now coming to the challenge to the letter dated June 17, 2020 whereby the respondent No.1 had written to the petitioner calling upon him to pay an amount of ₹50,00,000/- as liquidated damages is concerned, there is no prayer made in the petition nor a ground has been raised by the petitioner challenging Clause V in the Recruitment Letter of December 22, 2017. The plea is raised only in the rejoinder. There was no occasion for the respondent No. 1 to justify the stipulation. Relevant part whereof reads as under:-

> *"In the event, you leave the Company upon successful completion of training and fail to serve the Company for the Fixed Term or you abandon or leave the services of the Company before expiry of 10 years (including extended Fixed Term Contract) or your Fixed Term Contractual engagement is terminated for any reason, you would be liable to pay Air India Limited a sum of Rs.50 Lacs as liquidated damages as indicated in Service Agreement, in addition to invocation of the Bank Guarantee (if Valid)."*

97. The said stipulation clearly contemplates that if the Fixed

Term Contract engagement is terminated for any reason, the petitioner is liable to pay a sum of ₹50,00,000/- as liquidated damages as indicated in the Service Agreement. To that extent, the respondent No. 1 is justified in saying that since the services of the petitioner had been terminated on disciplinary grounds, the petitioner is liable to pay such liquidated damages to the respondent No.1. I must state that the petitioner in the rejoinder has referred to Clause 25 of the Offer of Engagement dated September 01, 2017, Clause E of the Surety Bond dated August 28, 2017 / September 06, 2017; and Clause 12 of the Service Agreement dated August 28, 2017 / September 06, 2017 to contend that, the same contemplates, that an amount of ₹50,00,000/- is liable to be paid, if the petitioner leaves or abandon the Company before the expiry of 10 years and not termination for any reason.

98. In the rejoinder, the petitioner has stated that the stipulation that if the engagement is terminated *"for any reason"*, he shall be liable to pay liquidated damages, is arbitrary. Suffice to state, in the absence of any challenge to the stipulation in the petition, the said issue cannot be gone into, I say nothing except that the petitioner shall be at liberty to make a representation to the respondent No.1 in that regard for its consideration raising all pleas. If such a representation is made, the respondent No.1 shall consider and convey its decision to the petitioner within a period of eight weeks from today. If the petitioner is aggrieved, he is at liberty to seek such remedy as available in law.

99. Insofar as the prayer of the petitioner against the respondent No.2 Bank to waive off the interest that has already been charged on

₹10,68,003.50/-, i.e., remaining amount of the BG paid to the respondent No.1 is concerned, it is the stand of the petitioner that the respondent No.2 Bank is charging compound interest @ 17.65%. I may state here, that in the Counter Indemnity agreement dated December 22, 2017 executed between the respondent No. 2 Bank and the petitioner, no such rate of interest has been stipulated. Even the communication of the respondent No. 2 Bank dated April 17, 2021 merely states interest at the applicable rate shall be charged. There is nothing to show what interest shall be levied. It is not known, whether there was any agreement between the respondent No. 2 Bank and the petitioner for charging compound interest at the said rate, and whether the respondent Bank is actually charging the same. In the absence of any conclusive material on record, this Court cannot take a final view on the issue. Appropriate shall be for the respondent No.2 Bank to consider the stand of the petitioner taken in this petition and pass a detailed and speaking order within a period of six weeks from today. If the petitioner has any grievance with regard to such decision/ order, liberty shall be with him to seek such remedy as available in law.

100. Coming to the prayer made by the petitioner seeking a direction against the respondent No.1 for reimbursement expenses incurred by the petitioner for his flying license renewal, flying allowances and deductions made from the petitioner's salary towards in-house training is concerned, the same is untenable, more so, when I have already held the termination of the services of the petitioner, to be lawful and justified. If that be so, the respondent No.1 is within its right to recover the cost of in-house training and deny the request for

reimbursement of flying allowances. That apart, if the flying license of the petitioner has expired, any renewal cannot be at the cost / behest of the respondent No.1 and as such the petitioner is not entitled to any reimbursement / payment. This prayer is rejected.

101. The reliance placed by the learned Senior Counsel for the petitioner on the judgment of ***Arjun Ahluwalia (supra)*** shall have no applicability in the facts of this case, as in that case, the Court was concerned with an issue that an agency which is a State or its instrumentality within the meaning of Article 12 of the Constitution of India cannot dispense with their employees because of financial constraints. The instant case is not such a case where the services of an employee have been terminated due to financial constraints. Even the judgment in the cases of ***State Bank of India (supra)*** and ***Lalita Kumari (supra)*** relied upon by the counsel for the petitioner shall have no applicability in the facts of this case and in view of my finding above. Further, there is a compliance of principles of natural justice as the action has been taken by respondent No. 1 after issuing a Show Cause Notice to the petitioner and eliciting reply from him.

102. In view of my above discussion, I find no occasion to interfere with the impugned orders dated August 05, 2020 and June 07, 2021. The petition is disposed of to the extent stated above. No costs.

CM APPL. 19254/2021 & 36130/2021 (for stay and directions)

In view of my decision in the petition, these applications have become infructuous and are dismissed as such.

V. KAMESWAR RAO, J

SEPTEMBER 26, 2022/*ds*