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IN THE HIGH COURT OF DELHI AT NEW DELHIReserved on: 19th January, 2022Decided on: 28th January, 2022+ **W.P.(C) 6139/2021 & CM APPLN No.19434/2021****CAPT HARVINDER SINGH SANDHU**

..... Petitioner

Through: Mr.Sanjoy Ghosh, Sr Advocate with
Mr.Naman Jain, Advocate.

versus

ALLIANCE AIR AVIATION LTD

..... Respondent

Through: Ms.Neetika Sharma, Advocate.

CORAM:**HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.** (Through Video Conferencing)

1. This petition is filed with following prayers:-

- a. *Quash and set aside the Impugned Order dated 16.06.2021, whereby services of the Petitioner have been terminated by the Respondent;*
- b. *Reinstate the Petitioner in service, with the Respondent, with full continuity of service, and due back-wages;*
- c. *Direct the Respondent to immediately take all steps necessary to give due effect to the MoU, in terms of which the Petitioner was engaged by the Respondent, and enable him to take on flying duties at the earliest;*
- d. *Direct the Respondent to provide to the Petitioner, at its own cost, necessary training and certifications that may have lapsed on account of actions directly attributable to the Respondent's negligence; and,*
- e. *Pass any other order or direction in the interest of justice.*

2. The facts are on 01.10.2018, the petitioner joined the respondent under Fixed Term Employment Agreement (FTEA). On 25.10.2018 he completed the assigned course and achieved requisite certificate. During April 2019, three more officers of Indian Air Force joined the respondent.



On 17.06.2019, *Airline Type Rating Programme* commenced and it was completed on 10.07.2019. On 06.09.2019, simulator flying commenced and was completed on 04.11.2019. On 07.11.2019, the documents of petitioner were submitted to Directorate General of Civil Aviation (DGCA) for necessary endorsement to the case of petitioner. On the basis of certain oral observation made by the DGCA to respondent, the petitioner completed all necessary requirement and submitted the clarification that he had joined from the Indian Air Force pursuant to MoU. The clarification were submitted to DGCA in the form of TR-04. The objections so raised by DGCA were all cleared. In February 2020 the necessary amendment was incorporated in OM-D, by way of TR-05 and mandatory requirement of flying hours from engagement of transition commanders were changed from 2500 hours to 2000 hours. This amendment was approved by the DGCA on 02.03.2020. On 04.03.2020, the case of the petitioner was resubmitted to DGCA. On 09.03.2020, the petitioner had a serious chest pain at Jabalpur from where he was brought to Delhi and on 18.03.2020 he underwent an angioplasty in Delhi and informed his medical condition vide email dated 28.03.2020 and was mandatorily deemed *Temporarily Medically Unfit (TMU)* for a period of one year from the date of procedure per clauses 3.5.2 and 3.5.3 of the *FTEA* entered into between the parties, which notes:-

3.5.2 It is agreed between the Parties that all obligations of the Company arising out of this Agreement are strictly subject to the Employee being medically fit and remaining medically fit during the entire term of his/her employment. It is clarified that in case DGCA Medical Board or any other designated authority declares The Employee Permanently Medical Unfit (PMU) for any reason whatsoever, this Agreement shall stand automatically terminated.



3.5.3 In case, the Employee is declared Temporarily Medical Unfit (TMU) then the payment of salary & Allowances to the Employee during the period of TMU shall be governed by The Company's policies/rules in this regard.

3. As per revised pay scale dated 25.10.2019, only 70% of the total salary would be payable for the first three months during the period of TMU. From May 2020, the petitioner was following the respondent to know the status of his case for endorsement, however, no response was received. Ultimately, on 03.01.2021, the petitioner went for his fitness medical test at AFCME, New Delhi, where he was suggested to undergo angiography for fitness certification. On 13.01.2021, pursuant to angiography results, the petitioner underwent angioplasty.

4. However on 20.01.2021, FIR was lodged against the petitioner under Section 376 IPC, at police station Infocity, Gandhinagar, Gujarat. The petitioner then appeared for post TMU medical review on 08.03.2021 and was declared TMU for a further period of *six* months. On 09.05.2021, the petitioner got an anticipatory bail by High Court of Gujarat and subsequently on 31.05.2021 when he visited the respondent, efforts were made to pressurise him to resign and threats were made to him that he was going to be terminated. He gave an email dated 31.05.2021 requesting the CEO of respondent to grant him an appointment so that he could put his case, but no response was received. The impugned order was thus passed terminating the services of the petitioner in terms of Clauses 8.2(i) read with 8.2 (ii) (a) & (k) of the FTEA. The clauses notes:-

8. TERMINATION

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8.2 TERMINATION BY THE COMPANY WITHOUT NOTICE PERIOD



- (i) If the performance of the Employee is deemed by the Company to be unsatisfactory the Company may at any time, upon written notice to the Employee, terminate the employment without any notice period;*
- (ii) Without limitation, the following acts of omissions/ commission shall constitute unsatisfactory performance for the purposes of this section; or*
- (a) The Employee is unable to maintain his/her capabilities (clause 1.1) as required by him/her under this Agreement or*
xxx
- (k) The Employee **is/shall** be **convicted** of a criminal offence by a Court of Law in respect of which imprisonment could be imposed, which in the reasonable opinion of the Company, would adversely affect the reputation the Company.*

5. The petitioner submits his termination is illegal as he had obtained medical fitness certificate only on 30.09.2021 by the Civil Aviation Department, Government of India and he be permitted to join the services of respondent with effect from 01.10.2021 with all benefits.

6. The learned counsel for respondent referred to various correspondences exchanged between the parties qua the FIR lodged against the petitioner and even to a letter dated 29.01.2021 of the Investigating Officer informing a case under Section 376 IPC registered against the petitioner at Infocity Police Station, Gandhinagar, Gujarat.

7. It is also the submission of the respondent the petitioner never informed about this FIR to the department and rather on 04.02.2021 the respondent wrote to the petitioner and asked him to give all documents pertaining to his case, but he ignored. He even ignored further emails dated 19.04.2021 and 01.05.2021, hence being an employee, the act of the petitioner adversely affects the reputation of the respondent as he was allegedly involved in a heinous crime of rape under Section 376 IPC, and



he did not cooperate with law enforcement agencies. It is also alleged despite being an employer of petitioner, his whereabouts could not be traced for the reasons attributable to the petitioner and he was unavailable for performance of duties to be assigned to him only because of FIR registered against him.

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9. Admittedly, anticipatory bail was granted to petitioner by the Gujarat High Court on the ground a false case was registered against him by the prosecutrix. He then went for quashing of the FIR, such petition was dismissed. Thereafter, the petitioner approached the Supreme Court in SLP (Crl) No.5357/2021 and *per* order dated 02.08.2021 the Hon'ble Supreme Court *stayed the investigation in such FIR*. Thus terminating the petitioner on the basis of aforesaid clauses is patently illegal as clause 8.2(ii)(k) (*supra*) requires an employee to be either *convicted* in criminal case or *shall be convicted* in such case in future. However, it is not the case here. Admittedly, the investigation of the FIR has already been stayed by the Supreme Court and petitioner being on anticipatory bail this provision cannot be the basis of terminating the employment of the petitioner by the respondent. Clause (k) (*supra*) contains the word *shall* and not *may*. At this stage it cannot be said with certainty the petitioner *shall* be convicted. If clause (k) contained the word *may* instead of *shall* then the things may have been different.

10. Further, it is not even the case of respondent that between January 2021 to March 2021, when the petitioner was temporarily medically unfit, the respondent ever assigned him any duty which he had declined to



perform, hence no case is made out under clause 8(i) (*supra*) either.

11. Thus, clause No.8.2.(ii)(k) of the *FTEA* is not applicable since the petitioner is neither convicted nor it can be said at this stage that he *shall* be convicted; the investigation having being stayed by the Supreme Court, hence it cannot be the basis for termination of his services. There is *no* proof of *non-performance* of any of his assigned duties to him which he had failed to perform. During this period he was temporarily unfit for medical reasons, hence it cannot be said the petitioner was *unavailable* for the services of respondent. Hence on both counts, the act of respondent of terminating the petitioner is illegal.

12. The decision in *Ramjay Kumar Singh vs State of Jharkhand W.P.(C) No.7344/2019* decided on 01.09.2020 is not applicable on facts as employee engaged therein was a casual employee, on a daily wage basis and was facing investigation under the Prevention of Corruption Act, investigated by Anti-Corruption Bureau. He did not respond to show cause notice and was terminated, hence the petition was found unmaintainable.

13. In view of above, the petition is allowed. The impugned order dated 16.06.2021 is quashed. The petitioner be treated in service with legal dues to which he is entitled. Pending application, if any, also stands disposed of.

14. Needless to say the arrears of petitioner, if any, be cleared by respondent within a period of eight weeks from today, lest shall carry simple interest @ 6% per annum on delayed payment(s).

YOGESH KHANNA, J.

JANUARY 28, 2022/M