

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9857-9861 OF 2011
(Arising out of SLP(C)Nos.20668-20672 of 2007)

AIR INDIA CABIN CREW ASSN. & ORS. ... APPELLANTS

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NOS.9862-9865 OF 2011
(Arising out of SLP(C)Nos.20679-20682 of 2007)

AND

CIVIL APPEAL NOS.9866-9871 OF 2011
(Arising out of SLP(C)Nos.20773-20778 of 2007)

J U D G M E N T**ALTAMAS KABIR, J.**

1. Leave granted.

2. Special Leave Petitions (Civil) Nos.20668-20672 of 2007, Special Leave Petitions (Civil) Nos.20679-20682 of 2007 and Special Leave Petitions (Civil) Nos.20773-20778 of 2007, have been taken up together for hearing and final disposal, inasmuch as, the facts in the several matters are the same, and the law involved is also the same. For the sake of convenience, we shall narrate the facts from Special Leave Petitions (Civil) Nos.20668-20672 of 2007, which have been filed by the Air India Cabin Crew Association and two others.

3. The common issue in all these matters is whether the promotional avenues and other terms of

service of the pre-1997 cadre of Assistant Flight Pursers could be changed to their prejudice despite the provisions of the Air Corporation (Transfer of Undertakings and Repeal) Act, 1994 and, in particular, Section 8 thereof and also in view of the judgments of this Court in Air India Vs. Nergesh Meerza & Ors. [(1981) 4 SCC 335], and Air India Cabin Crew Assn. Vs. Yeshaswinee Merchant & Ors. [(2003) 6 SCC 277], along with the various agreements and settlement arrived at between the parties. The further question that arises is whether in the circumstances indicated, a policy decision of gender neutralization, which was prospective in nature, could be applied retrospectively to the pre-1997 cadre of Pursers and whether such application would be arbitrary and contrary to the provisions of Articles 14, 19 and 21 of the Constitution, as it upsets certain rights

relating to promotion which had vested in Assistant Flight Purser belonging to the pre-1997 cadre.

4. In order to appreciate the case made out by the appellants in these appeals, it is necessary to set out briefly some of the facts leading to the filing of the several writ petitions before the Delhi High Court.

5. According to the appellants, for several decades two distinct cadres have been existing in Air India Corporation, comprising male Air Flight Purser and female Air Hostesses, each with their own terms and conditions of service, including promotional avenues. In 1980, one Nergesh Meerza and four other Air Hostesses filed Writ Petition No.1186 of 1980 in the Bombay High Court, questioning the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations and raising certain other

questions of law. Air India, being the Respondent No.1 therein, moved a transfer petition, being Transfer Case No.3 of 1981, for transfer of the writ petitions from the Bombay High Court to this Court on the ground that several writ petitions filed by Air India were pending before this Court and also on account of the fact that other writ petitions had also been filed by the Air Hostesses employed by the Indian Airlines Corporation, hereinafter referred to as "IAC", which were also pending in this Court involving almost identical reliefs. Even in the said case, which was transferred to this Court, it was observed that from a comparison of the method of recruitment and the promotional avenues available, Air Hostesses formed an absolutely separate category from that of Assistant Flight Purser in many respects, having different grades, different promotional avenues and different service conditions.

6. At this stage, it may be necessary to give a little further background regarding Indian Airlines Corporation and Air India Limited established under Section 6 of the Air Corporations Act, 1953. Subsequently, Indian Airlines Limited and Air India Limited were formed and registered under the Companies Act, 1956. In 1994, the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, hereinafter referred to as "1994 Act", was enacted to provide for the transfer and vesting of the undertakings of Indian Airlines and Air India respectively to and in the companies formed and registered as Indian Airlines Limited and Air India Limited and also to repeal the Air Corporations Act, 1953. Section 3 of the 1994 Act provided for the vesting and transfer of the undertaking of Indian Airlines in Indian Airlines Limited and the undertaking of Air India in Air India Limited.

Section 8 of the 1994 Act also specified that every officer or other employee of the Corporations, except the Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of the Corporation serving in its employment immediately before the appointed day (1st April, 1994) would, in so far as such officer or other employee were concerned, become as from the appointed day, an officer or other employee, as the case may be, of the company in which the undertaking had vested and would hold his office or service therein for the same tenure, at the same remuneration and upon the same terms and conditions of service. He would be entitled to the same obligations, rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds of retirement, pension, gratuity and other benefits as he would have held

under the Corporation if its undertaking had not vested in the Company, with the option of not becoming an officer or other employee of the Company.

7. The dispute regarding the distinction between Assistant Flight Purser and Air Hostesses resulted in a Record Note signed on 30th May, 1977, by the Air India Cabin Crew Association and Air India Limited, which noticed differences between the functional designation of In-Flight Crew and actual designation and also permitted female Executive Air Hostesses to fly. After the decision in Nergesh Meerza's case, on 17th November, 1983, a further Record Note was entered into between the aforesaid Association and Air India Limited, which introduced avenues of promotion for Air Hostesses. It was provided that the avenues of promotion for Air Hostesses would be through the categories of Senior

Check Air Hostess, Deputy Check Air Hostess and Additional Chief Air Hostess to Chief Air Hostess. It was also indicated that as far as male Assistant Flight Purser, comprising Flight Purser and In-Flight Supervisors were concerned, they would continue to be unaffected and the hierarchy on board the aircraft for various categories would remain as was then existing and there would be no change in the job functions of any category of cabin crew on account of the said agreement. What is evident from the said Record Note is that the separate and distinct cadres of male and female Cabin Crew were continued in respect of promotional avenues, hierarchy and job functions on board an aircraft.

8. Subsequently, on 5th June, 1997, a settlement was arrived at between the appellants and Air India that all earlier settlements, awards, past

practices, record notes and understandings arrived at between the erstwhile Corporation and the appellant Association, would continue. Immediately after the signing of the said Memorandum of Settlement, on the very same day Air India Limited issued a promotion policy for all the Cabin Crew members, but treated the pre-1997 and post-1997 crew separately. By a specific clause, the said promotion policy amended the existing promotional avenues for the male Cabin Crew to that of In-Flight Supervisors and female Cabin Crew to the post of Senior Check Air Hostesses recruited prior to the settlement. The said promotion policy kept the promotional avenues in the two streams of male Cabin Crew and female Cabin Crew, recruited prior to 1997, separate.

9. It may be of interest to note that there was a distinct division among the Air Hostesses, the

majority of whom belonging to "workmen" category, numbering about 684 at the relevant time, were members of the Air India Cabin Crew Association. When the revised promotion policy for Cabin crew was brought into effect from 7th June, 1997, a small number of about 53 Air Hostesses, who were about 50 years of age, including those promoted to executive cadres for ground duties or who were at the verge of retirement from flying duties, formed an association in the name of Air India Air Hostesses' Association. The Association unsuccessfully challenged the binding effects of the Settlement of 5th June, 1997, in the Bombay High Court, but got itself impleaded as a party in a pending Reference before the National Industrial Tribunal and raised the issues of merger and interchangeability of job functions between the male and female Cabin Crew members. Despite opposition from the appellant Association, which represented 684 out of 1138 Air

Hostesses of Air India, the High Court accepted the conditional proposal of merger of cadres of male and female members of Cabin Crew and held that Air Hostesses were also entitled to retire at the age of 58 years from flying duties on par with Flight Purser and other members of the cabin crew. The High Court held that the age of retirement from flying duties of Air Hostesses at and up to the age of 50 years with option to them to accept ground duties after 50 and up to the age of 58 years amounted to discrimination against them based on sex, which was violative of Articles 14, 15 and 16 of the Constitution, as also Section 5 of the Equal Remuneration Act, 1976. It was further held that the two cadres of male and female Cabin Crew members came to be merged only after 1997 and such merger applied to fresh recruits and the conditions of service and distinction between the two cadres would continue with regard to the existing Cabin

Staff up to the year 1997.

10. The aforesaid promotion policy separated the promotional avenues for male Cabin Crew and female Cabin Crew recruited prior to 1997 as a separate and distinct class, as was also observed in Yeshaswinee Merchant's case (supra). According to the appellants, the Union of India, by its directive dated 21st November, 2003, attempted to over-reach the judgment of this Court in Yeshaswinee Merchant's case (supra), wherein, the directives dated 16th October, 1989 and 29th December, 1989, were to become inoperative after the Repeal Act of 1994. Thereafter, on 18th December, 2003, in terms of the directive of 21st November, 2003, the Respondent No.2 came out with an Office Order of even date, wherein, it was, *inter alia*, indicated that with the flying age of female Cabin Crew having been brought at par with

the male Cabin Crew, the issue of seniority and promotion would have to be addressed by the Department so that there was no resentment among the categories of employees. Liberty was given to the In-Flight Service Department to assign flight duties to such Air Hostesses, who may have been grounded at the age of 50 years. On 30th December 2003, the Respondent No.2 addressed a letter to the Air Hostesses informing them that in keeping with the directions received from the Respondent No.1, it had been decided by the management to allow them to fly up to the age of 58 years, though, of course, such decision would be without prejudice to the proceedings pending before the National Industrial Tribunal at Mumbai. Thereafter, by subsequent letters, the Respondent No.2 wrote to the appellant Association that on the issue of service conditions, the management was aware of the various Agreements, Awards and Judgments and it was

re-emphasized that the two cadres were not being merged and the service conditions of the male and female Cabin crew continued to be separate and distinct in terms of the Agreements and judgments passed in respect thereof.

11. However, in contrast to the correspondence on 27th December, 2005, the Respondent No.2, in total disregard of the Record Notes, Memorandum of Settlement and the judgments of this Court in Nergesh Meerza's case and in Yeshaswinee Merchant's case (supra), issued an administrative order bringing female Cabin crew and the male Cabin Crew at par in respect of age of retirement. Accordingly, Air Hostesses were also permitted to fly up to the age of 58 years. In the said order it was also indicated that after the promulgation of the order, the Executive Female Cabin Crew would be eligible to be considered for the position of

In-Flight Supervisor along with the Executive Male Cabin Crew. It was, however, clarified that the number of Executive Cabin Crew to be designated as In-Flight Supervisors would be based on operational requirements of the company.

12. On the promulgation of the said order, the appellant Association made a representation to the Chairman and Managing Director of the Respondent No.2 on 28th December, 2005, pointing out that the same was contrary to the judgments of this Court. Since the appellant Association did not receive any response to its representation, it filed Writ Petition (C) Nos.983-987 of 2006, before the Delhi High Court on 21st January, 2006, complaining that the orders passed were arbitrary, illegal and contrary to the various decisions of this Court. The said writ petitions, along with various connected matters, came up for consideration before

the Division Bench of the High Court on 30th January, 2006. After impleading Air India Air Hostesses Association and the Air India Executive Air Hostesses Association as respondents in the writ petition on the ground that they were likely to be affected by any order which may be passed in the pending proceedings, the appellant Association filed its Rejoinder Affidavit to the Counter Affidavits filed by the Respondent Nos.1, 2 and 3 and denied the claim of the respondents that the posts of Flight Supervisors had been abolished by the promotion policy of 1997 and that the male and female cadres of the Cabin Crew recruited prior to 1997, had been merged. Before the Division Bench of the High Court, both the parties appeared to have clarified their stand that the merger of Indian Airlines with Air India did not in any manner affect the existing settlements and agreements. Ultimately, on 8th October, 2007, the

Division Bench of the High Court dismissed the writ petitions filed by the appellant Association. By the said judgment, the Division Bench of the High Court rejected the challenge of the appellant Association to the constitutional validity of Section 9 of the Air Corporation (Transfer of Undertakings) Act, 1994, though, on the ground of laches. The other challenge to the impugned directive issued by the management on 21st November, 2003, was also not accepted. More importantly, for our purpose in these cases, the Division Bench of the High Court held that the expression "In-Flight Supervisor" is, in fact, a description of a job function and is not a post exclusively reserved for the male Cabin crew.

13. As mentioned hereinabove, these appeals are directed against the said decision of the Division Bench of the High Court of Delhi.

14. Appearing for the appellant Association and the other appellants in SLP(C)Nos.20668-20672 of 2007 (Now appeals), Mr. Pramod B. Agarwala, learned Advocate for the appellants in SLP(C)Nos. 20679-20682 of 2007, contended that the Appellant No.1, Association, is a registered trade union under the Trade Unions Act and represents the largest number of Cabin Crew in the country, both prior to and after 1997 of both Air India and the former Indian Airlines. Learned counsel contended that the said Association is the sole recognized union for collective bargaining in respect of the Cabin Crew, such as Air Hostess and Flight Purser cadres. He submitted that the said Association represented more than 1480 Cabin Crew in Air India and more than 350 of their members were pre-1997 Air Hostesses and, approximately, 360 were pre-1997 Flight Purser. The Executive Cabin Crew members

are represented by the Air India Officers Association, as also the Air India Executive Cabin Crew Association. It was contended by Mr. Agarwala that none of the other trade unions are recognized or registered trade unions.

15. Mr. Agarwala submitted that the challenge to the directive issued by the Central Government on 21st November, 2003, had been wrongly interpreted by the management of Air India as facilitating the breach of binding Settlements, Agreements and Record Notes. The management of Air India also appears to have taken the position that the directive issued by the Central Government on 21st November, 2003, freed it from the directions contained in the decision of this Court in Yeshaswinee Merchant's case (supra). Mr. Agarwala submitted that the decision in these appeals would depend on the answers to the following questions :

- (a) Whether the decision of this Court in Nergesh Meerza's case and Yeshaswinee Merchant's case (supra), could be nullified by an order of the Civil Aviation Ministry issued under Section 9 of the Air Corporation (Repeal and Transfer of Undertakings) Act, 1994, and also whether the same could set aside the various Record Notes, Settlements and Agreements entered into by Air India with the appellant Association?; and
- (b) Did the post of In-Flight Supervisor stand abolished by the promulgation of the promotion policy of 5th June, 1997?

16. Referring to the judgment of the High Court, Mr. Agarwala submitted that three issues were framed for adjudication, namely,

- (i) What is the effect of the judgments of the Supreme Court in Nargesh Meerza's case (supra) and in the case of Yeshaswinee Merchant (supra) on the validity of the impugned orders and directives?;
- (ii) Is the position of an In-Flight Supervisor a job function or a post and how does the same affect the claim of male Cabin Crew in the Flight Purser cadre to an exclusive right to be appointed to such a position?

(iii) Are the impugned circulars and orders rendered invalid either on account of procedural violations and/or on the grounds of discrimination, arbitrariness or irrationality and do they violate any previous settlements and agreements?

17. Mr. Agarwala submitted that the High Court had misunderstood the decisions rendered by this Court and had proceeded on an erroneous assumption that Flight Purser were claiming benefits only for the male Cabin Crew.

18. Mr. Agarwala submitted that in the two cases referred to hereinabove, the relevant findings are that on a comparison of the mode of recruitment, the classification, the promotional avenues and other matters which had been discussed, it was

clear that Air Hostesses formed a separate category from that of Air Flight Purser, having different grades, different promotional avenues and different service conditions, but no discrimination had been made between Flight Purser and Air Hostesses, although their service conditions may have been different. It was also held that the post of In-Flight Supervisor belongs to the Flight Purser cadre. While considering the fact that the retirement age of Air Hostesses was 58 years, Air Hostesses were prohibited from flying beyond the age of 50 years. What was also established was that there could be no interchangeability of functions between the two cadres, unless the same was introduced by way of settlement between the appellant Association and the management of Air India. Mr. Agarwala submitted that all these issues had been considered by this Court in the light of the various Agreements, Settlements and Awards

entered into by Air India with the appellant Association in Yeshaswinee Merchant's case and once such an exercise had been undertaken by this Court, it was no longer open to the High Court to undertake a fresh exercise on the decided issues.

19. Mr. Agarwala further contended that the findings of this Court could not be negated by a mere directive issued by the Government under Section 9 of the 1994 Act. The said directive of 21st November, 2003, merely directs Air India to allow the female Cabin crew to perform flying duties up to the age of 58 years in the interest of operations and in view of the exigencies of circumstances. Mr. Agarwala submitted that by issuing such an administrative order, on 27th December, 2005, Air India was not only seeking to nullify the judgments of this Court, but also the

binding settlements which had been arrived at between the parties.

20. On the question as to whether the abolition of a post could be implied or whether it has to be an explicit arrangement through a bilateral settlement or a Court order, learned counsel submitted that, although, it had been Air India's stand that the post of In-Flight Supervisor stood abolished under the 1997 promotion policy, the same is not reflected either in the said policy or the settlement. In fact, except for placing on record a seniority list as on 1994 and 1998, no other material had been disclosed to establish the fact that the posts of In-Flight Supervisors had been abolished. Mr. Agarwala repeated his submission that it had been admitted by Air India that the post of In-Flight Supervisor was meant exclusively for the Flight Purser cadre, since their

promotional avenue and/or any change in their service conditions could only be brought about through a bilateral settlement with the appellant Association. Mr. Agarwala pointed out that in Nergesh Meerza's case this Court had observed that it was unable to understand how the management could phase out the posts available to the Air Hostesses exclusively at the instance of Purser when they had no concern with the said post nor did they have any right to persuade the management to abolish a post which had been meant for them. This Court went on to observe that since the decision had been taken as far back as in 1977 and no grievance had been made by the Air Hostesses in that regard, no relief could be given to them, but in view of the limited promotional channels available to Air Hostesses, Air India should seriously consider the desirability of restoring the posts of Deputy Chief Air Hostess in order to

remove the injustice which had been done to the Air Hostesses, in violation of the principles of natural justice.

21. Consequent upon the decision in Nergesh Meerza's case, a settlement was reached on 17th November, 1983, whereby the Executive Post of Deputy Chief Air Hostess was reintroduced with a separate standard force and job profile and also defining separate promotional avenues for the cadre of Flight Purser and Air Hostesses. The subsequent settlement of 25th December, 1988, went further and increased the standard force of Deputy Chief Air Hostesses, while maintaining the separate avenues of promotion of the two cadres.

22. The third Agreement contained in the Record Note of Understanding dated 17th March, 1995, did not contain anything of relevance to the facts of this case, except for paragraph 6 of the Note which

provided for interchangeability of job functions. It was indicated that in respect of new entrants there would be interchangeability in the job functions between male and female members of the Cabin Crew to ensure optimum utilization of the existing work force and the standard force to be maintained, without affecting the promotional avenues of the work force then in existence and that the uniform conditions of service were to be maintained. Paragraph 7 dealt with the upgradation of In-Flight service, which, it was agreed, would be carried out as per the Agreement dated 6th October, 1992, with immediate effect. The said Agreement did not change anything as far as the two separate cadres were concerned, which continued to remain in existence.

23. The aforesaid Agreement was followed by a policy adopted by Air India for redesignation,

scales of pay and changes in promotion policy for Executive Cabin Crew of In-Flight Services Department. The same was contained in a letter dated 24th May, 1996, written by the Director, H.R.D., to the Director of Finance of Air India. By virtue of the said policy, the posts of the Executive Cabin Crew of the In-Flight Services Department were redesignated. The Executive Cabin Crew began from Grade No.27, which consisted of In-Flight Supervisors and Deputy Chief Air Hostesses. Their designation was revised to that of Deputy Manager-IFS. Grade No.29 consisting of Deputy Manager and Additional Chief Air Hostesses were redesignated as Manager-IFS. Grade No.31, which comprised of Managers and Chief Air Hostesses, were redesignated as Senior Managers-IFS. Lastly Senior Managers in Grade No.34 were redesignated as Assistant General Managers-IFS. It was made clear that such redesignation was for Administrative/

Executive ground assignments and, that the existing functional designations of In-Flight Supervisor and Air Hostess would continue, whilst on flight duties, in accordance with the prevailing practices. The scales of pay were also revised and a fitment method was introduced in respect thereof. The effect of the said policy was that all Cabin Crew could be required to discharge dual functions, in the air and also on the ground, in addition to duties to be performed by In-Flight Supervisors.

24. Inasmuch as, all members of the appellant Association, which was a Trade Union registered under the Trade Unions Act, 1926, belong to the workmen category of the Cabin Crew, as was then existing, such as Assistant Flight Purser, Flight Purser, Check Flight Purser, Additional Senior Check Flight Purser, Senior Check Flight Purser, Air Hostess, Senior Air Hostess, Check Air Hostess,

Additional Senior Check Air Hostess, Senior Check Air Hostess and those recruited from March, 1995 onwards till the date of Settlement, they intimated to the Management of Air India on 1st July, 1990, that the Settlement entered into between the Management for the period 1st October, 1985 to August 31, 1990, stood terminated on the expiry of the period specified in the Settlement. A fresh Charter of Demands for the period commencing from 1st September, 1990, was also submitted. On 26th May, 1993, the Management of Air India and the appellant Association signed a Memorandum of Settlement providing for payment of interim relief during the period of wage settlement for the period commencing from 1st September, 1990. It was indicated that the settlement was in supersession of all previous Agreements, Record Notes, Understandings, Awards and past practices in respect of matters specifically dealt with or

amended or modified. It was stipulated that the Settlement would be implemented after the same was approved by the Board of Directors of Air India Limited. The result of the said Settlements and Agreements was that the designation of Air Hostesses and Flight Purser were discontinued and all were designated as "Cabin Crew".

25. Then came the promotion policy for Cabin Crew on 5th June, 1997. It was stipulated therein that the revised promotion policy would cover all promotions of Crew from the induction level up to the level of Manager, which is the first Executive level post, with the object of providing planned growth to the Cabin Crew. From this date onwards, the two cadres of the Cabin Crew stood merged as far as the fresh recruits were concerned. Paragraph 7.4 of the promotion policy provided that the existing category of Cabin Crew on being

promoted to the new grades would continue to perform their job functions prior to such promotion till the time of actual requirement in the higher grade. It was also provided in paragraph 7.5 that on promotion to the Executive cadre, i.e., to the level of Manager and above, the male Cabin Crew would continue to carry out their respective job functions of Assistant Flight Purser/Flight Purser, as the case may be, until such time they started performing the functions of In-Flight Supervisors on a regular basis. Mr. Agarwala submitted that paragraph 7.4 created a cadre within a cadre after 5th June, 1997, and those recruited prior to 1995 and 1999 were to continue in their old cadre till the date of merger and the new service conditions would apply to new recruits after the said date.

26. Mr. Agarwala submitted that this Court had taken into account all the various Agreements, Settlements and Awards entered into by the Management of Air India with the appellant Association in Yeshaswinee Merchant's case and it was not open to the High Court to attempt to rewrite the law, as had been declared by this Court.

27. Mr. Agarwala contended that all the Agreements arrived at between the appellant Association and the Management of Air India in 1977, 1983, 1988 and 1995, dealt with Executive posts and also protected the separate and distinct promotional avenues of Flight Purser and Air Hostesses, at least till 1997, when there was a merger of the Cabin Crew.

28. On the question as to whether by the directive of 21st November, 2003, issued by the Government under Section 9 of the 1994 Act, the law as

declared by this Court in Yeshaswinee Merchant's case could be unsettled, Mr. Agarwala's response was to the contrary. It was submitted by him that the said directive only directed Air India to allow the female Cabin Crew to perform flying duties up to the age of 58 years, but it did not say anything more. On the other hand, by issuing the Administrative Order dated 27th December, 2003, Air India was seeking to nullify the judgments of this Court, as also the binding settlements, which it was not empowered to do under the law. It was submitted that a contrary view could not be canvassed by the Government authorities barely four months after the judgment of this Court, concluding that the directives were no longer operative due to the repeal of the Air Corporations Act, 1994. Mr. Agarwala contended that the directive of 21st November, 2003, issued by the Government was nothing but a mechanism evolved by the management

of Air India to circumvent the judgments of this Court, which it could not do.

29. As to the second proposition as to whether a post could be abolished by implication, Mr. Agarwala submitted that the same could only be effected through a bilateral settlement or a Court order. It was urged that, although, on behalf of Air India it had been submitted that the post of In-Flight Supervisor had been abolished under the said promotion policy, not a single clause of the settlement reflects such submission. Mr. Agarwala submitted that except for a seniority list of 1994 and 1998, no material had been placed on behalf of the Air India to show that in fact the post of In-Flight Supervisor had been abolished. In this regard, Mr. Agarwala also referred to the observation made by this Court in Nergesh Meerza's case, where it had been observed that the Court was

unable to understand how the Management could phase out a post available to the Air Hostesses exclusively, at the instance of Purser, when they had absolutely no concern with the said post.

30. Mr. Agarwala submitted that the case of the appellant Association, representing the In-Flight Purser, was confined to the question of the benefits which were available to In-Flight Purser prior to the promotion policy of 1997.

31. Mr. Sanjoy Ghose, learned Advocate appearing for the appellants in SLP(C)Nos.20679-20682 of 2007, supported the submissions made on behalf of the All India Cabin Crew Association and submitted that the Appellant No.1, Kanwarjeet Singh, was himself a party in Yeshaswinee Merchant's case (supra). Learned counsel submitted that the appellants were all Assistant Flight Purser, who also sought the same relief as was being sought by

the Air India Cabin Crew Association. Mr. Ghose submitted that the appellants were aggrieved by the order passed by the Minister of Civil Aviation on 21st November, 2003, enhancing the age of flight duties of female Cabin Crew up to 58 years and also the subsequent order passed by Air India on 18th December, 2003, directing the In-Flight Services Department of Air India to assign flight duties to Air Hostesses who had been grounded at the age of 50 years. Mr. Ghose submitted that even the Office Order issued by Air India on 27th December, 2005, stating that Air India would be at liberty to consider Air Hostesses for the post of Air Flight Supervisor, was contrary to the decision of this Court in both Nergesh Meerza's case, as well as Yeshaswinee Merchant's case, indicating that there were three different categories of staff comprising the Cabin Crew. It was submitted that by issuing the said orders, Air India was trying to by-pass

the decisions of this Court in the said two cases. It was submitted that the question has to be decided as to whether the functions discharged by In-Flight Purser were "job functions" or whether the same were the adjuncts of the Flight Purser's duties on board the Aircraft. It was further contended that whatever be the answer to the said question, what was material is that in the absence of an express agreement with the majority union, the job functions, which were the subject matter of industrial agreements and settlements, could not be altered or abolished in any manner by Air India.

32. Mr. Ghose further submitted that the respondents' contention that the post of In-Flight Supervisor is an executive post and workmen have no *locus standi* to challenge the same, is contrary to the position adopted by the management of Air India regarding the legitimate interest of the appellants

by which their avenues of promotion had been altered and their future job functions had been affected, without recourse to the lawful process of collective bargaining. It was pointed out that in Yeshaswinee Merchant's case (supra), this Court had held that executives, who as workmen had entered into and benefited from the various industrial settlements, could not attempt to wriggle out of the same, merely on account of having received promotions to the executive cadre.

33. The other challenge with regard to the increase in the retirement age of Air Hostesses up to 58 years and also assigning them flying duties up to and beyond the age of 50 years, was the same as in the Air India Cabin Crew Association's case. In addition, it was also submitted that having protected the conditions of service of the employees under Section 8 of the 1994 Act, the

legislature could not have intended to confer powers upon the Central Government in Section 9 thereof, to direct the Management of Air India to alter the conditions of service which had been settled on the basis of binding settlements and agreements. In support of his submissions, Mr. Ghose referred to the decision of this Court in Karnataka State Road Transport Corporation Vs. KSRTC Staff & Workers' Federation & Anr. [(1999) 2 SCC 687], wherein, it was held that the power of the Government to issue directives could not in its width over-ride industrial law or create service conditions. Mr. Ghose submitted that since the decision in Yeshaswinee Merchant's case continued to hold the field, any attempt to question the 1997 policy on the ground of ironing out the creases relating to accelerated promotions and eligibility criteria was misplaced and the 2003 directive to permit Air Hostesses to fly beyond the age of 50

years, which was exigency based, should not be allowed to continue for 8 years, since almost a thousand new Cabin Crew had been recruited after 2003.

34. In SLP(C)Nos.20773-20778 of 2007, Rajendra Grover and Ors. Vs. Air India Ltd. & Anr., the same challenges were advanced as in the other two SLPs. It was submitted by Mr. Siddharth Aggarwal, learned Advocate appearing for the appellants, that Air India is a Government Company within the meaning of Section 617 of the Companies Act, 1956, in which one of the departments is the "In-Flight Services Department", which includes the Cabin Crew Section, consisting of members of two separate and distinct cadres - Air Hostess's Cadre and Flight Purser's Cadre. Mr. Aggarwal submitted that this Court had clearly recognized the said two cadres as separate and distinct in Nergesh Meerza's case (supra), and

the same was upheld in Yeshaswinee Merchant's case (supra). Accordingly, the conditions of service with regard to the various posts had been the subject matter of negotiations and settlements and, as contended both by Mr. Siddharth Aggarwal and Mr. Ghose, the same could not be altered to the detriment of the workmen without due consultation with the concerned unions. Mr. Aggarwal urged that the post of In-Flight Supervisor is a post which was exclusive to the Flight Purser's Cadre and even if it is taken as a job function, the same would continue to be exclusive to the Flight Purser's cadre and could not, therefore, have been extended to Air Hostesses after 1997 when the Cabin Crew comprised of In-Flight Purser and Air Hostess were merged. Mr. Aggarwal, submitted that on account of judicial precedent and the principles of *res judicata*, the decisions in Nergesh Meerza's case and Yeshaswinee Merchant's case were binding and

since the terms and conditions of service of the pre-1997 recruits had been fixed through negotiations and agreements made in course of industrial adjudication, the High Court ought not to have accepted the proposal of merger of the two cadres, without the consent of the employees. He also reiterated that a splinter group of Air Hostesses, who had consented to the merger as proposed by Air India, could not wriggle out of the binding agreements and settlements to which they were also parties through the Air India Cabin Crew Association, merely on the ground that they were no longer workmen as they had been promoted to executive posts. It was urged that the decision taken by the Management of Air India contained in the order of the Ministry of Civil Aviation dated 21st November, 2003, and the Office Order issued by Air India on 18th December, 2003, as well as the Office Order dated 27th December, 2005, were,

illegal, arbitrary and in violation of the principles of *res judicata* and were, therefore, liable to be quashed.

35. Mr. L. Nageshwara Rao, learned Senior Advocate, who also appeared on behalf of the Appellant Association, submitted that the three issues framed for adjudication by the High Court related to (1) the effect of the judgments of the Supreme Court in Nergesh Meerza's case and in Yeshaswinee Merchant's case (supra) on the validity of the impugned orders and directives; (2) Whether the position of an In-Flight Supervisor was a job function or a post; and (3) Whether the impugned circulars and orders were rendered invalid on the ground of procedural violation or on the ground of discrimination, arbitrariness or irrationality. Mr. Rao submitted that all the three issues had been incorrectly answered by the High Court.

36. Mr. Rao submitted that since it had been categorically held in Nergesh Meerza's case and in Yeshaswinee Merchant's case that Air Hostesses and Flight Purser constitute different cadres and that "In-Flight Supervisor" is a post belonging to and forming part of the Flight Purser cadre, the same could not be altered by mere Office Orders. It was also held that there could be no interchangeability of functions between the two cadres, unless such interchangeability was introduced by way of settlement between the Appellant Association and the Management of Air India. Mr. Rao submitted that the High Court also observed that there was no discrimination made out as regards the differential treatment between Flight Purser and Air Hostesses and their service conditions could be different. Accordingly, the flying age of Air Hostesses from the Pre-1997 settlement period was fixed at 50

years, though the retirement age was 58 years. On the question whether the position of In-Flight Supervisor was a job function or a post, Mr. Rao submitted that the said question had been decided in Nergesh Meerza's case and it was held that the post belonged to the Flight Purser's cadre.

37. On the third issue regarding whether the impugned circulars and orders had been rendered invalid, Mr. Rao submitted that there could not be any exercise of powers by the Central Government under Section 9 in respect of the dispute, having regard to the decisions rendered in Nergesh Meerza's case and in Yeshaswinee Merchant's case. Mr. Rao submitted that the High Court, while considering the matter, had arrived at a wrong conclusion and the impugned judgment was, therefore, liable to be set aside.

38. The submissions made on behalf of the appellants in all these appeals were strongly opposed on behalf of the Union of India by the Additional Solicitor General, Mr. Gaurav Banerji. He submitted that on the basis of a Record Note dated 30th May, 1977, between Air India and the Air India Cabin Crew Association, the post of Deputy Chief Air Hostess was abolished and the service conditions of Air Hostesses were altered on 12th April, 1980 vide Regulation 46. Subsequently, after the judgment in Nergesh Meerza's case, the post of Deputy Chief Air Hostess was reintroduced on 17th November, 1983, and the challenge thereto was rejected both by the learned Single Judge and the Division Bench of the Bombay High Court. On 16th October, 1989, the Government of India issued directions to Air India under Section 34 of the 1983 Act to increase the retirement age of Air Hostesses to 58 years and the same was followed by

a Clarification dated 29th December, 1989, indicating that while the Air Hostesses would retire at the age of 58 years, they would be entitled to fly till the age of 45 years. Thereafter, on 12th January, 1983, a further Circular was issued by Air India extending the flying age of Air Hostesses from 45 years to 50 years. Soon thereafter, the Air Corporation Act was repealed by the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, resulting in the Record Note between Air India and the Association on 17th March, 1995, leading to the re-designation of scales of pay and changes in the promotion policy for the Executive Cabin Crew of In-Flight Services Department. Mr. Banerji submitted that on 5th June, 1997, a Memorandum of Settlement was entered into between Air India and the Association and on the same day, a promotion policy for Cabin Crew was also promulgated. This

was challenged in the Bombay High Court in Yeshaswinee Merchant's case (supra), in which the Bombay High Court held that the cadre of Flight Purser was distinct and separate from that of Air Hostesses. Mr. Banerji submitted that while the decision in Yeshaswinee Merchant's case was rendered by the Division Bench on 11th July, 2003, by a Presidential Directive dated 21st November, 2003, issued under section 9 of the Air Corporations (Repeal) Act, 1994, Air Hostesses were allowed to undertake flying duties till the age of 58 years, which was followed by the Administrative Order dated 27th December, 2005, by which the Executive female Cabin Crew was made eligible to be considered to be in position along with male Cabin Crew.

39. Mr. Banerji submitted that the issues involved in these matters are purely administrative in

nature relating to the management of Air India and did not, therefore, attract the provisions of Article 14 of the Constitution as the Company has the right to run and manage its affairs in accordance with law. Mr. Banerji submitted that in the revised Promotion Policy for the Cabin Crew dated 5th June, 1997, there was a shift from the policy of standard force promotion to a time bound policy. By virtue of Clause 4 of the Promotion Policy, there was a merger of the male and female Cabin Crew, both the existing crew and new recruits, to make them all eligible for the Career Advancement Scheme.

40. Referring to the Memorandum of Settlement arrived at between the management and the workmen represented by the Appellant Association, Mr. Banerji pointed out that the said Settlement covered only the workmen and not the members of the

executive staff. He pointed out that in clause 7 of the Memorandum of Settlement it was categorically stated and agreed to by the parties that the Cabin Crew who are promoted to the grade of Manager (Grade 29 and above) would not be represented by the Appellant Association. Mr. Banerji submitted that as per the earlier promotion policy, a decision had been taken to rationalize the designations of the Cabin Crew. In keeping with the said decision In-Flight Supervisors and Deputy Chief Air Hostesses, who were in Grade 27, were re-designated as Deputy Manager-IFS. Grade 28 was abolished and Grade 29 was comprised of Deputy Manager and Additional Chief Air Hostesses, who were re-designated as Manager-IFS. It was, however, clarified that the revised designations were for executive/administrative ground assignments. The existing functional designations of In-Flight Supervisors and Air Hostesses would

continue while on flight duties, in accordance with prevailing practices. Once again referring to the revised Promotion Policy of 5th June, 1997, Mr. Banerji also referred to paragraph 7.4 onwards where it has been stated in no uncertain terms that the existing cadre of Cabin Crew on being promoted to the new/higher grades would continue to perform their job functions prior to such promotion till the time actual requirement arose in the higher grade or position. Paragraph 7.5.1 also stipulated that on promotion to the executive cadre i.e. to the level of Manager (Grade 29 and above) the male Cabin Crew would continue to carry out their respective job functions of AFP/FP till such time as they started to perform the functions of In-Flight Supervisors on a regular basis. Mr. Banerji also pointed out that in paragraph 7.5.3 it has been mentioned that the male Cabin Crew would be required to carry out executive/administrative

office duties, as and when required, without disturbing their bids and on promotion to the level of Manager and above, they would be entitled to applicable allowances and benefits attached to the respective executive grades of Cabin Crew. Similarly, in the case of promotee female Cabin Crew recruited prior to March, 1995, to the executive grades, paragraph 7.5.4 provided that there would be no change in their existing terms and conditions of service and the female Cabin Crew would be entitled to be paid for their flights. They would also be entitled to applicable allowances and benefits attached to their respective grades of Cabin Crew. Mr. Banerji submitted that the aforesaid Settlement and Promotion Policy superseded all the earlier Settlements and hence the claim of the Appellants regarding the right of In-Flight Purser to pre-merger benefits was not tenable in law.

41. Referring to the decision in Nargesh Meerza's case (supra), Mr. Banerji contended that two cadres of In-Flight Purser and Air Hostesses were being maintained separately, although, there was always a possibility of duties and job functions overlapping. By the revised Promotion Policy the two cadres were brought at par with each other. Mr. Banerji submitted that the basis of the decision in Yeshaswinee Merchant's case (supra) was that the majority of the Air Hostesses had wanted to retire from flight duties on international flights at the age of 50 years or opt for ground duties on 50 years of age up to the age of 58 years on a par with males, so that at least in some period of their service, they would not have to remain for long periods away from their homes and families.

42. Mr. Banerji submitted that, although, in the writ petitions before the High Court the vires of Section 9 of the Air Corporations (Transfer of Undertaking and Repeal) Act, 1994, had been challenged, the said provisions were exactly the same, as was contained in Section 34 of the Air Corporations Act, 1953, which empowered the Government to issue any directions in respect of any functions of the Corporations, which then existed, where the Corporations have power to regulate the matter in any manner including the terms and conditions of service of officers and employees of the Corporation. In fact, the provisions of Section 9 of the Repeal Act had not been diluted in any way by the judgments in the Nergesh Meerza and in Yeshaswinee Merchant's case. Mr. Banerji submitted that for a long time there had been complaints with regard to the discrimination in the service conditions of Air

Hostesses in Air India and it was, therefore, decided to remove such discrimination in service conditions of the Air Hostesses to bring them at par with other male crew members. Mr. Banerji submitted that in individual cases, Air Hostesses could be allowed to opt out of flying till the age of 58 years, but as a general Rule, by virtue of the Presidential Directive, all Air Hostesses were required to discharge the functions of Air Cabin Crew along with their male counter-parts. As far as Air Hostesses belonging to the Executive Cadre are concerned, even they were required to discharge such duties till they could be accommodated in a substantial vacancy.

43. Mr. Banerji submitted that the decision to increase the flying age of Air Hostesses to 58 years was to remove the discrimination allegedly

practised against them and not to prejudice their service conditions.

44. Appearing for a group of Air Hostesses represented by the Air India Hostesses Association and the Air India Executive Hostesses Association, Respondent Nos.3 and 4 in the writ petition filed by Kanwarjeet Singh, Mr. C.U. Singh, learned Senior Advocate, submitted that the said Association (AICCA) had no right to question the claims of those who had already been promoted to the managerial cadre by virtue of the revised promotion policy. Mr. Singh submitted that the said Association could represent employees up to Grade 26 who were considered to be "workmen" for the purposes of collective bargaining. Mr. Singh pointed out that the settlement dated 5th June, 1997, was only with regard to the terms and conditions of service of workmen up to Grade 26.

45. Mr. Singh submitted that the claim of the Air Hostesses for parity of service conditions with their male counter-parts had been continuing for a considerable length of time. The said disputes were referred to the National Industrial Tribunal by the Central Government on 28th February, 1972. The Award was published on 25th March, 1972, wherein, it was ultimately observed that the nature of duties of In-Flight Supervisors, the Deputy Chief Flight Purser and the Deputy Chief Air Hostesses were administrative and supervisory. Hence, they were not "workmen" within the meaning of the Industrial Disputes Act, 1947, and their case was beyond the jurisdiction of the Tribunal. The Tribunal also took note of the evidence that the Deputy Chief Air Hostess and the In-Flight Supervisor performed supervisory functions, both on the ground as well as in flight and that Cabin Crew were to work as a team and interchangeability of

duties could be insisted upon by the Management in emergencies, when a standby Crew of that class was not available. It was, however, clarified that the Management should not have blanket power to effect such interchangeability of duties between Air Hostesses and Assistant Flight Purser and Flight Purser. Mr. Singh reiterated that in 1977 the supervisory post of Deputy Chief Air Hostesses was phased out and on account of the anomalies which surfaced the Record Note of Agreement signed by the Management of Air India and the Association on 30th May, 1977 took note of the fact that female Executives, irrespective of rank or seniority, would be listed as Air Hostesses on board the Aircraft, and would be deprived of their rank and seniority. Consequently, all reports issued on the Aircraft would have to be signed by the Air Hostess, irrespective of her rank and were to be countersigned by the Flight Purser. This ultimately

led to the new promotion policy for Cabin Crew on 5th June, 1997, which was, however, confined to employees in the workmen category alone. Ultimately, by Office Order dated 18th December, 2003, female Cabin Crew were permitted to undertake flying duties up to the age of 58 years with the object that opportunities for male and female Cabin Crew should be equal in Air India and that female Cabin Crew should be eligible for being considered for the post of In-Flight Supervisor along with the male Cabin Crew.

46. Mr. Singh submitted that ultimately the writ petitions, which were filed, *inter alia*, for a declaration that Section 9 of the Air Corporation (Transfer of Undertakings and Repeal) Act, 1994, was *ultra vires* and for other reliefs, was dismissed by the Delhi High Court, resulting in the Special Leave Petitions. Mr. Singh submitted that

there was no substance in the appeals filed since the revised promotion rules had been approved and accepted by all concerned. Mr. Singh urged that it was on account of the continued representations made for placing the cadre of Air Hostesses at par with the cadre of In-Flight Purser, that the settlement was arrived at and there was no reason to interfere with the same. Mr. Singh submitted that the appeals were, therefore, liable to be dismissed.

47. From the submissions made on behalf of the respective parties, what ultimately emerges for decision is whether the management of Air India was entitled to alter the service conditions of Flight Purser and Air Hostesses, despite several bilateral agreements arrived at between Air India and its workmen represented by the Air India Cabin Crew Association, and the Executive cadre of In-

Flight Purser and Air Hostesses promoted to the Executive rank and given Grade 29, which was the starting point of the Executive cadre. The other connected question involved is whether those Flight Purser who had been promoted in terms of the revised promotion policy, would still be governed by the Settlements arrived at between the Management and the Unions, since they were covered by the same prior to their promotion to the Executive cadre.

48. Another question which calls for our attention is with regard to the merger of Cabin Crew effected in 1996, giving rise to the other disputed questions relating to interchangeability of duties between Flight Purser and Air Hostesses. It may be indicated that during the course of the hearing, Mr. Pramod B. Agarwala urged that the Appellant Association was mainly concerned with the status of

In-Flight Supervisors prior to the merger of cadres in 1996. In deciding the aforesaid questions, this Court will have to take into consideration the decisions rendered in Nergesh Meerza's case (supra) and Yeshaswinee Merchant's case (supra), although, strictly speaking, we are more concerned with the decision taken in terms of Section 9 of the 1994 Act, to bring about a parity in the service conditions of both Flight Purser and Air Hostesses, both at the level of workmen and also the Executive cadre. While the Agreements are not altered or vary to any large extent, what has been done is to iron out the differences on account of the revised promotion policy, which exempted some of the workmen, who had been transformed to the category of Executive from the ambit of the said Settlements. It is apparent from a reading of both the judgments delivered in Nergesh Meerza's case and Yeshaswinee Merchant's case that the same were

rendered in the context of bringing parity between the cadre of In-Flight Supervisors and the cadre of Air Hostesses. It is, in fact, the prerogative of the Management to place an employee in a position where he would be able to contribute the most to the Company. Hence, notwithstanding the decision in Nergesh Meerza's case and in Yeshaswinee Merchant's case, the Air India was at liberty to adopt the revised promotion policy which was intended to benefit all the employees.

49. As indicated hereinbefore, Mr. Pramod B. Agarwala, representing the Appellant Association, submitted that the appellants were not concerned with the post-revised promotion policy, but with the separate cadre of In-Flight Purser, as distinct from the cadre of Air Hostesses, with regard to their channel of promotion. We are inclined to agree with Mr. Agarwala's submissions

that prior to 1997, there was a category of Cabin Crew referred to as In-Flight Supervisors, which was confined to In-Flight Purser alone and did not concern the Air Hostesses. However, we are unable to agree with Mr. Agarwala's submissions with regard to treating the duties discharged by In-Flight Supervisors to indicate that "In-Flight Supervisor" was a separate post. We are inclined to accept the submissions made on behalf of Air India that the duties discharged by persons designated as In-Flight Supervisors did not create any separate post and the post remained that of In-Flight Purser.

50. Accordingly, we are unable to accept the further submissions made on behalf of the appellants that they had been discriminated against in any way on account of the decision in Nergesh Meerza's case and Yeshaswinee Merchant's case. As

was observed by this Court in Inderpreet Singh Kahlon & Ors. Vs. State of Punjab & Ors. {(2006) 11 SCC 356], it is well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. Further, it is also well-settled that the ratio of a case must be understood having regard to the fact situation obtaining therein. The position since the decisions rendered in Nergesh Meerza's case and in Yeshaswinee Merchant's case, underwent a change with the adoption of the revised promotion policy agreed to between the parties and which replaced all the earlier agreements. In our view, the Management of Air India was always entitled to alter its policies with regard to their workmen, subject to the consensus arrived at between the parties in supersession of all previous agreements. We are also unable to accept the further submission made on behalf of the appellants that those workmen

who had been promoted to the Executive category would continue to be governed by the Settlements arrived at when they were workmen and were represented by the Association. In our view, once an employee is placed in the Executive cadre, he ceases to be a workman and also ceases to be governed by Settlements arrived at between the Management and the workmen through the concerned Trade Union. It is not a question of an attempt made by such employees to wriggle out of the Settlements which had been arrived at prior to their elevation to the Executive cadre, which, by operation of law, cease to have any binding force on the employee so promoted by the Management.

51. We are not, therefore, inclined to interfere with the orders passed in the several writ petitions, out of which the present appeals arise, and the same are, accordingly, dismissed. All

connected applications, if any, will also stand disposed of by this order.

52. However, having regard to the facts of the case, the parties will bear their own expenses.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi
Dated: 17.11.2011