

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL Nos.8119-8123 OF 2009

(Arising out of Special Leave Petition (C) Nos.22449-22453 OF 2008)

M/S. SHEELA JOSHI & ORS.

....APPELLANT(S)

VERSUS

INDIAN AIRLINES LTD.

...RESPONDENT(S)

ORDER

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. The appellants are working as Air Hostesses with respondent/Indian Airlines (hereinafter referred to as the Airlines). They were initially appointed as trainee Air Hostesses on certain terms and conditions as contained in the appointment letter. Clause 8 of the letter provided that they will be governed by the Indian Airlines Service Regulations applicable to the Flying Crew and Standing

Orders concerning discipline and appeals as framed/amended by the Indian Airlines from time to time. Clause 9 of the letter provided that during the period of training and on appointment as Air Hostesses their services are liable to be terminated under the following circumstances:

- “i. in the event of your getting married before the specified period;
- ii. if you:-
 - a. failed to maintain the vision without glasses ,
 - b. do not maintain weight within the prescribed limit; and,
 - c. develop air sickness”

3. During their service the weight requirements were prescribed by the respondent-Indian Airlines at various times. A number of circulars were issued. All these circulars indicated the range of weight to be maintained by the Air Hostesses. There was no discretion and relaxation of weight from 1981 to 1987. For the first time on 4.11.1987, in the circular issued by the respondent, it

is provided that if the crew member's weight exceeded 10% of the outer limit prescribed, he or she should be taken off flying duties and treated on leave or leave without pay till he/she attains the standard weight. However, relaxations in cases of flying over weight were subsequently allowed by various other circulars. At the same time, the grace in the quantity of over weight was also being gradually reduced. The other condition with regard to being taken off flying duties was maintained. But on 4.5.2006 the respondent withdrew even the 3 kgs. grace in weight limit with effect from 15.6.2006. It was enforced from 1.7.2006. The circular dated 4.5.2006 was challenged by the appellants by filing four separate writ petitions. All the writ petitions were dismissed by the learned Single Judge by a common judgment dated 31.5.2007. The learned Single Judge noticed that the Air Hostesses were supposed to keep their body weight within the minimum and the maximum prescribed limits. This was known to the appellants, all along. It was a condition of their appointment. They had knowingly and

willingly accepted the same. Therefore, this condition fructified to consensual contract between the parties. Earlier the condition with regard to being over weight was not being strictly enforced. Now merely because concessions had been withdrawn the appellants could hardly make a grievance of the same. According to the learned Single Judge by virtue of Clause 9 of the appointment letter the services of the appellants could have been terminated in the event of their not maintaining body weight as per the weight chart. The learned Single Judge also observed that the appellants had accepted all the earlier circulars as well as the grace of over weight upto 10 kgms. Therefore they had no justification to challenge the circular dated 4.5.2006. With these observations the writ petitions were dismissed.

4. The Division Bench in appeal took note of the submissions of the appellants that Regulation 12 of the Airlines Flying Crew Service Regulations only provided that the cabin crew should be medically fit. Since, all the

appellants were medically fit they could not be grounded or deprived of their salaries merely on account of being overweight. The same submission had been rejected by the learned Single Judge. The Division Bench after noticing the circulars observed that merely because earlier some concessions were given by not adhering to the body weight chart in *stricto sensu*, it would not mean that Airlines cannot now be allowed to withdraw those indulgences. No legal right accrues in favour of the appellants merely by the grant of earlier concessions. Since, there is no legal right the concession could be withdrawn. The Division Bench notices that the Airlines staff is required to maintain high standard of fitness. They have to work in Aircrafts which fly at very high altitude. In cases of emergency utmost fitness would be required. The Division Bench, therefore, accepted the findings recorded by the learned Single Judge and dismissed the appeals.

5. We have heard the learned counsel for the appellants at length. It is submitted by the learned

counsel that the action of the respondent in not paying salary to the appellants during the period they were grounded is wholly unjustified and without sanction of law.

6. At this stage we may notice that these appeals need not be decided on merits, in view of the subsequent developments. It is not disputed that during the pendency of the proceedings in this Court 11 out of 13 appellants have reduced weight to satisfy the acceptable norms and are already back on duty. Therefore, in our opinion, nothing remains to be decided in these appeals, at this stage.

7. Learned counsel, however, submitted that in view of the observations made by the High Court, action has been initiated against some of the Air Hostesses who were overweight. Their services have been terminated. It is submitted by the learned counsel that those employees whose services have been terminated on the ground of being overweight have initiated legal proceedings. They are apprehending that their claim would be prejudiced

due to the observations made by the learned Single Judge as well as by the Division Bench in the writ petitions and the appeals, respectively.

8. Learned Solicitor General, however, submits that observations were merely to illustrate a point that the Airlines had shown indulgence to the Air Hostesses. Therefore, no grievance could be made by the withdrawal of the concessions. In any event according to the learned Solicitor General termination of the services would give a separate cause of action to each individual employee which would take its own course. It is also brought to our notice by the learned Solicitor General that pursuant to the orders passed by the High Court payments were sought to be made to some of the appellants but the same were not accepted. Therefore, the appellants cannot make a grievance at this stage that the payment of dues has been illegally withheld.

9. We have considered the submissions made on behalf of both the sides. We are of the opinion that it would be wholly inappropriate to express any opinion on

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

.....
J
(TARUN CHATTERJEE)

.....J
(SURINDER SINGH NIJJAR)

NEW DELHI
DECEMBER 07, 2009