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

% ***Date of Decision: 01.06.2021***

\+ W.P.(C) 4203/2020 and CM 19550, 15095/2020 & 1488/2021

ARJUN AHLUWALIA ..... Petitioner

Through: Mr. Shankar Raju and Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 4420/2020 and CM 19558, 15920/2020, 8290/2021 & 1489/2021

CAPTAIN SNEHA BHANOT AND ANR ..... Petitioners

Through: Mr. Shankar Raju and Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Sanjeev Sen, Sr. Advocate with Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocatess

AND

\+ W.P.(C) 4850/2020 and CM 19552/2020, 17494/2020 & 3143/2021

PRADEEP KUMAR ..... Petitioner

Through: Ms. Aarti Mahto for Mr. Abhishek Bharti, Advocate

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 4851/2020 and CM 17496/2020, 19702/2020 & 3219/2021

AADITYA MAHESHWARI ..... Petitioner
Through: Ms. Aarti Mahto for
Mr. Abhishek Bharti, Advocate

versus

AIR INDIA LIMITED ..... Respondent
Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 4928/2020 and CM 19481, 17800/2020 & 3150/2021
CAPTAIN LOKESH RAMPAL ..... Petitioner
Through: Mr. Shankar Raju and
Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent
Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5184/2020 and CM 18692, 19486, 19487/2020 & 3316/2021
VIGNESH SANGARAN ..... Petitioner
Through: Mr. Ravi Raghunath,
Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent
Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5195/2020 and CM 18741, 19492, 19493/2020, 4239 & 11897/2021

GHULAM WARIS ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5227/2020 and CM 18846, 19439-40/2020 & 3178/2021

RIJUL ARORA ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5229/2020 and CM 18851, 19475-76/2020 & 3145/2021

VIKRANT JADHAV ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5230/2020 and CM 18854, 19483-84/2020 & 4238/2021

LOGEESH V ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5232/2020 and CM 18860, 19489-90/2020 & 3141/2021
CM APPL 11901/2021

ROHIT RATHI ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5240/2020 and CM 18881, 19495-96/2020 & 3144/2021

YOGISH S KATAGIHALLIMATH ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5278/2020 and CM 19014, 19539/2020 & 1485/2021

CAPTAIN SANDEEP LAMBA ..... Petitioner

Through Mr. Keshav Sehgal, Mr. Gaurav H. Sethi, Mr. Jitesh Wadhawan & Mr. Abhinav Tyagi, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Sanjeev Sen, Sr. Advocate with Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5330/2020 and CM 19248/2020 & 1486/2021

MOHIT ARORA ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Sanjeev Sen, Sr. Advocate with Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocatess

AND

+ W.P.(C) 5371/2020 and CM 19345, 29306/2020 & 3142/2021

PAVAN N. LAKHANI ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5411/2020 and CM 19528/2020 & 1482/2021

NICK MEHTA ..... Petitioner

Through: Mr. Satyabrata Panda and Mr. Shashwata Panda, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Sanjeev Sen, Sr. Advocate with Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5413/2020 and CM 19532/2020 & 3220/2021

KANWARDEEP SINGH BAMRAH ..... Petitioner

Through: Mr. Satyabrata Panda and Mr. Shashwata Panda, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5416/2020 and CM 19540/2020 & 3138/2021

NITESH GODARA ..... Petitioner

Through: Mr. Satyabrata Panda and Mr. Shashwata Panda, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5417/2020 and CM 19543/2020 & 4242/2021

CAPTAIN JASMINE RAVAIYA ..... Petitioner

Through Mr. Keshav Sehgal, Mr. Gaurav H. Sethi, Mr. Jitesh Wadhawan & Mr. Abhinav Tyagi, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5472/2020 and CM 19728/2020 & 3139/2021

CAPTAIN AARTI DATTATRAY KURNE AND ORS .... Petitioners

Through: Mr. Shankar Raju and Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P. (C) 5484/2020 and CM 19765/2020

SHREY MALHOTRA ..... Petitioner

Through Mr. Neeraj Sharma and Mr. Basit K. Zaidi, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P. (C) 5505/2020 AND CM 19815/2020 & 1487/2021

NIPURN AHUJA ..... Petitioner

Through Mr. Neeraj Sharma and
Mr. Basit K. Zaidi, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Sanjeev Sen, Sr. Advocate with Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocatess

AND

\+ W.P.(C) 5599/2020 and CM 20240/2020 & 4228/2021

CAPTAIN PEHROZ KANGA ..... Petitioner

Through: Mr. Shankar Raju and
Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5614/2020 and CM 20346/2020 & 3182/2021

ABHINAV GAUR ..... Petitioner

Through: Ms. Sonali Chopra, Advocate

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5631/2020 and CM 20391/2020 & 3188/2021

CAPT JITENDER SINGH RANDHAWA ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5634/2020 and CM 20398/2020 & 3180/2021

CAPT ADISH M. CHAVAN ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5645/2020 and CM 20451/2020 & 3187/2021

CAPT REUBEN JAMES ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5649/2020 and CM 20460/2020 & 4243/2021

CAPT B SUJIMON ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5660/2020 and CM 20490/2020 & 3184/2021

CAPT VISHAL V CHANDORKAR ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5632/2020 and CM 20393/2020 & 3140/2021

CAPTAIN ADIL SHAH ..... Petitioner

Through: Mr. Shankar Raju and Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5633/2020 and CM 20396/2020 & 3185/2021

CAPT VIJAY KUMAR DAHIYA ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5646/2020 and CM 20453/2020 & 3186/2021

CAPT UDIT NARULA ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 5647/2020 and CM 20455/2020 & 3217/2021

CAPT ARVIND KUMAR SHARMA ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5648/2020 and CM 20458/2020 & 3191/2021

CAPT K SAI SASHANKA ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 5651/2020 and CM 20465/2020 & 3189/2021

CAPT JEETENDER YADAV ..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Advocate with Mr.Naman Jain and Ms. Urvi Mohan, Advocates

versus

AIR INDIA LTD ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 6322/2020 and CM 22438, 22439/2020 & 3181/2021

CAPT. YADAV NANDU GANESH ..... Petitioner

Through: Mr. Prateek Tushar Mohanty, Adv.

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 6473/2020 and CM 22767/2020

CAPTAIN VIBHA PARASHAR ..... Petitioner

Through: Mr. Shankar Raju and
Mr. Nilansh Gaur, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 6597/2020 and CM 23016/2020 & 3072/2021

CAPT. SHANTANU S. SANGIDWAR ..... Petitioner

Through: Ms. Anushree Menon and
Mr. Animesh Khandelwal, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

\+ W.P.(C) 8625/2020 and CM Nos. 27794, 27795/2020 & 4236/2021

DUSHYANT GAUR ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advs.

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

AND

+ W.P.(C) 8626/2020 and CM Nos. 27796, 27797/2020 & 3218/2021

AMITH SURESH ..... Petitioner

Through: Mr. Ravi Raghunath, Ms. Aakashi Lodha, Ms. Madhusruthi Neelakantan & Ms. Yashaswini Venkatadri, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates.

AND

+ W.P.(C) 9442/2020 and CM Nos. 30395/2020 & 3179/2021

BALLALESHWAR S PAWADMAL ..... Petitioner

Through: Mr. Bhasker &
Mr. Pankaj Sharma, Advocates

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. A.P. Singh, Ms. Padma Priya & Ms. Akanksha Das, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

JYOTI SINGH, J.

1. Petitioners herein were initially inducted by the Respondent as Trainee Pilots and subsequently released as First Officer. Those in permanent employment have been promoted to various ranks thereafter and out of those employed under the Fixed Term Contracts, some Petitioners were promoted

to the rank of Captain, while the others were First Officers at the time of filing the present petitions.

2. Challenge is laid in the present petitions to the orders passed by the Respondent on 13.08.2020, except in W.P.(C) 5599/2020 where the impugned order is dated 15.08.2020 and W.P.(C) Nos. 8625/2020 and 8626/2020, where the impugned orders are both dated 16.10.2020, whereby Respondent has accepted the resignations tendered by the Petitioners, after the same were withdrawn by them, well before their acceptance. Mandamus is sought for a direction to the Respondent to reinstate the Petitioners, who were serving as permanent employees, with all consequential benefits of continuity of service, seniority, back wages etc. Petitioners, who were employed on Fixed Term Contracts, have sought directions to the Respondent to abide by their appointment letters and terms of the Contracts and permit them to continue in service till the present Contracts expire, with a further direction for renewal of the Contracts for a further term of 5 years, with consequential benefits. On account of the similitude of facts and common questions of law arising in all the writ petitions, the same are being taken up and decided by this common judgement.

3. Respondent/Air India Limited (erstwhile National Aviation Company of India Limited) is an amalgamation of Air India Limited and Indian Airlines Limited and is incorporated as a Public Limited Company under the Companies Act, 1956. Petitioners in this batch of petitions are Pilots and can be broadly categorised under two heads : (a) Permanent Employees (hereinafter referred to as **'PEs'**) and (b) Fixed Term Contract Employees (hereinafter referred to as '**FTCEs**'). Consequent to amalgamation, the harmonized Air India Employees' Service Regulations were formulated,

replacing all the previous Service Regulations and Standing Orders applicable to the erstwhile companies. Air India Regulations came into effect from 1.04.2013. PEs are governed by the Service Regulations and FTCEs are governed by the terms of their respective Fixed Term Contracts (hereinafter referred to as '**FTCs**'). However, both categories of Pilots are admittedly governed by the Civil Aviation Requirement (hereinafter referred to as '**CAR**') dated 27.10.2009, as amended from time to time.

4. The common thread that runs in all these petitions is a surmountable and vincible challenge to the action of the Respondent in accepting the resignations of the Petitioners, after the same were withdrawn prior to their acceptance. However, for the sake of convenience, with the consent of all the arguing counsels for the respective parties, the writ petitions were categorised into five categories, namely, Categories 'A', 'B', 'C', 'D' and 'E'. Category 'A' encompasses only PEs, Categories 'B' and 'C' include both PEs and FTCEs, Categories 'D' and 'E' comprise of Pilots inducted under the FTCs. Before embarking further on the facts and the contentions of the parties, it would be useful to understand the categorisation, as that would reflect the varying issues arising in the present set of petitions and the same is as follows:

(i) Category 'A' : Petitioners tendered resignations with notice period of six months and withdrew the same within the notice period, but prior to acceptance of the resignations by the Respondent. Writ petitions were filed before the impugned orders accepting resignations were passed for a declaration that the resignations were *non est* and a direction to continue the Petitioners in service, with consequential benefits.

(ii) Category 'B' : Petitioners tendered resignations with notice period of six months and withdrew the same within the notice period prior to acceptance of resignations by the Respondent. Writ petitions were filed for quashing the impugned orders dated 13.08.2020, 15.08.2020 and 16.10.2020, issued by the Respondent, accepting the resignations as also a declaration that the resignations be treated as *non est* and Petitioners be deemed to continue in service and granted consequential benefits in case of PEs and a direction to reinstate Petitioners, who were employed under the FTCs with a further direction to renew the contracts. Directions in respect of Bank Guarantees were also sought.

(iii) Category 'C' : Petitioners tendered resignations with notice period of six months and withdrew the same. Applications for withdrawal of the resignations were accepted but subsequently, the resignations were accepted by the Respondent. Quashing of the impugned orders dated 13.08.2020 was sought along with a mandamus to reinstate the Petitioners who were PEs, with all consequential benefits including continuity of service and a direction to reinstate Petitioners who were employed under the FTCs with a further direction to renew the contracts. Directions in respect of Bank Guarantees were also sought.

(iv) Category 'D' : Petitioners in this category are FTCEs and some had approached the Court prior to the passing of the impugned orders, similar to those in Category 'A', while the remaining had filed the writ petitions post the passing of the impugned orders similar to those in Category 'B'. Being FTCEs, an additional relief against encashment of Bank Guarantees (hereinafter referred to as **'BGs'**) furnished by them was sought.

(v) Category 'E' : Petitioner under this category tendered resignation with six months' notice period but subsequently sought extension of the notice period, which was granted. Resignation was withdrawn during the extended notice period.

5. It is pertinent to note at this stage that in W.P.(C) Nos. 5195/2020, 5230/2020 and 5232/2020, Petitioners had filed applications withdrawing their reliefs with respect to quashing of the impugned orders and reinstatement and restricted their reliefs to challenging the action of the Respondent in encashing the entire Bank Guarantees, contrary to the contractual terms and offer letters and a consequent direction to the Respondent to refund the excess amounts recovered towards training costs.

6. Learned counsels for the Petitioners have raised certain contentions which are common to all the writ petitions in all the aforesaid five categories and are being alluded to hereinafter. Certain contentions are specific and peculiar to certain categories/Petitioners therein and will be referred to separately. To avoid burdening the judgement, the factual details of the Petitioners, which are necessary for adjudication of the *lis* between the parties, are captured in a tabular form as under:

CATEGORY 'A'

Writ No.	Name of Petitioner (s)	Permanent Employee (PE) or Fixed Term Contract (FTC) & Dates of Appointment	Date of Resignation	Date of Expiry of Notice Period	Date of withdrawal of Resignation	Damages Imposed	Status of BG in case of Fixed Term Contract
4203	Arjun Ahluwalia	PE 19.04.2008	06.02.2020	05.08.2020	19.03.2020	-	-

4420	Sneha Bhanot (P1) Ayush Mahajan (P2)	PE 06.05.2009 24.04.2009	31.01.2020 (P1 & P2)	31.07.2020 (P1 & P2)	19.03.2020 (P1 & P2)	-	-
4850	Pradeep Kumar	PE Feb 2014	01.10.2019	01.04.2020	18.03.2020	17,50,000/-	-
4851	Aaditya Maheshwari	PE 07.11.2013	01.10.2019	01.04.2020	18.03.2020	17,50,000/-	-
4928	Lokesh Rampal	PE Dec 2009	06.02.2020	05.08.2020	19.03.2020	-	-

CATEGORY 'B'

Writ No.	Name of Petitioner(s)	Permanent Employee (PE) or Fixed Term Contract (FTC)	Date of Resignation	Date of Expiry of Notice Period	Date of withdrawal of Resignation	Damages Imposed	Status of BG in case of Fixed Term Contract
5371	Pavan N. Lakhani	FTC 19.11.2015	02.12.2019	01.06.2020	16.04.2020	10,29,772/-	-
5411	Nick Mehta	FTC 24.09.2015	23.09.2019	22.03.2020	18.03.2020	13,59,772/-	-
5413	K.P. Singh Bamrah	FTC 13.10.2015	26.09.2019	25.03.2020	18.03.2020	10,29,772/-	-
5416	Nitesh Godara	FTC 06.10.2015	23.09.2019	22.03.2020	18.03.2020	12,27,772/-	-
5417	Jasmine Ravaiya	FTC 07.09.2015	02.12.2019	31.05.2020	13.04.2020	10,29,772/-	-
5472	Aarti Kurne (P1) Praveen Bequr (P2) Mayank Yadav (P3)	PE 2003 2003 08.05.2010	10.02.2020 30.01.2020 06.02.2020	09.08.2020 29.07.2020 06.08.2020	17.03.2020 17.03.2020 19.03.2020	-	-
5599	Pehroz Kanga	FTC 12.02.2017	10.07.2019	09.01.2020	03.03.2020	50,00,000/-	-
5614	Abhinav Gaur	PE 29.02.2009	15.01.2020	15.07.2020	18.03.2020	-	-
5631	J.S. Randhawa	FTC 19.09.2015	01.01.2020	30.06.2020	12.03.2020	12,27,772/-	BG expired. Yet to be released

5634	Adish Chavan	FTC 31.08.2015	19.08.2019	18.02.2020	13.01.2020	10,30,000/-	Bank Guarante e expired – yet to be released
5645	Reuben James	PE 18.06.2014	05.02.2020	04.08.2020	09.03.2020	Not on record	-
5649	B. Sujimon	PE 08.10.2010	15.01.2020	14.07.2020	17.03.2020	-	-
5660	Vishal V. Chando-rkar	FTC 27.09.2015	05.08.2019	04.02.2020	10.01.2020	10,29,772/-	Bank Guarante e expired – yet to be released
6473	V. Parashar	PE 04.07.2005	30.09.2019	29.03.2020	21.03.2020	-	
8625	Dushy-ant Gaur	FTC 30.09.2018	04.01.2020	03.07.2020	20.03.2020	13,33,000/-	-
8626	Amith Suresh	FTC 06.11.2015	30.01.2020	30.07.2020	19.03.2020	10,29,772	-

CATEGORY 'C'

Writ No.	Name of Petitioner(s)	Permanent Employee (PE) or Fixed Term Contract (FTC)	Date of Resignation	Date of Expiry of Notice Period	Date of withdraw-al of Resignation	Date of acceptance of Withdrawal	Damages Imposed	Status of BG in case of Fixed Term Cont-ract
5484	Shrey Malhotra	PE 21.10.2013	21.01.2020	20.07.2020	16.03.2020	20.03.2020	26,88,825/-	
5505	Nipurn Ahuja	PE 16.06.2010	21.09.2019	20.03.2020	13.03.2020	19.03.2020	-	-
5632	Adil Shah	PE 17.06.2009	11.09.2019	10.03.2020	09.03.2020	(not mentio-ned)	-	
5633	V.K. Dahiya	FTC 16.10.2015	19.09.2019	18.03.2020	17.03.2020	17.03.2020	10,29,772/-	
5646	Udit Narula	FTC 02.04.2018	05.02.2020	04.08.2020	09.03.2020	13.03.2020	50,00,000/-	

5647	A.K. Sharma	FTC 15.06.2016	18.07.2019	16.01.2020	28.01.2020	29.01.2020	28,00,000/-	
5648	K.S. Sashanka	PE 16.07.2008	22.01.2020	22.07.2020	16.03.2020	18.03.2020	-	-
5651	Jeetender Yadav	FTC 01.08.2016	05.07.2019	03.01.2020	27.01.2020	28.01.2020	28,00,000/-	
6322	Y.N. Ganesh	PE 06.09.2007	10.10.2019	09.04.2020	12.03.2020	16.05.2020	-	
6597	S.S. Sangidwar	PE 06.12.2010	15.01.2020	14.07.2020	03.03.2020	03.03.2020	-	

CATEGORY 'D'

Writ No.	Name of Petitioner(s)	Permanent Employee (PE) or Fixed Term Contract (FTC)	Date of Resignation	Date of Expiry of Notice Period	Date of withdrawal of Resignation	Damages Imposed	Status of BG in case of Fixed Term Contract
5184	Vignesh Sangaran	FTC 16.02.2018	02.12.2019	31.05.2020	18.03.2020	50,00,000/-	BG invocation stayed by HC in WP (C) 13298/19 and later directed to be returned after proportionate deposit of training cost
5195	Ghulam Waris	FTC 04.02.2018	21.11.2019	22.05.2020	18.03.2020	50,00,000/-	-
5227	Rijul Arora	FTC 30.01.2018	14.11.2019	12.05.2020	18.03.2020	50,00,000/-	BG invocation stayed by HC in WP (C) 13300/19 and later directed to be returned after proportionate deposit of training cost
5229	Vikrant Jadhav	FTC 08.05.2018	22.11.2019	20.05.2020	20.03.2020	50,00,000/-	BG invocation stayed by HC in WP (C) 88/20 and later directed to be returned after proportionate deposit of training cost

5230	Logeesh V	FTC 18.05.2016	09.12.2019	08.06.2020	19.03.2020	39,50,000/-	-
5232	Rohit Rathi	FTC 06.04.2018	04.11.2019	02.05.2020	18.03.2020	50,00,000/-	-
5240	Yogish S Katagihalli-math	FTC 16.04.2018	18.12.2019	17.06.2020	17.03.2020	50,00,000/-	BG invocation stayed by HC in WP (C) 14005/19 and later directed to be returned after proportionate deposit of training cost
5330	Mohit Arora	FTC 30.01.2018	03.12.2019		18.03.2020	50,00,000/-	BG invocation stayed by HC in WP (C) 13373/19 and later directed to be returned after proportionate deposit of training cost
9442	Ballaleshwar S Pawadmal	FTC 12.01.2017	21.10.2019	20.04.2020	20.03.2020	28,00,000/-	Prayer sought in this Petition seeking stay and release of BG

CATEGORY 'E'

Writ No.	Name of Petitioner (s)	Permanent Employee (PE) or Fixed Term Contract (FTC)	Date of Resignation	Date of Expiry of Notice Period	Date of withdrawal of Resignation	Damages Imposed	Status of BG in case of Fixed Term Contract
5278	Sandeep Lamba	FTC 29.06.2016	31.07.2019	31.01.2020	18.03.2020 (But P sent a request for extension of period, which was accepted)	28,00,000/-	BG invoked

7. To appreciate the controversy involved before this Court, it is seemly to exposit the necessitous facts for both categories of Pilots. With respect to the Pilots who are PEs, a brief narration of facts is set out hereunder.

W.P.(C) 5614/2020 is taken as the lead petition purely for reference to dates and events.

(a) Petitioner was inducted by the Respondent as a Trainee Pilot on 29.02.2008 and on satisfactory completion of training, was released as a First Officer on 01.05.2010. He was thereafter released for command on 22.07.2018. Petitioner has served the Respondent as a Captain/Commander on the Airbus A-320 Fleet and has 7000 hours of flying experience, out of which, he has flown over 1200 hours as Commander.

(b) Petitioner tendered his resignation vide letter dated 15.01.2020 giving a six months' notice commencing from 15.01.2020 and requested for clearance of all his dues towards salary, Flying Allowances etc. as also to credit his contribution into his Employee Provident Fund and issuance of a 'No objection Certificate' in terms of Civil Aviation Requirement, issued by Directorate General of Civil Aviation (hereinafter referred to as **'DGCA'**). In the resignation letter, Petitioner pointed out that his Bond Period was ending on 01.05.2020 and thus, he be relieved w.e.f. 15.07.2020, on expiry of the six months' notice period.

(c) Petitioner continued to perform his flying duties even after tendering the resignation and was regularly and routinely deputed, rostered and assigned to flights. Vide letter dated 18.03.2020, Petitioner, on account of compelling personal reasons, withdrew the resignation. Respondent vide an e-mail dated 23.03.2020 informed the Petitioner that the withdrawal of his resignation would be examined at a later date.

(d) On 04.07.2020, Petitioner sent an e-mail inquiring about the status of the withdrawal of his resignation, but no response was received. Petitioner

volunteered to fly and operate the evacuation/repatriation flights as part of 'Vande Bharat Mission' of the Respondent amidst the Covid-19 Pandemic.

(e) Vide order dated 13.08.2020 i.e. after seven months from the date the resignation was tendered and five months from the date of its withdrawal, Respondent accepted the resignation of the Petitioner, overlooking the fact that the resignation stood withdrawn.

(f) Resignation was accepted on threefold grounds as reflected from a plain reading of the impugned order dated 13.08.2020: (a) Respondent was already under a severe financial strain and the global Pandemic Covid-19 had a further impact on the finances as the commercial functioning of the Company reduced considerably; (b) Current operations are a small fraction of the pre-Covid level, unlikely to increase in the near foreseeable future leading to huge net losses, resulting in financial inability of the Company to pay the emoluments of the employees and (c) Company is no longer accepting any withdrawals of resignations and the action is in consonance with the judgement of the Supreme Court in Air India Express Limited & Ors. Vs. Capt. Gurdarshan Kaur Sandu **(2019) 17 SCC 129**.

8. Brief expose of facts succinctly put, to understand the grievances of the Petitioners who were appointed under the FTCs and as set out in W.P.(C) 5330/2020, for the sake of reference only, is as follows:

(a) Respondent issued an Advertisement in August, 2016 inviting applications for filling up posts of Senior Trainee Pilots (with A-320 endorsement) on Fixed Term Contract. Selected candidates were to be imparted A-320 endorsement training and the cost of training was to be recovered in 60 equal monthly instalments from the salary. Candidates were also required to execute a Service Agreement and Surety Bond to serve the

Respondent for a period of 10 years (initially for 5 years and extendable by 5 years, subject to satisfactory performance).

(b) Petitioner applied against the Advertisement and was selected. On 23.12.2016, an offer letter of appointment was issued, setting out the terms and conditions on which the training was to commence. It was stated that on successful completion of training and obtaining necessary endorsement and instrument rating from DGCA and completion of release checks, Petitioner would be engaged on a five years contract, extendable by another five years, subject to satisfactory performance. Regularisation of service was to be considered at appropriate time, as per prevailing Rules.

(c) Clause (12) stipulated that after being released as First Officer, Petitioner was to serve for a period of 10 years, of which five years was the initial Fixed Term Contract and five years was the extendable period. Petitioner thereafter furnished a Bank Guarantee (hereinafter referred to as **'BG'**) dated 10.01.2017, towards the training cost, for a sum of Rs.13,33,000/- valid for five years i.e. upto 20.01.2022. Subsequently, Respondent issued a letter dated 20.01.2017 setting out the terms and conditions applicable during the Contract period including Pay-Scale, salary structure, Flying Allowance, necessary deductions, etc.

(d) On 30.01.2018, Petitioner was released as First Officer and performed all his duties with sincerity and due diligence but the Respondent failed to meet its obligations towards timely payment of salaries and allowances, without any justification. Even the Flying Allowance, which was a major component of the remuneration, was not paid on time, resulting in failure of the Petitioner to meet his financial commitments towards his family. The

Indian Commercial Pilots Association also submitted a representation highlighting the grievances of the FTC Co-Pilots.

(e) On account of acute financial distress and inability to meet even the obligation of paying the EMIs on time, Petitioner submitted his resignation on 03.12.2019 to the Respondent. In response, Respondent issued letter dated 16.12.2019 alleging breach of the terms of the offer letter and Service Agreement on the part of the Petitioner, calling upon him to pay Rs.50 Lacs as liquidated damages and expressing intention to encash the BG.

(f) Petitioner filed W.P.(C) 13373/2019 seeking stay of encashment of the entire amount under the BG as well as to release the BG amount proportionate to the unpaid instalments. Vide order dated 18.12.2019, this Court stayed the invocation and encashment of the BG subject to Petitioner depositing the proportionate amount. Vide e-mail dated 28.12.2019, Petitioner was informed that only after payment of the liquidated damages, the resignation would be processed by the Competent Authority.

(g) W.P.(C) 13372/2019 was disposed of by the Court after recording the Respondent's submission to release the BG within one week in lieu of the deposit of balance amount by the Petitioner and leaving open all other rights and contentions of the parties.

(h) Subsequent thereto, Respondent issued a Memorandum dated 15.01.2020 revising the salary structure of the Pilots under FTCs w.e.f. from 01.01.2020 whereby fixed allowances were increased from 25% of Basic Pay to 50% of the Basic Pay. On 18.03.2020, Petitioner sent an e-mail withdrawing his resignation with immediate effect, on account of this positive development. On 23.03.2020, Respondent through an e-mail informed the Petitioner that his request for withdrawal would be examined at

a later date. Petitioner sent a letter dated 30.07.2020 to the Respondent requesting to accept his withdrawal and permit him to fly. However, vide letter dated 13.08.2020, Respondent accepted the resignation, constraining the Petitioner to approach this Court.

9. The grievances of the Petitioners falling in Category 'C' as aforementioned and as reflected from the obtaining factual matrix in W.P.(C) 5505/2020, for the sake of reference alone, are as follows:

(a) Petitioner was selected as a Trainee Pilot on 16.10.2007 and subsequently appointed as Second Officer w.e.f. 03.06.2009. Petitioner was further appointed as First Officer with the Operations Department w.e.f. 16.06.2010 and as a Commander w.e.f. 01.01.2017.

(b) On 21.09.2019, Petitioner tendered his resignation, through proper channel. Respondent acknowledged the resignation letter and informed the Petitioner vide letter dated 17.02.2020 that the resignation had been accepted by the Competent Authority. Contemporaneously, Respondent reached out to the Petitioner to persuade him to withdraw his resignation, assuring that the conditions of service would be looked into. On an assurance by the Respondent that the salaries will be cleared and paid in time, Petitioner vide letter dated 13.03.2020 withdrew the resignation. Respondent accepted the Petitioner's request for withdrawal of resignation on 19.03.2020 and the approval was notified to the Petitioner on the same day vide letter dated 19.03.2020.

(c) Petitioner continued his flying duties under the impression that his resignation stood withdrawn and also undertook several flights during the 'Vande Bharat Mission' for evacuation of people stranded on account of Pandemic Covid-19. However, vide impugned order dated 13.08.2020, the

resignation of the Petitioner tendered on 21.09.2019 was accepted, while he was awaiting his standby duty on 14.08.2020, as per the flying roster.

10. **COMMON CONTENTIONS OF THE PETITIONERS**

A. Regulation 18 of Air India Employees Service Regulations applicable to PEs and Clauses 3.3 and 3.4 of CAR dated 27.10.2009 in Section 7 – Flight Crew Standards Training and Licensing, series 'X', Part II, Issue II, issued by DGCA as amended by Notification dated 16.08.2017, applicable to PEs and FTCEs, requires a Pilot to serve a six months' notice if he intends to tender resignation and leave the Company. The resignation so tendered is thus invariably and indisputably prospective in nature and this is unambiguously admitted by the Respondent in its counter affidavits. It is a settled principle of law that an employee can withdraw a prospective resignation, at any time, till it is accepted or takes effect i.e. till the jural relationship between the employer-employee ceases. It is trite that in the absence of anything contrary thereto in the provisions governing the terms and conditions of the service of an employee, an intimation in writing, sent to the Competent Authority, responsible for accepting resignation, of his intention or proposal to resign, from a future date, can be withdrawn at any time before it becomes effective. This is more so when there are no Rules requiring acceptance of the withdrawal of resignation. Petitioners tendered resignations giving six months' notice, in accordance with CAR and thus their resignations were prospective in nature. It is an undisputed fact that prior to the acceptance of resignations, the same were withdrawn by the Petitioners and it was thus not open to the Respondent to accept *non est* resignations.

B. Provisions of CAR cast an obligation on the Respondent to issue a 'No Objection Certificate' (NOC) after the expiry of notice period, relieving the Pilot and severing the relationship between the Pilot and the Airline. It is thus evident that the jural relationship between the Petitioners and the Respondent would come to an end upon expiry of the notice period or acceptance of resignation under Clause 3.7 of CAR, whichever is earlier. Therefore, the jural relationship had not ceased at the time when the Petitioners sought to withdraw the resignations. In this view, the resignations became *non est*, invalid and untenable, after their withdrawal, by the Petitioners and the only obligation cast thereafter on the Petitioners was to continue to render their services, till the expiry of the notice period.

C. Some of the Petitioners had approached this Court prior to passing of the impugned order, when the notice period was about to expire, alleging inaction on the part of the Respondent in permitting them to continue flying, despite withdrawal of resignations. This triggered passing of the impugned orders dated 13.08.2020, overnight, illegally accepting *non est* resignations and was clearly an act actuated by malice and with a view to overreach the Court. Respondent has treated the resignations as valid in perpetuity appropriating itself the power and right to act upon void, *non est* and unenforceable resignations, regardless of whether they were withdrawn or in some cases, withdrawals having been accepted.

D. Reliance was placed by learned counsels for the Petitioners on the following judgements for the proposition that an employee can withdraw his resignation at any time before it is accepted or becomes effective:

(a) Union of India & Ors. vs. Gopal Chandra Misra & Ors. **(1978) 2 SCC 301;**

(b) P. Chattopadhyay vs. The Institute of Cost and Works Accountants of India & Ors. **MANU/WB/0230/1986;**

(c) Balram Gupta vs. Union of India & Anr. **1987 (Supp.) SCC 228;**

(d) Punjab National Bank vs. P.K. Mittal **1989 Supp (2) SCC 175;**

(e) Moti Ram vs. Param Dev & Ors. **AIR 1993 SC 1662;**

(f) Prem Prakash vs. Air India Corporation, **1996 SCC OnLine Del 529;**

(g) Union of India & Ors. vs. G. Ganayutham (Dead) by LRs **AIR 1997 SC 3387;**

(h) Union of India vs. Wing Commander T. Parthasarathy **(2001) 1 SCC 158;**

(i) Secretary, Home Department, Govt. of Maharashtra Mantralaya vs. Sanjay Pandey **2005 SCC OnLine Del 1366;**

(j) Lady Cadet Shivanjali Sharma vs. Union of India & Ors. in **Writ Petition (C) 1143/2011** decided on 26.03.2012;

(k) Rakesh Rai vs. National Aviation Co. **2014 (1) Mh.L.J 18.**

E. There is no statutory Rule or Regulation or service condition which prohibits the Petitioners from withdrawing their resignations. Further, there is neither any requirement of a prior permission from the Respondent for withdrawing a resignation nor any provision in the CAR or the Regulations which mandates acceptance of the withdrawal applications by the Respondent. Thus, once the resignations were withdrawn, during the notice period, prior to acceptance on expiry of notice period, the impugned action

in accepting the resignations was illegal and arbitrary when tested on the anvil of Article 14 of the Constitution of India.

F. In P.K. Mittal (supra), it was held by the Supreme Court that it is not necessary that there should be a specific Rule permitting an employee to withdraw his resignation and in Bank of India vs. O.P. Swarnakar **(2003) 2 SCC 721**, the Supreme Court held that the right of an employee to continue in employment, is a fundamental right under Article 21 of the Constitution of India and cannot be taken away, except in accordance with law. The argument is that once the resignations were *non est*, accepting the same and dispensing with the services of the Petitioners amounts to termination, which was impermissible in law. Termination of the Petitioners can only be in consonance with Regulation 17 of the Air India Employees Service Regulations for the PEs and in accordance with Clause XI of the offer letters pursuant to Advertisement issued in 2015 and Clause XII of offer letters issued pursuant to Advertisement issued in 2016 and only on the grounds enumerated therein.

G. In the absence of any statutory Rule or a contractual provision, as aforesaid, Section 5 of the Indian Contract Act, 1972 would apply and the Petitioners would have an absolute right to withdraw their offer/resignations prior to their acceptance.

H. Action of the Respondent in accepting the *non est* resignations of the Petitioners is *ex-facie* discriminatory and violates Article 14 of the Constitution of India, for another reason. Respondent permitted withdrawals of resignations of a number of Pilots, other than the Petitioners, whose names have been categorically adverted to in the writ petitions, where resignations were tendered between July, 2019 to October, 2019, as also in

respect of some others, who had withdrawn the same only a few days prior to the withdrawals by the Petitioners. Few Pilots had submitted resignations between January to February, 2020, as averred in the petitions and even their withdrawals were accepted. In fact, two Pilots had withdrawn resignations, after the expiry of six months notice period and Respondent accepted their withdrawal. All these Pilots, referred to by name and dates of resignations in the writ petitions, are continuing to work with the Respondent and Petitioners are similarly placed. These averments are uncontroverted in the counter affidavits.

I. A perusal of the impugned orders dated 13.08.2020, 15.08.2020 and 16.10.2020, whereby Respondent has accepted the resignations of the Petitioners, reflects complete non-application of mind. The orders are identically worded in all cases and a verbatim reproduction, barring the personal particulars of the Petitioners. Each Petitioner had furnished a reason/ground to tender resignation, which was personal and peculiar to him, including the reason for withdrawal. Assuming for the sake of arguments in favour of the Respondent that the Respondent was entitled to consider the resignations, it was incumbent upon the concerned officers to consider each case separately on its own merits and apply their mind to the reasons set out for resignation and withdrawal. Each case was different from the other and it was not open to the Respondent to paint all the cases with the same brush. As an illustration, it was pointed out that in one case, the Petitioner had categorically stated in the resignation letter that she was resigning due to personal reasons, on account of family issues. While withdrawing the resignation, she specifically stated that the family issues had been resolved. Likewise in certain cases, the reasons for resignations were delayed payment

of salaries and other service issues and the reasons for withdrawal were assurance of payment of salaries on time and/or the increase in the wages under the FTCs. However, Respondent has not even taken cognizance of these grounds and a mechanical exercise was carried out to somehow oust the Petitioners. Impugned orders are predicated primarily on the alleged financial crunch of the Respondent and the effect of Pandemic Covid-19 on its operations, which was an irrelevant consideration, besides reflecting undue haste and intent to overreach the proceedings pending in the Court, when the orders were passed. This is amply demonstrated not only by the plain reading of the aforesaid orders which are identically worded, but also the fact that they bear the same Reference No. HPTO1/O-2701.

J. The plea and purported defence of the Respondent that there is a financial crunch and distress, occasioned by reduced commercial functioning of the Company on account of the extraordinary circumstances created by the Pandemic Covid-19, is completely fallacious and misplaced. It is emphasized that financial viability or otherwise cannot be an answer to the impugned action of accepting the resignations, which can only be tested on the principles enunciated for accepting resignations, as propounded in various judicial pronouncements. Financial constraint is not a ground available to the Respondent being an instrumentality/agency of 'State' under Article 12 of the Constitution. It is well settled that State has a fiduciary duty towards the citizens of its country, which it implements through instrumentalities like the Respondent. Article 19(1)(g) and Article 21 of the Constitution provide that State has responsibility to secure the right of livelihood to its citizens. Reliance is placed on the judgement of the Supreme

Court in Kapila Hingorani vs. State of Bihar **(2003) 6 SCC 1** and of Calcutta High Court in P. Chattopadhyay (supra) in this regard.

K. The plea of financial crunch is merely a facade as the financial status of the Respondent is not a new factor and its commercial viability is in the public domain for the past several years. This is merely a tool to get rid of the Petitioners and is evident from the fact that no other employee, except the Petitioners, has been terminated, laid off or retrenched on account of the alleged plea of financial viability during the Pandemic Covid-19, be it the Air Crew, Ground Staff, Administrative Staff or any other category of employees. In fact, as recently as on 23.07.2020, Respondent made a public statement that no employee shall be laid off by the Respondent and this was widely reported in the Media as a conscious decision taken by the Board of the Respondent after a review by the Ministry of Civil Aviation.

L. Even otherwise, the plea is belied by the official statement by the concerned Ministry, that Respondent had generated revenue of Rs. 2556.60 Crores from the flight operations under the 'Vande Bharat Mission' till 31.08.2020. Advertisement was issued on 14.08.2020 by the Respondent wherein through its subsidiary, it invited applications for appointment of fresh Pilots, which militates against the plea of financial crisis. In any event, the Ministry vide its Notification dated 02.09.2020 allowed domestic flights to resume operations upto 60% of its capacity and with the passage of time, there is no doubt that the operations will resume to their full capacity. Financial crisis cannot be used as a ground to dispense the services of the Petitioners, selectively, when admittedly every other employee of the Respondent is continuing to serve the Respondent.

M. Additionally, vide order dated 15.07.2020, the Ministry of Civil Aviation has reduced the Flying Allowances to 20 hours, as opposed to nearly 70 hours and the rate of Flying Allowance per hour has also been reduced by 40% w.e.f. 01.04.2020. Petitioners have already borne the burden of reduced salaries and allowances, since Flying Allowance constitutes approximately 70% of the salary of a Pilot. Thus, the Petitioners who have shared the financial burden with the Respondent and have dedicatedly performed their duties as a part of rescue and repatriation 'Vande Bharat Mission' till the impugned orders were passed, ought to have been permitted to continue rendering their services with the Respondent.

N. The only other reason for passing the impugned orders, as reflected from a reading of the orders itself is that the Respondent is no longer accepting withdrawals of resignations, in consonance with the judgement of the Supreme Court in Air India Express Limited (supra), wherein according to the Respondent, the Supreme Court has held that given the nature of the job of a Pilot requiring long training periods and costs, the general law on withdrawal of resignation would be inapplicable, which is a misreading of the judgement of the Supreme Court. The judgement was peculiar to its own facts, where the Pilot concerned had resigned on 03.07.2017 and a replacement was engaged on 14.08.2017. The resignation was accepted on 02.09.2017 and subsequent thereto, the Respondent had applied for withdrawal of the resignation i.e. on 18.12.2017. The application for withdrawal was post-acceptance of the resignation and she had joined another Private Airlines in the meantime. Compared and contrasted with the facts of the said case, in the present case, Petitioners resigned by giving a six months' notice and withdrew the resignations within the said period, well

before the same were accepted by the impugned orders. During the said period, Petitioners were performing their duties with the Respondent and no substitute or replacement Pilot was engaged by the Respondent. The reliance on the said judgement is therefore misplaced as it is settled law that a decision is only an authority for what it decides and with a slight change in facts, the ratio of the judgement would not apply to another case, with a different set of facts. Reliance was placed on the judgement of the Supreme Court in State of Orissa vs. Sudhanshu Sekhar Misra **AIR 1968 SC 647**.

ADDITIONAL CONTENTIONS BY PETITIONERS EMPLOYED UNDER THE FTCs

O. Petitioners who were employed under the FTCs had additionally argued that the offer letters of appointment as well as the terms of the FTCs, governing the parties entitle the Petitioners to extension for 5 years, where FTCs have expired during the pendency of the petitions and where the FTCs are yet to expire, they are entitled to continue till expiry and thereafter 5 years extension. Under Clause (1) of the FTCs, duration of the contracts was 5 years from the date the Pilots were released as First Officers, extendable by 5 years, subject only to satisfactory performance. Thereafter, Respondent was required to consider the Pilots for regularisation, at appropriate time, as per prevailing Rules of the Company. It is not the case of the Respondent that the services of the Petitioners were unsatisfactory. Renewal of FTCs has been the norm as per past practice and in the case of the Petitioners, the only hurdle was their resignations, which stand withdrawn. It is a settled law that even in the case of renewal/extension of Contracts, State or its agencies cannot act arbitrarily or in a discriminatory manner. This Court has the jurisdiction to issue a writ of mandamus to the State or its instrumentality, to

renew/extend the contract of employment, if it is found that the action of the Respondent is illegal and arbitrary, as was done by a Division Bench of this Court in the case of Chitra Sharma vs. Airline Allied Services **2017 SCC OnLine Del 11360**.

P. The parties to the *lis* are governed by the terms of the FTCs and the Contracts of employment of the Petitioners cannot be terminated on the pretext of financial constraints or a Pandemic. FTCS are terminable only for reasons stipulated in Clause XI/XII of the respective FTCs, which are unsatisfactory conduct, dishonesty, fraud or any act which is contrary to the interest of the Respondent. Admittedly, it is not the Respondent's case that any of the above conditions existed, enabling the Respondent to terminate the FTCs.

Q. Respondent has illegally invoked and encashed the entire BGs furnished by the Petitioners. Clause (V) of the FTCs provided that the total cost of training (amount varying under different FTCs) would be recovered from the salary and Flying Allowances in 60 equal monthly installments after release as First Officer and a BG was required to be executed equivalent to the said amount for a period of 5 years. It was provided that if the FTC was terminated for any reason or the Pilot left the Respondent before completion of 5 years, the BG shall be invoked for proportionate amount. Immediately after the resignation letters were submitted by the Petitioners, Respondent illegally invoked the entire BG amount, without adjusting the amounts already recovered through monthly deductions from the salaries. On writ petitions being filed in this Court, in another round of litigation, when the BGs were invoked, the same were allowed by the Court directing the Respondent to release the BGs on receipt of proportionate

amounts of training costs. Action of encashment/invocation is not in consonance with the contractual terms and the previous order of this Court and the Petitioners are entitled to the release of proportionate amounts under the respective BGs.

ADDITIONAL CONTENTIONS BY THE PETITIONERS UNDER CATEGORY 'C'

R. Impugned action of the Respondent is a classic case of complete non-application of mind as well as illegality, arbitrariness and high-handedness on the part of the Respondent and is not in consonance with the well settled principles of resignation and its withdrawal, enunciated by the Courts through various judicial pronouncements. As the facts would indicate, the Petitioners falling in this category submitted their resignations, which were subsequently withdrawn during the notice period, prior to their acceptance by the Respondent. Admittedly, Respondent accepted the withdrawal of the resignations and Petitioners continued to work as the resignations ceased to exist. *De hors* this fact, Respondent by the impugned orders accepted the initial resignations which no longer existed having been withdrawn and the withdrawal having been accepted by the Respondent. No provision or Rules/Regulations or even the general law of resignation in service jurisprudence can justify such an action in law and only points to sheer arbitrariness in action. Reliance was placed on the judgement in Management of Coimbatore District Central Co-operative Bank vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Ors. **(2007) 4 SCC 669**.

S. Last but not the least, it was argued by all the Petitioners that the Respondent has been unable to establish any facet of public interest that is

sub-served by the arbitrary and *malafide* discontinuation of the services of the Petitioners. In fact, the impugned action does disservice to the Airlines as well as to the public whereby services of trained Pilots, some of whom have vast and long experience, have been dispensed with.

ADDITIONAL CONTENTION BY PETITIONER FALLING IN CATEGORY 'E'

T. Petitioner had tendered his resignation by giving six months' notice. On the expiry of the said notice period, request was made to the Respondent to extend the notice period, which was approved and extended. Therefore, the jural relationship of employer-employee continued and was subsisting when the Petitioner withdrew his resignation on 18.03.2020 and it is impermissible in law to impair the jural relationship of employer-employee, in the manner adopted by the Respondent.

11. **CONTENTIONS OF THE RESPONDENT**

A. Respondent had addressed arguments dividing the Petitioners into two broad categories: (a) Permanent Employees and (b) Fixed Term Contract Employees. The arguments were general and on legal aspects without much stress on individual facts obtaining in each petition. It is to be noted that while counter affidavits were filed in majority of the matters, pleadings were focussed on the general propositions of law and reasons to justify the impugned orders. It be noted that there were no arguments rebutting the well settled principles under the law of resignation. As a start point, Mr. Sen learned Senior Counsel for the Respondent submitted that PEs are governed by the Air India Employees' Service Regulations applicable to Flying Crew while the FTCEs are governed by the terms of their FTCs. However, both

categories of Pilots are governed by CAR dated 27.10.2009 issued by the DGCA with respect to requirement of mandatory notice by the Pilots while tendering resignations.

B. CAR was enacted primarily to address two issues: (a) prevent the Pilots from crippling the Airlines by their sudden and abrupt resignations and (b) in public interest i.e. to safeguard the passengers from harassment and inconvenience due to cancellation of flights as a result of untimely resignations. Pilots are highly skilled personnel and any act of resignation without a minimum period would be against the public interest. The mandate of six months' notice was therefore to subserve public interest and not for the benefit of the Pilots.

C. Attention of the Court was drawn to Clause 3.4 of CAR which mandates a notice of six months by a Pilot, to the Respondent, indicating his intention to leave the job and within the said period the Pilot cannot refuse to undertake the flight duties assigned to him. Clause 3.6 mandates the Respondent to issue NOC to the Pilot on expiry of the notice period. Clause 3.7 enables the Airlines to reduce the notice period and give an NOC, accepting the resignation earlier than the requisite notice period. It was also pointed out that the purpose of providing a notice period is to enable the employer to find a suitable replacement or a substitute, as the training takes considerable time.

D. The well settled principles, with respect to resignation would not apply to the Pilots employed by various Airlines and this class of employees falls under an exception to the statement of law that an employee can withdraw his resignation before its acceptance by the employer. The strenuous argument of Mr. Sen was predicated on the exceptional nature of

the job of a Pilot and public interest element based on financial status of the Respondent. It was urged that this Court ought not to entertain the writ petitions under Article 226 of the Constitution. To strengthen the argument, Respondent heavily relied on the judgement of the Supreme Court in Air India Express Limited (supra), where the Supreme Court observed as under:

> ***"16.*** *The underlying principle and the basic idea behind stipulation of the mandatory notice period is public interest. It is not the interest of the employee which is intended to be safeguarded but the public interest which is to be subserved. It seeks to ensure that there would not be any last minute cancellation of flights causing enormous inconvenience to the travellers. It is for this reason that the pilot concerned is required to serve till the expiry of the notice period. The notice period may stand curtailed if NOC is given to the pilot concerned and the resignation is accepted even before the expiring of the notice period. It may, in a given case, be possible that the trained manpower to replace the pilot, who had tendered resignation, could be made available before the expiry of such notice period, in which case the employer is given a choice under Clause 3.7 of the CAR. Even in such eventuality, the guiding idea or parameter is public interest.*
>
> ***17.*** *The stipulation of notice period is, therefore, only to subserve public interest and is designed to enable the air transport undertaking or employer to find a suitable replacement or a substitute. By very nature of the job profile a replacement for a pilot does not come so easily and therefore, the period of six months. The CAR acknowledges the fact that it would require considerable expenses and efforts to train the replacement concerned before he could be a worthy substitute. The notice period enables the air transport undertaking or the employer to gear itself up in that direction and obliges it to find a substitute or a replacement. The obligation to find a suitable replacement begins immediately on receipt of letter of resignation. In the present case, steps were taken by the appellant to discharge such obligation and replacement in*

Captain Jiban Mahapatra was found. The normal principle that an employee can at any time before the resignation becomes effective, withdraw his resignation will therefore be subject to the core principles of the CAR. In our view, the instant matter would, therefore, be within the exception stipulated in paras 41 and 50 of the decision in Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] and para 12 of the decision in Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126] , and the respondent could not have withdrawn the resignation."

E. The Supreme Court has clinched the issue that the normal principle that an employee can at any time before resignation becomes effective, withdraw his resignation, will be subject to the core principle of CAR and looking at the exceptional nature of the job, training and its costs with respect to the Pilots, matters of resignations of Pilots would fall within the exception stipulated in paragraphs 41 and 50 of the judgement in Gopal Chandra Misra (supra) and paragraph 12 of the judgement in Balram Gupta (supra). In view of the said judgement, it was not open to the Petitioners to withdraw their resignations, once tendered.

F. The Supreme Court after analysing the provisions of CAR held that the underlying principle behind the stipulation of mandatory notice period is public interest and not the interest of the employee. It was designed to enable the Air Transport Undertaking to find a suitable replacement or substitute to take over the duties and to avoid untimely cancellations in the interest of the passengers. The Supreme Court also observed that in case the Airlines has trained and replaced another Pilot pursuant to the resignation of a Pilot, it would not be in the public interest to permit withdrawal of resignation. Therefore, the action of the Respondent in accepting the resignations

tendered by the Petitioners is in consonance with the judgement of the Supreme Court and cannot be faulted.

G. Acceptance of the resignations of the Petitioners was completely justified on account of the financial distress under which the Respondent has been reeling since a number of years. The extraordinary and exceptional circumstances created due to Pandemic Covid-19 resulted in imposition of restrictions in Air travel, causing huge financial loss to the Respondent, in turn adversely impacting its financial ability to pay remuneration to the employees. It is a matter of record that by March 2012 itself, the Respondent would have become a non-performing asset (NPA) in the Banking sector and in order to help the Respondent the Government had taken a Cabinet approval to infuse funds to the extent of Rs. 49,500 Crores which included financial support for non-convertible debentures and interest thereon. Currently the Respondent is reeling under a debt of approximately Rs.30,000 Crores after transferring debts of Rs. 29,464 Crores to Air India Assets Holding Limited, a SPV formed under the Disinvestment Plan. Additionally, Respondent has outstanding liabilities to various Banks, lessors, vendors and service providers including outstanding towards Aircraft Loan and the Central Government has already announced the Disinvestment Plans for the Respondent.

H. Respondent has a cash deficit of Rs.250 Crores every month even during normal flight operations and is somehow keeping afloat with the help of financial support from the Central Government. The Pandemic has adversely affected the commercial functioning of the Respondent as it had to stop operation of flights in all international/domestic sectors except for a few relief flights for evacuation and transportation of essential cargo like

medicines, food etc. as per directives of the Government. Attention of the Court was drawn to the data placed on record in the counter affidavits indicating the number of flights that operated in the pre-Covid era and during the Covid-19 period, in order to substantiate the effect on operations. Likewise, a tabular data was also placed on record to indicate the number of Pilots utilised in the pre-Covid-19 period and from July 2020 when according to the Respondent skeletal operations resumed.

I. The global Pandemic Covid-19 has left no enterprise, industry or business untouched and several Airlines across the world have undertaken cost cutting measures and resorted to either VRS packages or laid off some percentage of their employees or permitted them to continue with restrictive conditions such as reduction in salary, unpaid leave, stoppage of overtime, etc. The Respondent despite its precarious financial position is trying its best not to retrench any of its employees but at the same time cannot be burdened with employing the Petitioners who had at one stage voluntarily offered to resign.

J. Petitioners had tendered resignations, out of their own free will and in most cases for the reason that they were offered assignments with Private Airlines and were looking for greener pastures. However, on the onset of Covid-19, it is believed that the Private Airlines declined to take them on their rolls and this led to the Petitioners withdrawing their resignations. This is evident from the fact that somewhere in mid-March, 2020, there were signs of spread of Covid-19 and the resignations were withdrawn around the same period. The act of withdrawal is not *bonafide* and there is no reason why Respondent should accept the withdrawals of resignations of those Pilots who wanted to leave in search of better career prospects, more

particularly, at a time when the Respondent does not have the ability to bear the financial burden of paying them. With a whole lot of Pilots suddenly withdrawing the resignations, there has been a reverse exodus, resulting in a cascading effect on the already depleting finances of the Respondent, which the Respondent can ill-afford.

K. Reliance was placed on the letter dated 15.07.2020, in respect of Pilots and letter dated 17.07.2020, in respect of other officials, issued by the Ministry of Civil Aviation (hereinafter referred to as **'MoCA'**), directing rationalisation of allowances and their reduction, ranging from 20% to 50%. Reliance is also placed on the order dated 23.03.2020 issued by MoCA under Section 8B(1) of the Aircraft Act, 1934 ceasing operations of Domestic Operators engaged in scheduled, non-scheduled and Private Aircraft operations in India and the order dated 17.05.2020 extending the said directive. Respondent had also placed on record subsequent Circulars restricting the operations in international commercial passenger services. Be it noted that none of these documents were either a part of the pleadings in the counter affidavits nor were annexed thereto and were brought on record along with the compilation of judgements.

L. There is a distinction between the Central and State Government vis-à-vis the Public Sector Enterprises/Government Companies. Public Sector Enterprises have the freedom to take commercial decisions to ensure that the financial viability is maintained. Reliance is placed on the judgement in Lt. Governor of Delhi & Ors. vs. V.K. Sodhi & Ors. **(2007) 15 SCC 136**, where the Supreme Court held that bodies like the SCERT are created with the laudable object of coordinating and promoting education in the State with limited financial resources and when an argument is taken by the

SCERT that it cannot spend the whole of its resources on payment of salaries etc., it must be considered as a weighty argument by the Court and while exercising jurisdiction under Article 226 of the Constitution, financial implications cannot be ignored.

M. Reliance was placed on the judgements of the Supreme Court in Jatya Pal Singh & Ors. vs. Union of India & Ors. **(2013) 6 SCC 452** and Oil and Natural Gas Commission & Anr. vs. Association of Natural Gas Consuming Industries of Gujarat & Ors. **1990 (Supp.) SCC 397**, to argue that the Respondent has taken a conscious policy decision to accept the resignations of the Petitioners and this is purely a 'commercial decision', which a Public Sector Undertaking is free to take, looking at the various factors in place and it is beyond the power of judicial review of this Court to interfere in the same. Judgement of the Kerala High Court in Girish G. & Anr. vs. State of Kerala **(2020) SCC OnLine Ker 1903**, was cited for the proposition that employment or termination of services of an employee does not involve any public element and therefore no writ petition would lie to enforce the personal contracts.

N. Pandemic Covid-19 has been declared as a *force majeure* and the Respondent cannot be compelled into continuing the Petitioners on its rolls. The Supreme Court in Ficus Pax (P) Ltd. vs. Union of India **(2020) 4 SCC 810** has held that the lockdown measures have equally impacted the employees and the employers. All industries or establishments are of different nature and financial capacity and while some may bear the financial burden of payment of wages etc., the others may not be able to do so. A balance has to be struck between two competitive claims. Reliance was placed on a judgement of the Coordinate Bench of this Court in Halliburton

Offshore Services Inc. vs. Vedanta Limited & Ors. **2020 (3) ARB LR 113 (Delhi)** wherein the Court has observed that Covid-19 is a *force majeure* event and referred to the principles laid down by the Supreme Court in Energy Watchdog vs. Central Electricity Regulatory Commission **(2017) 14 SCC 80** particularly in relation to invocation of doctrine of frustration in the event of a *force majeure*. Judgement of the Supreme Court in Swiss Ribbons (P) Ltd. vs. Union of India **(2019) 4 SCC 17** was relied to argue that the primary focus of a Legislation is to ensure revival and continuance of a corporate debtor and survival of any company is of paramount importance. Therefore, the financial constraints of the Respondent cannot be overlooked while deciding the claims of the Petitioners as the financial burden by employing them would add to the existing losses making it difficult for the Company to survive.

O. A State or its instrumentality can choose its own method of functioning, more particularly in commercial Contracts and the decisions have to be based on various relevant factors having regard to commercial viability. Courts cannot interfere in the decision but only in the decision-making process on grounds of *malafides*, unreasonableness or arbitrariness. Courts cannot examine relative merits of economic policies and cannot strike down a Policy merely on the ground that another Policy would be fairer and better and this is more so in policies regarding disinvestment in Public Sector. Reliance was placed on the judgement in and Life Insurance Corporation of India vs. Escorts Ltd & Ors, **(1986) 1 SCC 264,** Air India Ltd. v. Cochin International Airport Ltd. **(2000) 2 SCC 617** and Balco Employees Union v Union of India **(2002) 2 SCC 333**.

P. Power to abolish a post which may result in holder ceasing to be a Government Servant has to be recognised. Measure of economy and need to streamline administration may induce a State Government to make alterations in its starting pattern by increasing or decreasing the number of posts or abolishing them wholly or partially for want of funds but that is the domain of the employer and the Court cannot by a writ of mandamus direct the employer to continue employees so dislodged. For this proposition of law, reliance was placed on the judgements in the cases of State of Haryana vs. Shridesh Raj Sangar **(1976) 2 SCC 844** and Avas Vikas Sansthan & Anr. V. Awas Vikas Sansthan Engineer's Association **(2006) 4 SCC 132**. With changing times, the Court must progressively interpret the constitution and the law and take a fresh look to mould the existing precepts to suit the new emerging situations. The law with respect to employment, the rights of employees including the principles of the law pertaining to resignations must be, according to the Respondent, interpreted and moulded keeping the emerging situation of the Respondent, on account of unprecedented and extraordinary Pandemic Covid-19. The submission was sought to be supported by the observations of the Supreme Court in Kalpana Mehta & Ors. v. Union of India & Ors. **(2018) 7 SCC 1**.

Q. With respect to the FTCEs, it was additionally contended that it was a term of the FTC that the total cost of training would be recovered from the salary and Flying Allowances in 60 equal monthly installments after release as First Officer and BG equivalent to the said amount was required to be furnished by the Petitioners. It was also stipulated in the FTCs executed in the year 2015 that in case the trainee Pilot left the Company before completion of 5 years of contractual engagement, the BG will be invoked for

proportionate amount. In the FTCs executed in the year 2016, an additional clause was incorporated which made the Petitioners thereunder, liable to pay the Company a sum of Rs. 50 Lacs as liquidated damages, apart from encashment of the BG. Petitioners were well aware of the terms of the FTCs and the consequences of the breach. Petitioners are guilty of breach of the terms of the FTCs by tendering resignations and the Respondent was well within its rights to invoke the BG as also to demand liquidated damages, wherever applicable. In fact, in the earlier round of litigation pertaining to BGs, the Court had approved the action of the Respondent and had directed the Petitioners therein to deposit the proportionate amount of training cost and subject to the said deposit, the BGs were to be released to the proportionate extent.

12. **CONTENTIONS OF THE PETITIONERS IN REJOINDER**

A. Apart from distinguishing the judgements cited by the Respondent, the Petitioners vehemently argued that Respondent has failed to discharge the onus to establish the defence raised by them and/or the grounds set out in the impugned orders as a cause to justify acceptance of resignations of the Petitioners. Respondent has not addressed arguments on the position of law with respect to resignation, its withdrawal and acceptance and have brushed aside the only issue raised in the present petitions by relying upon the judgement of the Supreme Court in Air India Express Limited (supra), which is inapplicable to the facts in the present petitions. Extensive arguments have been raised to defend the action on financial crisis *albeit* the same can have no bearing on the issue of resignation and is an extraneous factor.

B. The objection to the maintainability of the petitions is totally misplaced as the very judgement on which heavy reliance is placed by the Respondent in Air India Express Limited (supra) arose out of a writ petition entertained by the Kerala High Court. It is a different matter that the Supreme Court did not agree with the Respondent on merits, however, the maintainability was not objected to and nor did the Supreme Court hold that a writ petition shall not lie challenging an action of accepting the resignation of a Pilot working with the same Airlines. Decision of the Division Bench of this Court in Prem Prakash (supra) squarely covers the present petitions and also negates the feeble objection of maintainability of the petitions. Reliance was also placed on the judgements in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. **(2004) 3 SCC 553**, Kumari Shrilekha Vidyarthi vs. State of U.P. **(1991) 1 SCC 212**, Chitra Sharma (supra) and O.P. Swarnakar (supra).

C. The argument of the Respondent that the impugned decision is a commercial decision and thus beyond the scope of judicial review is a fallacious argument and has been made to justify an arbitrary decision taken to overreach the judicial process when several writ petitions were sub-judice and this is evident from the chronology of dates and events. Resignations were submitted between November, 2019 to January, 2020. On 15.07.2020 and 17.07.2020, Circulars were issued by MoCA reducing the allowances payable to the Pilots with retrospective effect from 01.04.2020. This Court issued notice on 15.07.2020 in W.P.(C) 4203/2020 titled Arjun Ahluwalia vs. Air India Limited, where the Petitioner had contended that resignation should be treated as otiose and he be continued in service with all consequential benefits. Subsequently, notice was issued on 22.07.2020 in

W.P.(C) 4420/2020 and on 04.08.2020 and 05.08.2020, arguments were heard and the matters were adjourned to 14.08.2020 for further hearing. Between 11.08.2020 to 13.08.2020, seven writ petitions were filed and notices were issued for 14.08.2020. While no action was taken by the Respondent for nearly one year, suddenly on the night of 13.08.2020 at about 10.30 p.m., impugned orders were sent via e-mail to all the Pilots/Petitioners, when the petitions were listed on the very next day. The undue haste and non-application is writ large from the perusal of the orders itself which are identical, cyclostyled letters with same reference numbers and were sent even to those pilots whose withdrawals had been earlier accepted. In two matters, in W.P.(C) 8625/2020 and 8626/2020, the impugned orders were passed after over two months i.e. on 16.10.2020 and no reason for the belated issue of the orders was forthcoming.

D. On a pointed query by the Court, a categorical stand was taken by the Respondent that no other employee of the Respondent be it the Cabin Crew, Ground Staff, Administrative Staff etc. has been retrenched or laid off barring the Petitioners and no explanation is forthcoming despite extensive arguments as to why the Petitioners have been discriminated inasmuch as the financial constraint would equally apply to all classes of employees. In fact, as a matter of record, FTCs have been executed in July, 2020 and August, 2020 with about 19 Pilots and this fact pleaded particularly in W.P.(C) 8626/2020 is uncontroverted.

E. The judgement in the case of Air India Express Limited (supra) does not apply to the present petitions and is distinguishable on facts. In the said case, the factor that weighed with the Supreme Court was that the Respondent had been replaced by another Pilot and time and money had

been spent on his training. In that fact situation, the Supreme Court held that in a given case it is possible that the trained manpower to replace the Pilot who had tendered resignation could be made available before the expiry of the notice period in which case the employer is given a choice under Clause 3.7 of CAR. In the present case, no substitutes have been trained to replace the Petitioners and on the contrary, the stand of the Respondent is that given the financial crisis, they do not intend to engage substitute Pilots. Careful reading of the observations of the Supreme Court further makes it clear that the choice can be exercised by the employer 'within the notice period', while in the present case no action was taken within the notice period and even the impugned order was passed well beyond the expiry of the notice period.

F. Respondent has made false statements on an affidavit that in the earlier round of litigation, Court had confirmed the liability of the Petitioners to reimburse the training cost as also the right of the Respondent to invoke the BGs. The earlier writ petitions were filed for a limited purpose to restrain the Respondent from encashing the BGs to the extent of training cost, which had remained unpaid and/or alternatively to release the BGs upon receipt of the balance/proportionate amount of unpaid training costs. Court had disposed of the petitions on the statement of the Respondent that the BGs shall be duly released within a period of one week and no further deductions shall be made from the training cost and all rights and contentions of the parties were left open. Prior thereto, interim orders were passed by the Court staying the invocation and encashment of the BGs, subject to the Petitioners depositing the proportionate balance amount.

13. Having heard the respective counsels for the Petitioners and learned Senior Counsel for the Respondent assisted by different counsels and after

careful cogitation, the issues that pronouncedly emanate for consideration before this Court in the present writ petitions are:

A. Whether the Petitioners were entitled to withdraw their resignations prior to their acceptance by the Respondent?

B. Whether it was open to the Respondent to accept resignations which stood withdrawn by the Petitioners prior to their acceptance, if the answer to the above question is in the affirmative?

C. Whether financial crisis/distress/crunch of the Respondent can be a relevant consideration for accepting resignations of the Petitioners in view of the provisions of CAR?

D. Whether the Petitioners whose terms and conditions of service were governed by Fixed Term Contracts can enforce their contracts of employment and/or seek extension/renewal of the FTCs by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India?

14. In order to decide the first issue, it would be necessary to examine the concept of 'resignation' in the realm of service jurisprudence and keeping in backdrop the principles elucidated in several judgements on the subject. Petitioners have primarily predicated their arguments on the enunciation of law by the Supreme Court in several judgements and concisely stated the proposition as put forth is that it is open to an employee to withdraw the resignation before the same is accepted by the employer. *Per contra*, the foundation of the case set up by the Respondent is the already existing financial distress, aggravated by Pandemic Covid-19 on account of reduced flight operations.

15. I may first advert to the connotation of the expression 'resignation'. 'Resignation' by its Dictionary meaning means spontaneous relinquishment

of one's own right and in relation to an office, it connotes the act of giving up or relinquishing office. To relinquish an office means to 'cease to hold'. It has been held by the Supreme Court that in general juristic sense, in order to constitute a complete and operative resignation, there must be an intention to give up or relinquish the office and the concomitant act of its relinquishment. The act of relinquishment may take different forms or assume unilateral or bilateral character, depending on the nature of the office and the conditions governing it. In Gopal Chandra Misra (supra), it was held that if the act of relinquishment is of unilateral character it comes into effect when such act indicating the intention to relinquish office is communicated to the Competent Authority and the Authority is not required to take any action and relinquishment takes effect from the date of such communication, where the resignation is intended to operate in praesenti. A resignation may be prospective to be operative from a future date and in that event, it would take effect from the date indicated therein and not from the date of communication. In cases where relinquishment is of a bilateral character, communication of the intention is by itself not sufficient and some action is required to be taken on such communication for example acceptance of the said request and in such a case relinquishment does not become operative or effective till the acceptance takes place. As to whether the act of relinquishment of office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it. In Moti Ram (supra), the Supreme Court held that a contract of employment stands on a different footing wherein the act of relinquishment is of a bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. In the case of Government employees, specific provisions

of service Rules will govern the relinquishment as here only the acceptance of resignation makes it effective.

16. I may now refer to some of the authoritative pronouncements on the principles laid down with respect to resignation, its withdrawal and acceptance. Starting from one of the earlier judgements in Raj Kumar vs. Union of India **AIR 1969 SC 180**, the Supreme Court held that when a public servant tenders a letter of resignation and invites determination of his employment, his service clearly stands terminated from the date the Competent Authority accepts the resignation and in the absence of any rule to the contrary, it will not be open to the public servant to withdraw his resignation. Therefore, till the resignation is accepted, the public servant has *locus poenitentiae* but not thereafter to withdraw the resignation. This judgement was considered by the Constitution Bench of the Supreme Court along with other judgements on the subject in Gopal Chandra Misra (supra). The Supreme Court held that a request for premature retirement which was made to take effect from a prospective date and required acceptance, by the Competent Authority, will not be complete till accepted and can be withdrawn till it becomes complete. Relevant paras are as under:

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

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

17. Similar view was taken by the Supreme Court in Balram Gupta (supra) where the Appellant had sought voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972. After tendering his request for voluntary retirement, Appellant withdrew the notice. Relying on the judgement in Gopal Chandra Misra (supra) and Air India vs. Nergesh Meerza **(1981) 4 SCC 335** and the observations in Raj Kumar (supra), the Supreme Court reaffirmed the principle that a request for voluntary retirement can be withdrawn before acceptance. Infact in the said case, Rule 48A(4) prescribed

that the resignation could only be withdrawn with the approval of the Competent Authority. The Supreme Court observed that the approval was not the *ipse dixit* of the Competent Authority, upon whom lies the statutory obligation to act reasonably and rationally. Relevant paras are as under:

> *"11. In Air India v. Nergesh Meerza, the court struck down certain provisions of Air India Employees ' Service Regulations. We are not concerned with the actual controversy. But the court reiterated that there should not be arbitrariness and hostile discrimination in government's approach to its employees. On behalf of the respondent it was submitted that a government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Ra1 Kumar v. Union of India. There the court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub-rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the*

power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason…."

18. In Prem Prakash (supra), a Division Bench of this Court had the occasion to deal with an identical issue and significantly the Respondent therein was Air India Corporation and the legal provision involved was Regulation 49 of the Air India Employees Service Regulations which provided that no employee shall resign from the service of the Corporation except by giving such notice as he would have received if his services were terminated under Regulation 48. The Division Bench in no uncertain terms held that since the resignation stood withdrawn validly by the Petitioner before the same was accepted by the Respondent, the same was in consonance with Regulation 49 and that makes the acceptance to be bad being violative of Regulation 49. The impugned order was quashed and it was declared that the Petitioner continues to be in service without any break in service and will be duly assigned his job which he had been performing earlier. Relevant para is as under:

"13. *In view of the above, we have no hesitation in holding that there has been no acceptance of petitioner's resignation dated 3.2.1993 till the telegram dated 9.2.1993 was received by the respondents and acceptance of the resignation was subsequent to the receipt of the telegram. The resignation as such stood withdrawn validly by the petitioner. Otherwise also, assuming that acceptance was through letter dated 10.2.1993 the same*

was in consonance with Regulation 49 and the same will also make acceptance to be bad being violative of Regulation 49."

19. In Wing Commander T. Parthasarathy (supra), the Respondent had submitted an application for premature retirement w.e.f. 31.08.1986 and by a subsequent application sought an amendment of the actual date of release taking into account that the benefits under the Fourth CPC were expected to come in November, 1985. Subsequently, however, he withdrew his officer on 19.02.1986. Respondent then received a letter dated 20.02.1986 intimating that he would stand prematurely retired w.e.f. 31.08.1986. On a writ petition being filed before the Karnataka High Court, it was held by the High Court that once the offer was withdrawn, the action of acceptance of the request, subsequent thereto, had no effect. In an appeal by the Union of India, the Supreme Court held as follows:

"8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the headquarters, the appropriate authority, was said to have been made only on 20-2-1986, a day b after the respondent withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-8- 1986. While that be the position inevitably the respondent had a right and c was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

9. The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent

that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for premature retirement cannot, in our view, be destructive of the right d of the respondent, in law, to withdraw his request for premature retirement before it ever became operative and effective and effected termination of his status and relation with the Department. When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy e such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that apart, the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of f the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity (sic infirmity) in law, to warrant our interference."

20. In Shambhu Murari Sinha vs. Project & Development India Ltd. **(2002) 3 SCC 437**, the Supreme Court held as under:

*"**18.** Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the "release memo along with detailed particulars would follow". Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the*

respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end."

21. The question as to whether an employee who opts for voluntary retirement pursuant to a Scheme floated by the Nationalised Banks and the State Bank of India would be precluded from withdrawing the said offer came up for consideration before the Supreme Court in O.P. Swarnakar (supra). Relying on the Dictionary and the juristic meaning of the word 'offer', the Supreme Court observed as under:

"59. *The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The competent authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the Scheme. A procedure has been laid down for considering the provisions of the said Scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked "offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first-come-first-serve basis. The procedure laid down therefor suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down therefor. There is no assurance that such an application would be accepted without any consideration.*

60. *Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to*

him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. ....."

22. The Supreme Court thereafter culled out certain principles which are relevant to the present case and are extracted hereunder:

***"61.** The following, therefore, can be deduced:*
(i) The banks treated the application from the employees as an offer which could be accepted or rejected.

(ii) Acceptance of such an offer is required to be communicated in writing.

(iii) The decision-making process involved application of mind on the part of several authorities.

(iv) Decision-making process was to be formed at various levels.

(v) The process of acceptance of an offer made by an employee was in the discretion of the competent authority.

(vi) The request of voluntary retirement would not take effect in praesenti but in future.

(vii) The bank reserved its right to alter/rescind the conditions of the Scheme."

23. Relying on the earlier judgements of the Supreme Court, it was held as under:

***"113.** The submission of the learned Attorney-General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The Scheme was in force for a fixed period. A decision by the*

authority was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the employees concerned would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer. We, therefore, are of the opinion that the decisions of this Court, as referred to hereinbefore, shall apply to the facts of the present case also."

24. The law on resignation and its withdrawal prior to acceptance as enunciated by the Supreme Court in the aforesaid judgements was followed by the Division Bench of this Court in Lady Cadet Shivanjali Sharma (supra), Secretary, Home Department, Govt. of Maharashtra Mantralaya (supra), by the Division Bench of Bombay High Court in Rakesh Rai (supra) as well as by the Calcutta High Court in P. Chattopadhyay (supra) and Rajendra Bose vs. Institute of Cost Accountants of India & Ors. **2020 SCC OnLine Cal 1033**. To avoid prolixity and burdening the judgement with passages from all the above judgements, I may specifically refer to passages from two of these judgements. Relevant passage from the judgement of the Calcutta High Court in P. Chattopadhyay (supra) is as follows:

*"**51.** There is no provisions embodied in the Rules as regards the right of the employee to resign from service. Similarly, there is no provisions regarding the acceptance of resignation. The resignation, therefore, was to take effect from a future date. The writ petitioner by his letter dated 6th May, 1931 changed his decision to effect his resignation in praesento which would be patent from the letter dated 6th May, 1981, whereby he postponed it to the future date. So long as the resignation does not become effective, the appellant had*

a right to withdraw and in fact, he duly and properly exercised his right. The present case, if tested on the touchstone of the principle laid down in the case of Union of India v. Gopal Chandra Misra (supra) would show that the general principle as regards resignation is that in absence of a legal contractual or constitutional bar, a resignation fashioned with prospectively can be in actuality withdrawn at any point of time before it becomes operative or effective. When it operates to terminate the employment of the office of the tenure of the resigner it becomes effective. If in the terms of writing as would appear in the facts and circumstances of the present case from the letter dated 6th May, 1981 the appellant by such writing chose to resign from a future date the act of resigning office was neither final nor complete by reason of the fact it did not constitute termination of his tenure before such date and he could at any time before the arrival of that prospective date on which it was in actuality to be effective withdrew it. There is nothing either in the rules or any executive instructions which bars such withdrawal. It is very clear that in a case where the resignation tendered is to become effective from a future date the employee, who has tendered resignation has the right to withdraw the resignation before it becomes effective and he goes out of employment. In the letter dated 24th August, 1981, the petitioner in clear terms has stated that he was withdrawing the resignation. In view of the aforesaid withdrawal, the petitioner was entitled to continue in service. In other wards, the ration of the decision of the Supreme Court in Union of India v. Gopal Chandra Mishra (supra) is opposite to the present case and not the one in Raj Kumar v. Union of India (supra).”

25. In Rakesh Rai (supra), the Bombay High Court relying on the judgements of the Supreme Court on the subject, observed as follows:

“16. We respectfully agree with the observations made by the Delhi High Court. The Apex Court has also clearly laid down firstly that if a conditional acceptance is given by the employer, in that case, it is open for the employee to withdraw the

resignation, if the conditions imposed by the employer are not acceptable to him in which case, it will have to be held that his resignation stands withdrawn. Similarly, the Apex Court also in Wing Commander T. Parthasarathy, (2001) 1 SCC 158 (supra) has clearly held that where the resignation is to take effect on a future date, it can be withdrawn at any time before that date. The Constitutional Bench in Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (Land S) 303: (1978) 3 SCR 12: AIR 1978 SC 694 (supra) has also reiterated that prospective resignation can be withdrawn at any time before it becomes effective."

26. Following the aforesaid conspectus of judgements, the only conclusion that can be drawn, without two opinions on the subject, is that a resignation tendered by an employee indicating a prospective or a future date from when the resignation is to take effect, can be withdrawn at any time before it is accepted, in the absence of anything to the contrary in the applicable Rules or terms and conditions of service. It may be a different matter where the withdrawal of resignation can be made only with the prior permission of the employer or where the withdrawal needs acceptance under the given set of Rules, but these exceptions need not detain this Court, as admittedly in the present case, there is no Rule prescribing any of the two conditions. A corollary, if the resignation is withdrawn prior to its acceptance, it is not open to the employer to accept the resignation, as the same is non-existent and *non est* in the eyes of law.

27. Before applying the principles of law enunciated in the judgements referred to above, it would be pertinent to refer to the Rules/Regulations that govern the terms and conditions of the Petitioners herein with respect to resignation. As far as the PEs are concerned, they are governed by Air India Employees' Service Regulations and the relevant Regulation dealing with resignation is as under:

"**<u>Resignation:</u>**

18. No employee shall resign from the employment of the Company without giving six months notice in writing to the Company, in case of licence/approval categories.

xxx xxx xxx

Provided that Chairman and Managing Director/Managing Director in case of licence/approval categories and the Competent Authority in other cases may dispense with or reduce the period of notice on grounds of continued ill-health of the employee or such other compelling or extraordinary circumstances which in the opinion of the Chairman and Managing Director/ Managing Director/Competent Authority warrants such dispensing with or reduction in the period of notice;

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

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

28. Admittedly both the PEs and FTCEs are governed by CAR insofar as the mandatory notice period of six months is concerned for tendering

resignation. In exercise of powers conferred by Sections 5, 7 and 8(2) of the Aircraft Act, 1934 and Section 4 of the Indian Telegraph Act, 1885, the Aircraft Rules, 1937 were framed by the Central Government. Part XII-A of the said Rules provides for Regulatory provisions and Rule 133(A) is as follows:

> ***"133A. Directions by Director-General.***- *(1) The Director-General may, through Notices to Airmen (NOTAMS), Aeronautical Information Publication, Aeronautical Information Circulars (AICs), Notice to Aircraft Owners and Maintenance Engineers and publication entitled Civil Aviation Requirements issue special directions not inconsistent with the Aircraft Act, 1934 (22 of 1934) or these rules, relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India.*

29. DGCA issued the 'Civil Aviation Requirement' (CAR) on 27.10.2009 as under:

> *"OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION, TECHNICAL CENTER, OPPOSITE SAFDARJUNG AIRPORT, NEW DELHI.*
>
> *CIVIL AVIATION REQUIREMENT*
>
> *SECTION 7 – FLIGHT CREW STANDARDS TRAINING AND LICENSING*
>
> *SERIES 'X' PART II*
>
> *ISSUE II, 27TH OCTOBER 2009*
>
> *EFFECTIVE:FORTHWITH*
>
> *Subject: Requirement of 'Notice Period' by the Pilots to the airlines employing them.*

1. INTRODUCTION

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

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

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

2. APPLICABILITY

2.1 This Civil Aviation Requirement shall be applicable to the pilots in regular employment of any air transport undertaking as defined in clause (9A) of rule 3 of the Aircraft Rules, 1937.

2.2 This CAR is issued with the approval of the Ministry of Civil Aviation vide their letters No.A2012/08/2005-A dated 1st September 2005 and No.A.60015/024/2008-VE dated 21st October 2009.

3. REQUIREMENTS

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

can operate only as a copilot. To operate an aircraft as Pilot-in- Command (PIC), he needs to gain experience and undertake 'Skill Test' to fly as PIC of an aircraft, which may take another four months or so. Therefore, it would take more than four months for an airline to replace a trained Pilot in- Command.

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

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

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

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

3.6 It shall be mandatory for the air transport undertaking to issue NOC to the pilot on expiry of the notice period of six

months, failing which it shall be liable to penal action by DGCA.

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

(Dr. Nasim Zaidi)

Director General of Civil Aviation".

30. The scheme of resignation as envisaged is: (a) six months' notice period is mandatory for tendering resignation; (b) at the end of the notice period, Respondent is required to issue an NOC to the Pilot concerned; (c) the notice period can be curtailed by the Respondent and resignation accepted under Clause 3.7 of CAR; (d) there is no requirement of seeking prior permission for making an application for withdrawal of the resignation; (e) there is no Rule prescribing acceptance of withdrawal application by the Respondent and (f) there is no Rule prohibiting withdrawal of resignation.

31. Keeping the judgements and the Rule position in the backdrop, the facts in the present petitions, barring Category 'C', succinctly put are that the Petitioners had tendered their resignations giving a six months' notice to the Respondent. The Respondent did not accept the resignation until the passing of the impugned orders, which was well beyond the six months' notice period. Petitioners had withdrawn the respective resignations well before the same were accepted. It is apparent that the initial letters of resignations were only prospective or potential resignations and as they indicated a future date from which the resignation was to take effect, such resignations can only be termed as inert, inoperative and ineffective and cannot be said to have caused any jural effect. Consequently, it can be legitimately held that there

was no cessation of jural relationship of employer-employee between the Respondent and the Petitioners upto the last day of expiry of six months' notice period as it is an admitted case that prior to the said day, resignations were not accepted. Rules applicable to the parties herein manifest that resignation could only be tendered with a mandatory six months' notice period and was thus prospective and it cannot be said that offer to resign was *in praesenti*. Therefore, the inevitable position that emerges is that the Petitioners had a right to withdraw the resignations on various dates that they did, prior to their acceptance and position adopted by the Respondent, to the contrary is unacceptable.

32. Once the Petitioners were entitled under the Rules to withdraw the resignations and had so withdrawn validly, the next question that begs an answer is whether it was open to the Respondent to accept the resignations. In my opinion, the answer to the question can only be in the negative. The moment the resignations were withdrawn, during the notice period and prior to their acceptance, they were *non est* and non-existent in the eyes of law on the dates the respective decisions were taken to accept them.

33. Be it noted that it was not the stand of the Respondent that there is any provision in the Rules or any executive instruction which barred the Petitioners from withdrawing their resignations. If this Court was to agree with the Respondent and uphold the impugned orders accepting the resignations, it would be against the dicta of the Supreme Court in the long line of cases, holding unambiguously and unequivocally that so long as the resignation does not become effective or is accepted, the employee has a right to withdraw the same. Putting it differently, this would amount to concluding that an employer has the power and prerogative to keep a

resignation application of the employee pending in perpetuity, with no timelines or outer limits and appropriate to itself the power to enforce them at his own whims and fancies, which would be in the teeth of various judgements cited by the Petitioners.

34. In this context, I may refer to a judgement of the Supreme Court in P.K. Mittal (supra). In the said case, the Service Regulation in question mandated a three months' notice period, if an officer intended to resign. The Respondent therein sent a communication to the Appellant on 21.01.1986 purporting to resign and indicated an effective date of 30.06.1986. However, the Appellant accepted the resignation in February, 1986 waiving the condition of notice and this led to the Respondent challenging the acceptance of his resignation. During the pendency, Respondent withdrew the resignation by letter dated 15.04.1986. The High Court allowed the petition holding that the resignation would have become effective only on 30.06.1986 and therefore under the Regulations the Appellant had no jurisdiction to determine his service earlier and until the resignation became effective, Petitioner had every right to withdraw the same. In an appeal by the Bank, the Supreme Court held as under:

> **"***5. We have given careful thought to this contention of the learned counsel and we are of the opinion that the High Court was right in the conclusion it reached. Clause (2) of Regulation 20 makes it incumbent on an officer of the bank, before resigning, to serve a notice in writing of such proposed resignation and the clause also makes it clear that the resignation will not be effective otherwise than on the expiry of three months from the service of such notice. There are two ways of interpreting this clause. One is that the resignation of an employee from service being a voluntary act on the part of an employee, he is entitled to choose the date with effect from*

which his resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. On this interpretation, the letter dated 21-1-1986 sent by the employee fully complied with the terms of this clause. Though the letter was written in January 1986 the employee gave more than three clear months' notice and stated that he wished to resign with effect from 30-6-1986 and so the resignation would have become effective only on that date. The other interpretation is that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the respondent's resignation would have taken effect on or about 21-4-1986 even though he had mentioned a later date. In either view of the matter, the respondent's resignation did not become effective till 21-4-1986 or 30-6-1986. It would have normally automatically taken effect on either of those dates as there is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules, such as the Government Services Conduct Rules.

xxx *xxx* *xxx*

8. The result of the above interpretation is that the employee continued to be in service till April 21, 1986 or June 30, 1986, on which date his services would have come normally to an and in terms of his letter dated January 21, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is

also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in Raj Kumar v. Union of India, Union of India v. Gopal Chandra Misra and Balram Gupta v. Union of India."

35. The case of the Petitioners falling in Category 'C' as aforesaid is a classic case where the action of the Respondent in accepting the resignations by the impugned orders reflects not only non-application of mind but complete arbitrariness, disregard to the law of the land relating to resignations and sheer highhandedness. The Petitioners had initially tendered their resignations and were informed that the same had been accepted. Subsequently, the resignations were withdrawn and the requests for withdrawal of the resignations were accepted. Having accepted the withdrawals, the Respondent vide the impugned orders accepted the resignations. Respondent has not shown any provision of Rule or judgement, neither has one come to the notice of this Court, which permits an employer to accept an offer of resignation once the resignation is withdrawn and the withdrawal is accepted. There is no gainsaying that the impugned orders cannot be sustained in law.

36. Petitioners have raised another contention based on the provisions of Section 5 of the Indian Contract Act and urged that in terms of the said provision, an offeror is entitled to revoke his proposal or offer at any time before communication of its acceptance and in the present case, Section 5 would be attracted. In my opinion, this Court need not delve into this argument, being wholly irrelevant to the facts of the present petitions. The resignations tendered by the Petitioners were prospective, with a future date on the expiry of six months' notice period, which implies that it was open to

the Petitioners to withdraw the resignations till the deadline was reached. As per Rules, if the resignations were not accepted within the notice period, under Clause 3.7 of CAR, Petitioners had time upto the last day of expiry of the notice period to withdraw the resignations. In the present set of facts, Petitioners had not yet crossed the Rubicon on the date they withdrew the resignations and applying the law laid down by the Supreme Court, it has to be held that the resignations were validly withdrawn and in these facts, provisions of Section 5 have no role.

37. Thus, applying the law propounded by the Supreme Court in the judgements aforesaid, the first two questions are answered in favour of the Petitioners. It is held that the Petitioners could validly withdraw their resignations before acceptance and during the notice period and that the Respondent had no jurisdiction to accept the resignations after the same stood withdrawn.

38. I also find force in the contention of the Petitioners that even otherwise the impugned orders reflect total non-application of mind and a pre-meditated decision to discontinue the services of the Petitioners. The impugned orders dated 13.08.2020, 15.08.2020 and 16.10.2020 are identical in their contents and reasons, barring the personal particulars of the Petitioners and have the same reference number. In fact, as rightly put by the Petitioners, they are mirror images and verbatim copies of each other. Even assuming for the sake of arguments, in favour of the Respondent, that they were entitled to consider the applications for resignations, it was incumbent for the Respondent to examine the reason for resignation and the subsequent reason for withdrawal, individually. As pointed out by the Petitioners, there were different reasons for different Petitioners which led to resignations and

subsequent withdrawals. The absolute right of an employer to consider an offer of resignation of its employee cannot be questioned but the employer cannot accept or reject the application without applying his mind to the reasons furnished, more particularly, when the resignation is sought to be withdrawn by an employee and acceptance of the resignation would lead to the employee losing his job and livelihood. Non-application of mind to the individual cases before passing a sweeping order is itself eloquent of arbitrariness, writ large on the face of the impugned orders. Examined from this angle also, the impugned orders are unsustainable in law.

39. At this stage I may extract the impugned order dated 13.08.2020 from W.P.(C) 4203/2020, for ready reference and better appreciation of the respective contentions, as under:

> *"Having considered your request, please be informed that the Company is no longer accepting any withdrawal of resignation. This is in consonance with the judgement of the Hon'ble Supreme Court of India dated 22.08.2019 in case Air India Express Ltd. & Ors vis Capt. Gurdarshan Kaur Sandhu -Civil Appeal No: 6567 of 2019, wherein the Apex Court was pleased to settle the law in relation to withdrawal of resignations so far as pilots are concerned. The court while examining the purpose of notice period, held that given the nature of a Pilot's job requiring long training periods and costs would fall in the exception, and the general law on withdrawal of resignation would not apply to them.*
>
> *You would further appreciate that the Company is already severely strained financially. Further, the global pandemic COVID-19 has resulted in extra-ordinary and exceptional circumstances by gravely reducing the commercial functioning of the Company leading to redundancies.*
>
> *The current operations are a small fraction of Pre-COVID level and is unlikely to increase in the near foreseeable*

future. The Company is incurring huge net losses and does not have the financial ability to pay.

In view pf the aforesaid, your request for withdrawal of resignation cannot be acceded to. The Company herewith accepts your resignation w.e.f. 05.08.2020 and accordingly, you will stand released from the services of the Company w.e.f. 05.08.2020."

40. Plain reading of the impugned orders reflects that the sole ground for accepting the resignations tendered by the Petitioners was financial distress/crunch. Much was argued by learned Senior Counsel for the Respondent on the precarious financial condition of the Respondent which purportedly worsened due to the impact of the Pandemic Covid-19 effecting the operations of the flights, both international and domestic. The issue that arises for consideration is could the Respondent predicate its decision on the applications for resignation, preferred by the Petitioners on its 'financial status'. *Albeit*, having held in the earlier part of the judgement that the resignations were *non est* on the date the Respondent took the decision to accept them, this issue becomes irrelevant, yet, since the sole ground for acceptance of the resignations is the financial distress of the Respondent and extensive arguments were made by both sides, I may consider the same.

41. Learned Senior Counsel for the Respondent has repeatedly emphasized that the impugned action of accepting resignations was justified keeping in view the huge financial crunch of the Respondent and has pitched the case on the doctrine of 'public interest'. The fulcrum of this argument, according to the Respondent are the observations of the Supreme Court in the case of Air India Express Limited (supra) that public interest will override the private interests of the Pilots and the acceptance of resignations

will have to be tested on the core principles of CAR. Having read and re-read the judgement very closely, this Court is unable to find any observation in the said judgement that public interest would include the financial crisis which the Respondent is undergoing. In fact, from a reading of the judgement, I am constrained to conclude that the Supreme Court held that the core principles of CAR will be the relevant consideration in deciding the issue of resignation tendered by a Pilot. Reading of the provisions of CAR reflects that they are aimed towards discouraging the resignations of the Pilots in various Airlines as it takes months to train a Pilot, the job profile requires great skills, training and experience and costs are incurred on the training, for which reason a Pilot is not easy to replace. Keeping this in the background, a notice period of six months has been made mandatory in case a Pilot desires to tender resignation to avoid last minute cancellation of flights and harassment to passengers by sudden resignations of the Pilots and this is the 'public interest' that the provisions of CAR seek to sub-serve. Respondent is wanting this Court to add the words 'financial distress' as a parameter of public interest in the provisions of CAR, which is impermissible as this Court would not rewrite Rules and Policies framed by the Government on the asking of the Respondent. Likewise, the Supreme Court has, by referring to the provisions of CAR, observed that the stipulation of notice period is to sub-serve the public interest and to enable the Air Transport Undertaking to find a suitable replacement or a substitute. Therefore, the reliance of the Respondent on the provisions of CAR or the said judgement to argue that financial distress is a good ground to accept resignations in public interest is completely misplaced.

42. 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 its employees, in the manner adopted in the present case. State has a fiduciary duty to perform towards the citizens under Article 19(1)(g) and Article 21 of the Constitution and thus it becomes the bounden duty of a welfare State to secure the rights of livelihood of the citizens. In view of the above findings and circumstances, it is held that financial crunch cannot be a relevant consideration in deciding the issue of acceptance of resignations. Be it ingeminated that when the legal position on acceptance of resignation is so well settled, as noted above, it was futile for the Respondent to base its decision on the alleged losses it has been suffering and continues to suffer, on account of Pandemic Covid-19.

43. During the course of hearing of the writ petitions, Respondent had produced the concerned files in which the impugned decision was rendered, along with a covering note. I have carefully perused the file notings which reveal the factors that weighed in taking the impugned decisions: (a) impact of Covid-19 and (b) financial position of the Respondent due to reduced flight operations, which are likely to continue for some time. Based on this a decision was taken towards cost cutting measures by discontinuing engagement of trainee Cabin Crew by terminating their training and the practice of post-retirement engagement of employees.

44. While this Court is completely conscious of the well settled law that mere notings in the file are not decisions and should not form the basis of a judgement of a Court, nevertheless the notings do shed light on the decision making process, which is subject to judicial review in a writ jurisdiction. The notings when read conjointly, in a nut shell, record: (a) Pilots whose

withdrawals had been accepted and communicated to them were relegated to a position that existed prior to tendering the resignation and are deemed to be in service and recalling of the acceptance of the withdrawal request will expose the Respondent to potential litigation in Court of law; (b) wherever resignations had been processed for acceptance, expeditious action be taken to accept them to avoid request for withdrawal by the Pilots; (c) where no acceptance to the withdrawals had been furnished/communicated to the Pilots, expeditious steps be taken to finalise the resignations and communicate promptly to the Pilots and (d) where there have been no deliberations on the withdrawal requests, the same be rejected forthwith. The notings are indicative of the fact that Respondent was fully aware of the position of law that if the resignations were withdrawn, within the notice period of six months, prior to their acceptance by the Respondent, it shall have no jurisdiction to act on the said resignations. Respondent was fully conscious that with respect to Pilots, whose withdrawals were accepted, the orders could not be recalled and there are repeated notings on the file, against acceptance of these resignations. In fact noting dated 13.07.2020 records that the cases of such Pilots cannot be treated similar to the other categories as there is a contract of employer and employee, which must be honoured by Air India. Succeeding this is a noting dated 23.07.2020, recording that any action to the contrary would lead to a challenge in Court of law. Strangely, ignoring even this distinction, which the Respondent had itself carved out at one stage, a decision was taken to accept their resignations on financial grounds, thus painting all the cases with the same brush. It must be taken note of that in the same noting, Respondent sought to

take shelter under the judgement of the Supreme Court in the case of Air India Express Limited (supra), placing an interpretation that the long line of judgements on the law of resignation and withdrawal is wholly inapplicable to Pilots as a class. Misreading the observations of the Supreme Court, it is annotated in the file that detailed documentation and internal file notings 'be created to explain the decision of departure'.

45. I may also note that there are notings in the file where at one stage with respect to the FTCEs, it was being contemplated that the FTCs be terminated on account of the revised aviation scenario and the thought process revolved around the mechanism to be followed for termination of the contracts and consequential compensation payable in that regard. Even this proposal was subsequently given a go-bye and shelved for unexplained reasons and the impugned decision was taken to accept the *non est* resignations. The end result boils down to that the resignations of the Petitioners were considered as though Respondent was considering proposal of termination/retrenchment/lay off etc., in the wake of Pandemic Covid-19. With regret I note that in the garb and guise of accepting resignations, quite clearly Respondent has found an easy path to dispense with the services of the Petitioners, without following any procedure known to law and without having to bear the monetary consequences and liabilities thereto. In this context, the Court is reminded of the observations of the Supreme Court in Balram Gupta (supra), which in my view are apt to the present situation and I quote *"the Court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a moral employer, the Government must conduct itself with high probity and candour with its employees."*

46. It is a settled law that it is not for the Court to substitute its own decision for a particular policy or administrative decision taken by the Executive even if it is open to two different constructions. However, it is equally well-settled that the decision-making process is open to judicial review on the well-guided principles which are: (a) illegality i.e. the decision maker has not corrected applied the law that regulates the decision making process; (b) decision is vitiated by irrationality tested on the principle of 'Wednesbury unreasonableness' and (c) procedural impropriety. Court is entitled to investigate and examine the decision-making process with a view to see whether the concerned Authority has taken into account irrelevant factors which it ought not to have taken into account or conversely, has failed to take into account or neglected to take into account relevant factors which it ought to have taken. The impugned decision, when tested on the Wednesbury principles clearly reflects that the Respondent has taken into consideration the irrelevant factor of financial crunch and has failed to take into consideration the relevant law of resignation while engaging itself in the decision-making process.

47. Learned Senior Counsel for the Respondent highlighted that various Airlines across the globe have resorted to measures to downsize the strength of their employees in the wake of Pandemic Covid-19 and Respondent has been more than fair and generous in not resorting to retrenchment of its employees. *Albeit* the said argument is totally misplaced in the realm of the legal controversy relating to resignations, however, even when this position adopted by the Respondent is examined, I cannot help but observe that it only works against the Respondent. A plain reading of the tabular presentation given by the Respondent on the different measures adopted by

some of the Airlines reflects: (a) employees have been retrenched or laid off with compensation in accordance with the law in the said regime; (b) have been offered VRS packages and (c) employees have been retained with reduction in salaries and emoluments. The Respondent though relied heavily on these illustrations, has chosen to tread on a path different from these very examples and adopted a procedure, wholly unknown to law. Petitioners have been removed in the guise of accepting their resignations, left to fend for themselves with no monetary compensation or benefits. Resignation is an act of relinquishment by an employee for his or her own personal reasons and does not give license to an employer to use that as a tool to abruptly terminate the services of the employee. In this backdrop, this Court without the slightest hesitation and equivocation answers the third question in favour of the Petitioners that 'financial distress' was not a relevant consideration while taking the impugned decision.

48. In any event, it is an admitted case of the Respondent that the financial distress was not a creation of the Pandemic Covid-19 but existed from the year 2007. The Court may also at this stage take note of a very crucial and pertinent fact that on a pointed query by the Court, during the course of hearing, Respondent had taken a categorical stand, both orally and in writing, that no permanent employee including Pilots, other than the Petitioners, have been retrenched or terminated or laid off or in any other manner, their services have been dispensed with. In fact, what was put forth was that various cost cutting measures had been adopted to tide over the financial position, such as reduced working days with reduction of 60% existing salary; leave without pay for six months to 2 years extendable to 5 years; reduction in allowances in respect of Crew Cabin; rationalising

reduction upto 40% in allowance for Pilots; stoppage of overtime etc. In view of this stand, it is not understandable why a discriminatory action has been taken qua the Petitioners, assuming in favour of the Respondent that there was a financial crisis. Judged and tested from this perspective, the impugned action also fails on the touchstone of Article 14 of the Constitution of India.

49. Both sides have laboured hard to highlight the financial status of the Respondent and have filed their respective documents regarding the net income and operational status during the Pandemic period. However, in my opinion, it is unnecessary to delve any deeper into the issue in view of my finding above that financial crunch was an irrelevant consideration, while taking a decision on the resignations. Additionally, it would be pertinent to note that in a plethora of case law, the Supreme Court has repeatedly affirmed and reaffirmed that if the action of an employer is found to be wrongful in law and the employee is entitled to certain monetary benefits, the employer cannot be heard to set up a defence of financial constraints.

50. Mr. Sen, learned Senior Counsel strenuously argued that the impugned action of the Respondent is in consonance with the judgment of the Supreme Court in Air India Express Limited (supra) and cannot be found fault with. Pithily put, the argument was that the action of accepting resignations on account of financial crunch falls in the exception to the otherwise settled law on resignations. For this, support was drawn on the observations of the Supreme Court where it was observed that the normal principle that an employee can at any time before the resignation becomes effective, withdraw the same, will be subject to the core principles of CAR and would fall within the exceptions stipulated in paragraphs 41 and 50 of the decision

in Gopal Chandra Misra (supra) and paragraph 12 of the decision in Balram Gupta (supra). Petitioners have countered the argument by articulating that the judgement turned on its own facts and cannot be applied to the facts of the present petitions.

51. In order to deal with the argument, it would be imperative to delve a little deeper into the facts of the said case. The Respondent, namely, Captain G.K. Sandu tendered her resignation on 03.07.2017 with six months' notice as required under CAR. Resignation was accepted on 02.09.2017 and 3 months later on 18.12.2017, an e-mail was sent seeking to withdraw the resignation. The Appellants therein rejected the request for withdrawal on 04.01.2018 and the response was as under:

> *"...Please note that your request for withdrawal of your resignation letter cannot be acceded to as your resignation had become effective from 03.07.2017 by virtue of its acceptance vide email dated 02.09.2017 and you stood released from the services of the Company w.e.f. 02.01.2018 (i.e. on completion of six months notice period w.e.f. 03.07.2017). ... ..."*

52. In the meantime, relevant would it be to note that the Appellants engaged a replacement Pilot on 14.08.2017, in view of the resignation of the Respondent. Aggrieved by the action of the Appellants, the Respondent filed a writ petition before the Kerala High Court for a declaration that she was eligible and entitled to continue without any break in service with the Appellants. The writ petition was allowed by the learned Single Judge and the appeal filed by the Appellants was rejected by the Division Bench. The contention of the Appellants before the Supreme Court was as under:

> *"**8.** The learned Additional Solicitor General submitted that though in normal circumstances an employee who had tendered*

resignation would be well within his rights to withdraw the resignation before such resignation had become effective but the decisions of this Court admitted two exceptions to the rule. She relied upon the decisions of this Court in ***Union of India v. Gopal Chandra Misra*** *and* ***Balram Gupta v. Union of India*** *and submitted that as acknowledged by the CAR the positions of pilots stood on a different footing and finding a replacement or an alternative for a pilot would require incurring of some expenditure in training the concerned new talent. In the circumstances, the CAR had put certain restrictions and made some special provisions in public interest. The appellants had already taken appropriate steps for finding and training an alternative and as such the instant case came within the exceptions acknowledged in the decisions of this Court."*

53. The Supreme Court noticed the earlier judgements starting from Jay Ram vs. Union of India **AIR 1954 SC 584** followed by Raj Kumar (supra) and all the other judgements referred to above including Gopal Chandra Misra (supra) and Balram Gupta (supra). Analysing the well settled law on withdrawal of resignation, the Supreme Court observed as under:

"12. It is thus well settled that normally, until the resignation becomes effected, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paragraphs 41 and 50 in ***Gopal Chandra Misra****, "in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post" or "in the absence of a legal contractual or constitutional bar, a 'prospective resignation' can be withdrawn at any time before it becomes effective". Further as laid down in* ***Balram Gupta****, "If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter.""*

54. Examining the provisions of CAR, which were heavily relied upon by the Appellants, the Supreme Court observed that the provisions of CAR provide a certain mechanism for resignation of the Pilots which includes a minimum notice period of six months as the Pilots are highly skilled personnel and it takes considerable time to train them till they reach a certain level of expertise. The underlying principle behind stipulation of mandatory notice period is public interest. It is not the interest of the employee which is intended to be safeguarded but public interest which is to be subserved to ensure that there would be no last-minute cancellation of flights causing enormous inconvenience to the travellers. It is for this reason that the concerned Pilot is required to serve till the expiry of notice period, except in a situation where the notice period is curtailed if NOC is given to the Pilot and resignation is accepted before the expiry of the notice period. The notice period is designed to enable the Air Transport Undertaking to find a suitable replacement or a substitute as a replacement as a Pilot does not come so easily. Having so observed, the Supreme Court examined the facts of the case before the Court and noted that in the said case, steps were taken by the Appellants to discharge the obligation and in the meantime, replacement by training another Pilot had been found. In this background, the Supreme Court held that the withdrawal of resignation will be subject to the core principles of CAR and would fall within the exception stipulated in Gopal Chandra Misra (supra) and Balram Gupta (supra). Relevant paras 16 and 17 of the judgement have been quoted above in the earlier part of the judgement.

55. Mr. Sen, learned Senior Counsel is right in contending that the core principles of CAR are meant to sub-serve the public interest and not that of the Pilot as held by the Supreme Court. There cannot be a debate on this issue. However, the larger question that arises is whether the said judgement is applicable in the facts and circumstances of the present cases. To appreciate the argument, it would be necessary to go into the background of the circumstances in which the DGCA issued CAR on 27.10.2009, which is reflected from the introductory para of CAR. It was observed that Pilots were resigning without any notice to the Airlines and in some cases, even groups resigned together without notice. As a result, the Airlines were forced to cancel flights at the last-minute causing inconvenience and harassment to the passengers. Sometimes the abrupt action was a concerted move holding the Airlines to ransom and leaving the travellers stranded. It was noted that this was a highly undesirable practice and against 'public interest'. Clause 3.1 of CAR recognises that it takes several months to train a Pilot to operate an Aircraft as he has to pass technical and performance examinations and undergo various flying trainings as well as the skill test followed by gaining experience which may take a few more months. Pilots are highly skilled and highly paid and share responsibility with the Airlines towards the travelling public. To avoid harassment and inconvenience to passengers and to discourage abrupt resignations, a conscious decision was taken by the DGCA that a Pilot shall tender six months' notice indicating his intention to leave the job and during the notice period he shall not refuse to undertake the flight duties assigned to him. The aims and objectives of CAR are amply clear and laudable and no doubt intended to sub-serve public interest.

56. With the provisions of CAR in the backdrop, the Supreme Court framed the following questions:

> *"(A) Whether the stipulation of the notice period in the CAR is intended to safeguard the interest of the employee?; and*
>
> *(B) Whether the provisions of the CAR and the governing principles stipulated therein are in the nature of special provisions coming within the exception stipulated in paras 41 and 50 of the decision in Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] and para 12 of the decision in Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126] thereby disabling the respondent from withdrawing her resignation?*

57. Analysing the provisions of CAR, the Supreme Court observed that the underlying principle and basic idea behind stipulation of mandatory notice period is public interest and it is not intended to safeguard the interest of the employee. It seeks to ensure that there are no last-minute cancellation of flights causing enormous inconvenience to the travellers and for this reason, the concerned Pilot is required to serve till the expiry of notice period. The period may be curtailed if the resignation is accepted before the expiry of the notice period as in a given case, it may be possible that trained manpower to replace the said Pilot is available and in which case, the employer has a choice under Clause 3.7 of CAR. The Supreme Court reiterated that the stipulation of notice period is only to subserve public interest and is designed to enable the Air Transport Undertaking to find a suitable replacement. By very nature of the job profile, a replacement for a Pilot does not come easily and therefore a period of six months. What follows as an observation of the Supreme Court is extremely significant for

the present petitions and at the cost of repetition, I may extract a few lines from the judgement as under:-

> ***"17. ….. In the present case, steps were taken by the appellant to discharge such obligation and replacement in Captain Jiban Mahapatra was found. The normal principle that an employee can at any time before the resignation becomes effective, withdraw his resignation will therefore be subject to the core principles of the CAR. In our view, the instant matter would, therefore, be within the exception stipulated in paras 41 and 50 of the decision in Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] and para 12 of the decision in Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126] , and the respondent could not have withdrawn the resignation."***
>
> (Emphasis supplied)

58. It becomes evident from reading the above passage that the observations of the Supreme Court were in the facts of that case which is highlighted from the words 'in the present case'. The fact situation that the Appellants therein had engaged another Pilot as a replacement to the Respondent upon her resignation, weighed with the Supreme Court to hold in favour of the Appellant. Most importantly, the Supreme Court held that the case before the Supreme Court fell within the exception stipulated in paragraphs 41 and 50 of the decision in Gopal Chandra Misra and paragraph 12 of Balram Gupta and this is clear from the opening words of the last sentence of the above passage 'the instant matter'. The Respondent cannot therefore read into the judgement that the Supreme Court laid down as a general proposition that the well settled principles on the law of resignation through various judicial pronouncements would completely exclude the Pilots as a class. This Court cannot agree with the Respondent that the

Supreme Court has given a leeway to the Respondent to give a go-bye to the law of resignation and withdrawal in all cases, bereft of individual facts. In my opinion, the Supreme Court has laid down that the stipulations of CAR would override the personal interest of the employee who desires to resign. Therefore, a six months' notice period would be mandatory so that suitable replacement can be found and tendering of six months' notice by a Pilot meets the requirement of 'public interest' under the core principles of CAR. From the judgement and the provisions of CAR, the inevitable conclusion is that resignations have to be discouraged and from this perspective the argument put forth by the Respondent runs contrary to the observations of the Supreme Court and the core principles of CAR.

59. It needs to be emphasized at this stage that in the above case, as brought out above in the factual narrative, the Respondent had withdrawn the resignation after the same was accepted by the Appellants. The Supreme Court therefore had no occasion to deal with the controversy as to whether the resignation once withdrawn prior to its acceptance could be accepted by the employer, which is the legal nodus arising before this Court.

60. As understood from the arguments put forth by the Petitioners, even the Petitioners have no quarrel with the mandatory stipulation of six months' notice in terms of the provisions of CAR. In fact, in consonance with CAR, each of the Petitioners had tendered six months' notice when they expressed their desire to leave the Respondent and preferred their resignation applications. However, after tendering the resignations, Petitioners wrote to the Respondent offering to withdraw them and manifesting their desire to continue to serve the Respondent. Looked at from this prism, the action of the Petitioners is in larger public interest rather than against it and is in

consonance with the judgement in Air India Express Limited (supra) and the principles of CAR and if I may say, ironically, the impugned action of the Respondent in accepting the resignations is against the judgement as well as the provisions of CAR and public interest.

61. Mr. Sen had laid a lot of stress on the reasons which motivated most of the Petitioners to tender resignations, being, lucrative job offers in private sectors. On perusal of the original records of the Respondent, it was noticed that this factor has somewhere influenced and coloured the final decision of acceptance of the resignations. To say the least, the argument is completely preposterous and cannot be accepted in law. There is no gainsaying that when an employee tenders resignation, it is either on account of personal or domestic reasons or for better career prospects. Cases are not unknown where employees had tendered resignations for any of these reasons and subsequently withdrawn them. Nevertheless, the Supreme Court and other High Courts have held in favour of the employee, if otherwise the claim was sustainable in law. Reason for tendering resignation cannot be something that a Respondent can take a grudge with. In this view, this Court takes strength from the observations of the Supreme Court in Balram Gupta (supra) as follows:

> *"12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given in the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason.* ***It is true that he was resigning and in the notice for resignation he had not given***

any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modem age we should not put embargo upon people's choice or freedom. *If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter cut the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.*

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. ***In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."***

(Emphasis supplied)

62. Much has been argued by learned Senior Counsel for the Respondent that the conditions of service of FTCEs are governed by terms of the

Contract and the writ petitions are not maintainable as the Court cannot enforce a Contract of employment in a writ jurisdiction under Article 226 of the Constitution of India. In O.P. Swarnakar (supra), a similar question arose before the Supreme Court as to whether an employee who opts for voluntary retirement, in furtherance to a Scheme floated by the Banks could be precluded from withdrawing the offer. In one of the appeals, a contention was raised on behalf of the Appellant/Bank of India that the writ petitions involved enforcement of a Contract and were not maintainable. The Supreme Court examined the various provisions of the Indian Contract Act relating to offer and acceptance as well as referred to the long line of judgements on the law of resignation. Insofar as the issue of maintainability is concerned, the Supreme Court held as follows:

> ***"121.*** *We are furthermore not in a position to accept the arguments of Mr Mukul Rohatgi to the effect that writ petitions were not maintainable as thereby the writ petitioners intended to enforce a contract. The writ petitioners filed the writ petitions, inter alia, questioning the validity of the Scheme. In any event validity of clause 10.5 of the said Scheme was in question. The appellants herein are "State" within the meaning of Article 12 of the Constitution of India. The questions raised by the writ petitioners thus could be raised in a proceeding under Article 226 of the Constitution of India. Furthermore, in the event it be held that the action of the appellants was arbitrary and unreasonable, the same would attract the wrath of Article 14 of the Constitution of India. Furthermore, the right of the employee to continue in employment, which is a fundamental right under Article 21 of the Constitution of India could not have been taken away except in accordance with law. The decision of this Court in Har Shankar v. Dy. Excise and Taxation Commr. [(1975) 1 SCC 737] is not apposite. In that case, this Court was concerned with the question as to whether enforcing the terms and conditions of a contract of supply of*

liquor which is a privilege would be permissible in a writ proceeding. In the aforementioned situation, the writ was held to be not maintainable. Such is not the position herein."

63. In ABL International (supra), the Supreme Court held as follows:

"23. *It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:*

> *"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."*

Para 11 of the said object reads thus:

> *"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."*

24. *It is clear from the above two objects of the Company that apart from the fact that the Company is wholly a Government-owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail.*

xxx xxx xxx

27. *From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. *However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its*

instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

64. The Supreme Court relied on an earlier judgement of the Supreme Court in Kumari Shrilekha (supra) wherein the Supreme Court had held as follows:

"*The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble. Therefore, total exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.*

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions."

65. Finally, in ABL International (supra), the Supreme Court held as under:

***"53.** From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to*

the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs 16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner."

66. Keeping the above principles in mind, the objection raised by the Respondent only deserves to be rejected. In the present case, there is no dispute by the Respondent that it is a wholly owned and controlled Company of the Government of India and covered under Article 12 of the Constitution of India. In fact there is an admission to this effect in the counter affidavits and relevant para from one of the counter affidavits in W.P.(C) 5330/2020 is extracted hereunder for ready reference:

"1. At the outset, it is submitted that the acceptance of the resignations tendered by the Petitioner by the Answering Respondents is completely in consonance with the terms and conditions of his contract, the Civil Aviation Requirements dated 27.10.2009 as well as decision of the Hon'ble Supreme Court dated 22.08.2019 in C.A. No. 6567 of 2019 titled as Air India Express Limited & Ors. Capt. Gurdarshan Kaur Sandhu.

> *As such, any allegation of mala fide and arbitrariness levelled against the Answering Respondent is completely ill conceived and unsubstantiated. In fact, it may not be out of place to state that the Petitioner is merely trying to take undue advantage of the fact that the Answering Respondent is a State under Article 12 of the Constitution of India."*

67. The Supreme Court has time and again held that once the State or its instrumentality is a party to a Contract, it has an obligation in law to act fairly, justly and reasonably, which is the requirement of Article 14 of the Constitution. The Supreme Court also observed that scope of judicial review in contractual obligations may be limited and parties may be relegated to adjudication of their rights by resorting to remedies for purely contractual disputes, however, to the extent the challenge to an impugned act is on grounds of arbitrariness and unfairness on the touchstone of Article 14, the fact that the dispute also falls in the domain of contractual obligations would not relieve the State of its obligations and to this extent the obligation is of public character .

68. In Godavari Sugar Mills vs. State of Maharashtra **(2011) 2 SCC 439**, the Supreme Court held that where the *lis* has a public law character or involves question arising out of public law functions on the part of the State or its Authorities, access to justice by way of public law remedy under Article 226 of the Constitution will not be denied. In Rajasthan State Industrial Development & Investment Corporation & Anr. vs. Diamond & Gem Development Corporation Limited & Anr. **(2013) 5 SCC 470**, the Supreme Court held as follows:

> ***"21.** It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to*

protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. *Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. ....*"

69. In the case of Chitra Sharma (supra), a Division Bench of this Court was dealing with an issue of renewal of a Fixed Term Contract of an airhostess with Airline Allied Services, a subsidiary of Air India Limited. The initial contract was for a period of 3 years which was renewed for another 3 years. During the second renewal, she was promoted as a Check Cabin Crew. On account of illness, the Appellant did not join her duties for some time and the tenure of the extended Contract ended and was not renewed. Challenge was made to the non-renewal of the Contract on the ground that the decision was unfair, unreasonable and violative of Article 14 of the Constitution. The absence from service was sought to be justified on the basis of medical documents placed on record. The Division Bench found

as a matter of fact that the medical condition did not permit the Appellant to join service at the appropriate time and therefore the insistence of the Airlines that on account of unauthorised leave, she did not deserve renewal of Contract, was clearly unfair and unreasonable. The Court held that as a State Agency bound by Article 14 of the Constitution, it was incumbent upon the Airlines to renew the Contract of the Appellant without the period of illness coming in the way of the said consideration. Refusal to do so amounts to hostile and discriminatory treatment not justified by reasons given to the Court and finally the Court directed the Respondent to renew the Contract as was done in the case of her contemporaries.

70. In the present case, as referred to above, there is no dispute that the Respondent is a Company registered under the Companies Act, 1956 and is wholly owned and controlled by the Government of India. It discharges functions as an Agent of the Government even when it enters into contracts to engage the Pilots. The Supreme Court has time and again affirmed that personality of a State requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo a radical change merely because the rights involved are additionally in the realm of contractual rights. Preamble of the Constitution resolves to secure to all its citizens justice and equality and every State action must be aimed at achieving this goal. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity. The Supreme Court has reiterated that it would be alien to the Constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. There is an obvious difference in the contracts between private parties and contracts to which State is a party.

71. It is equally settled by the Supreme Court that while a public Authority has a discretion to take decisions but the whole concept of unfettered discretion is inappropriate to a public Authority, which possesses power solely to use it for public good. Likewise, the State action must satisfy the test of reasonableness and arbitrariness in State actions would be antithesis to the concepts of equality, fairness and reasonableness. I may, in this context, refer to the observations of the Supreme Court in the case of Dwarkadas Marfatia and sons vs. Board of Trustees of the Port of Bombay reported as **(1989) 2 SCR 751**, that all State actions "whatever their mean" are amenable to Constitutional limitations, the alternative being to permit them "to flourish as an imperium in imperio".

72. Insofar as the argument of enforcement of contractual obligations are concerned, the same also stands settled by the judgements alluded to above and it cannot be stated as a thumb rule or a proposition of law that under no circumstances, contract of employment cannot be enforced in a writ jurisdiction. In O.P. Swarnakar (supra), the Supreme Court upheld the judgements of the High Courts where the controversy was similar to the one arising in the present petitions and the High Courts held that an employee is entitled to withdraw the resignation prior to its acceptance by the employer and also rejected the contention of one of the Appellants that a writ Court cannot enforce a contract of employment. The Division Bench, as referred to above, in Chitra Sharma (supra), directed the Respondent therein, which is one of the subsidiaries of the Respondent herein, to renew the contract of employment of the Appellant.

73. In this context useful it would be to refer to a judgement of the Supreme Court in Union of India & Ors. vs. Arun Kumar Roy **1986 (1) SCC**

675 where the Supreme Court held that once an employee is appointed by a public authority, though the employment originates in a Contract, it acquires the status under the Service Rules and would no longer be under the Contract. Public law governing service conditions steps in to regulate the relationship between the employer and employee. It would not be permissible therefore to rely on terms of the contract which are not consonance with the Rules governing the service. Reliance was placed on the judgements rendered by two Constitution Benches of the Supreme Court in State of J & K vs. Triloki Nath Khosa **(1974) 1 SCC 19** and Roshan Lal Tandon vs. Union of India **(1968) 1 SCR 185**. Relevant paras of Arun Kumar Roy (supra) are as under:

> *"**18.** The question whether the terms embodied in the order of appointment should govern the service conditions of employees in government service or the Rules governing them is not an open question now. It is now well settled that a government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the government, the terms of the contract of appointment should prevail over the Rules governing their service conditions. The origin of government service often times is contractual. There is always an offer and acceptance, thus bringing it to being a completed contract between the government and its employees. Once appointed, a government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee. His*

emoluments and other service conditions are thereafter regulated by the appropriate statutory authority empowered to do so. Such regulation is permissible in law unilaterally without reciprocal consent. This Court made this clear in two judgments rendered by two Constitution Benches of this Court in Roshan Lal Tandon v. Union of India and in State of J&K v. Triloki Nath Khosa.

19. *Thus it is clear and not open to doubt that the terms and conditions of the service of an employee under the government who enters service on a contract, will once he is appointed, be governed by the Rules governing his service conditions. It will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the Rules governing the service."*

74. Tested on the anvil of the aforementioned principles of examining an action of a State or its Agency, this Court is compelled to conclude that the impugned action is violative of the well settled legal position and suffers from arbitrariness and unfairness and fails on the touchstone of Article 14 of the Constitution. In this view, the writ petitions are maintainable and the argument of the Respondent to the contrary cannot be countenanced. The matter can be examined from another angle with respect to the Fixed Term Contracts. Petitioners have placed on record the offer letters of appointment and the subsequent letters detailing the terms and conditions of the FTCs. Perusal of the terms of the Contracts indicates that the FTCs were executed initially for a term of 5 years, extendable by another 5 years, subject to satisfactory performance. The FTCs could be terminated without any notice, forthwith or at any time for reasons such as unsatisfactory progress or behaviour or any act of omission or commission amounting to misconduct,

in the opinion of the Respondent. Therefore, it is noteworthy that in the ordinary course, the FTCs were renewable after 5 years for another term of 5 years and the only rider or cautious caveat was satisfactory performance. Petitioners have taken a categorical stand in the writ petitions and during the arguments that as a past practice, the contracts have been renewed in routine, unless the performance of any Pilot was an issue in one odd case. A stand has also been taken that the FTCs for those Pilots whose contracts were executed along with the Petitioners, have been renewed. This position is not rebutted by the Respondent *albeit* it be noted that since the controversy in the present petitions is the acceptance of resignations, no occasion had arisen for the Respondent to respond to the performance of the Petitioners. Judged on the obtaining factual matrix and applying the principles elucidated by the Supreme Court in the above referred judgements, the fourth question is also answered in favour of the Petitioners and it is held that the Petitioners are entitled to enforce their contracts of employment under the writ jurisdiction of this Court.

75. What is palpably clear, however, is that but for the intervening circumstance of resignations, the Petitioners whose initial 5 years FTCs are yet to expire, would have continued till expiry of the contracts and were entitled at least for consideration for renewal/extension for the next 5 years. Likewise, the Petitioners whose contracts have expired during the pendency of the present petitions were entitled to a consideration for extension/renewal of their FTCs. This Court is conscious of the jurisdiction and scope of judicial review in a writ petition under Article 226 of the Constitution and cannot direct renewal of the contracts. However, once it is found that the action of the Respondent, in accepting the resignations, was violative of the

principles enunciated by the Supreme Court dealing with Article 14 of the Constitution, this Court is of the opinion that a direction can certainly be given to the Respondent to permit those Petitioners whose contracts are yet to expire to continue till the expiry of the term of 5 years as also a direction to consider their cases for renewal/extension for the second 5 years' tenure, subject to satisfactory performance in accordance with the terms of the contracts. Likewise, for those Petitioners whose FTCs have expired during the pendency of the *lis*, direction can be given to consider the extension/renewal of the FTCs.

76. Learned Senior Counsel for the Respondent had raised an argument that the decision to accept the resignations of the Petitioners was a commercial decision keeping in view the financial status and the reducing flight operations on account of Pandemic Covid-19 and was not amenable to interference by this Court in its power of judicial review under Article 226 of the Constitution of India. Howsoever ingenuous the argument may be, it only deserves to be rejected. Suffice would it be to state that the decision to accept or reject the resignation of an employee cannot be termed as a 'commercial decision', as understood in common parlance of trade and commerce or even going by its Dictionary or juristic meaning and connotation. The word 'commercial' comes from the French word 'commercial' meaning or pertaining to commerce and from Latin word 'commercium'. Black's Law Dictionary defines the word 'commercial' as "relating to or connected with Trade and Traffic or Commerce in general". By no stretch of imagination, the impugned decision can be a commercial decision as sought to be argued on behalf of the Respondent. Insofar as the second limb of this argument is concerned, even assuming for the sake of

argument that it is a commercial decision, the Supreme Court has in several judgements held that Courts would generally not be justified in interfering with complex economic, commercial or business decisions of the Government unless there is a violation of any statutory provision or proof of *malafide* or the decision is based on extraneous and irrelevant consideration. I may only refer to the judgement in Arun Kumar Aggarwal vs. Union of India (UOI) & Ors. **(2013) 7 SCC 1** in this context. This Court has found that the impugned decision was based on totally extraneous and irrelevant considerations such as the financial distress or the reasons of resignations, as evident from the records of the Respondent and this contention of the Respondent also has no merit. It bears repetition to state that the facade of 'Commercial decision' cannot apply to a miniscule percentage of employees, only because they chose to resign, while keeping the employments of every other employee intact.

77. Learned Senior Counsel for the Respondent had painstakingly taken the Court through various judgements, which have been referred to above, however, in the opinion of this Court, none of them inure to the advantage of the Respondent in the facts and circumstances arising in the present petitions. In V.K. Sodhi (supra), the employees of SCERT (State Council of Education Research and Training) had filed a writ petition seeking a mandamus to implement a policy decision in Regulation 67 granting numerous benefits of Pay Scales etc. at par with the employees of NCERT. High Court directed implementation of the unamended Regulation 67 observing that SCERT was a 'State' under Article 12 of the Constitution. In appeal, the Supreme Court held that SCERT was not a State since there was no Government control either financially, functionally or administratively

and was an independent body registered under the Societies Registration Act. It was held that since it was not a State under Article 12, SCERT was not amenable to the jurisdiction of the High Court and that the financial implications could not be ignored keeping in view the limited financial resources. The judgement clearly has no application as the Respondent admittedly comes under the purview of Article 12 of the Constitution of India.

78. Way back in the year 1986 in Central Inland Water Transport Corporation vs. Brojo Nath Ganguly & Anr. reported as (**1986) 3 SCC 156**, an issue had arisen with respect to the position of the Government Companies and their employees and the Supreme Court held that Corporation is a State within the meaning of Article 12 of the Constitution, which is now a well settled law. What is of significance is the observation by the Supreme Court that the Appellant being a State, was subject to constitutional limitations and its actions being State actions must be judged in the light of Fundamental Rights guaranteed by Part III of the Constitution and also Directive Principles of State Policy prescribed by Part IV. Fundamental Rights and Directive Principles both are complimentary to each other. It was also observed that the trading and business activities of the State constitute 'Public Enterprise'. The structural form in which the Government operates in the field of Public Enterprise are many and vary, these may consist of Government Departments, Statutory Bodies, Statutory Corporations, Government Companies etc. The immunities and privileges possessed by bodies so set up by the Government under Article 298 are subject to Fundamental Rights enshrined in the Constitution. The employees of these large organisations have attributes of Government employees and

form a separate and distinct class and their contracts of employment cannot be equated with contracts of employment of smaller employees. Therefore, the Respondent cannot rely on a judgement where the Authority involved was held to be not a State as in such cases, different parameters would apply.

79. For the same reason, as aforesaid, reliance on the judgement of the Supreme Court in Jatya Pal Singh (supra) is misplaced. The said case arose out of writ petitions filed by former employees of VSNL, against the newly constituted entity Tata Communications Limited (TCL) challenging their termination. The prime issue involved in the said case was maintainability of the writ petitions before the High Court. The Supreme Court found that the Government was no longer in control after disinvestment and the tests laid down in the judgement of the Supreme Court in Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology **(2002) 5 SCC 111** were not applicable with respect to the amenability of the Respondent to a writ jurisdiction. Another peculiar feature of the said case was that there was acquiescence of the Appellants who had been voluntarily observed from the Government to VSNL and could not enjoy the protections of a Government Service. In contrast, the Respondent is an Agency of the State and the present petitions relate to resignation, its acceptance and withdrawal and the action of the Respondent has to be tested on the anvil of Article 14 of the Constitution as being fair, reasonable and keeping in backdrop the well settled law of resignation.

80. The case before the Supreme Court in Oil and Natural Gas Commission (supra) related to writ petitions filed by the Industries for receiving Gas from ONGC under annual contracts on a fair and reasonable price. The High Court held ONGC to be a 'Public Utility Undertaking' and

thus had a duty to supply Gas to anyone who required and also formulated methods for calculation of the price. The Supreme Court held that supply of Gas could be restricted to certain consumers under individual contracts and ONGC was permitted to fix price which market could bear on a proper methodology. The facts of the said case or the legal issue involved do not even remotely have any bearing on the present case. It is a settled law that a decision is only an Authority for what it actually decides. I may, however, notice that even in the said judgement, the Supreme Court observed that the policy framed by a Government should not be irrational and State Undertakings are bound by Article 14 and 19 of the Constitution. Similarly, in the case of Girish G. (supra), the issue before the Kerala High Court was termination of the services of the employees of Cochin International Airport Limited (CIAL) and the High Court found that CIAL was not a State on the basis of the documents and the facts placed before it and the writ petitions were held as not maintainable on that ground.

81. The judgement in Ficus Pax (P) Ltd. (supra) is clearly distinguishable from the mere fact that in the said case several private employers had approached the Supreme Court on the onset of Pandemic Covid-19 challenging an advisory of the Central Government prohibiting termination from employment and reduction in wages etc. issued under the Disaster Management Act, 2005. It is in that context that certain directions were issued by the Supreme Court, more particularly, directing the employers-employees therein to attempt to enter into negotiated settlements. The Respondent being a wholly owned and controlled Government of India Undertaking cannot take shelter against the said judgement, especially when

it is an admitted fact that it has already resorted to various cost cutting methods such as reduction in salary and allowances etc.

82. In the case of Halliburton Offshore Services Inc. (supra), Vedanta Limited had engaged the services of Halliburton Offshore Services Inc. on a contractual basis for exploration of Rajasthan Block which produces a substantial portion of Petroleum in India. The contract was not completed within the stipulated period of completion and the contractor invoked *force majeure* clause in the contract. Apprehending invocation and encashment of Bank Guarantees, Halliburton Offshore Services Inc. approached this Court under Section 9 of the Arbitration & Conciliation Act,1996 seeking restraint against invocation. In this context, while the Court observed that Pandemic Covid-19 was a *force majeure*, however, declined the relief on the ground that the defaults had arisen prior to the onset of the Pandemic. This Court fails to understand how this case would have any relevance to the facts in the present petitions.

83. In Swiss Ribbons (P) Ltd. (supra), the legal nodus before the Supreme Court was the constitutional validity of various provisions of Insolvency & Bankruptcy Code, 2016 and the priority of the claims of the creditors. The Supreme Court held that timely resolution of a corporate debtor who is in the red, by an effective legal framework could go long way to support the development of credit markets. Liquidation should be availed as a last resort if there is no resolution plan or the plans are not upto the mark. In the context of the IB Code, the Supreme Court held that the primary focus of the Legislation is to ensure revival and continuation of the corporate debtor by protecting it from its own management and from a corporate debt by liquidation. The Code is a beneficial Legislation which puts the corporate

debtor back to its feet and the moratorium imposed by Section 14 is in the interest of the debtor, thereby preserving the assets of the debtor during the resolution process. The judgement, is in my opinion, inapplicable to the cases before this Court. The issue was in the context of a special Legislation namely the Insolvency & Bankruptcy Code, 2016 and the question was the protection granted by the Statute to a corporate debtor in order to ensure that the Company remains a going concern, so that the debts are discharged and simultaneously by imposing a moratorium coercive measures are prevented and the Company on the verge of liquidation is able to revive itself. None of these facts apply in the present case and the present petitions are not concerned with the protections granted to a corporate debtor under the IB Code. The alleged financial crunch put forth by the Respondent, as aforementioned, is an irrelevant consideration to decide cases of resignations of employees. More importantly, this Court fails to understand how the financial condition of the Respondent is impacted by continuing the services of the Petitioners, who are 41 in number, when a conscious decision has been taken not to retrench or terminate or lay off any other employee, in the entire organisation, in different Departments. The financial difficulties expressed by the Respondent only qua the Petitioners and the adamancy in resisting to take them back, only reflects malice in the action of the Respondent, which to a large extent, is substantiated by the file notings.

84. In Air India Ltd. (supra), a contract of ground handling services was the issue in question. Air India Ltd. was one of the bidders and had amended the initial offer and was the final recipient of the contract. In a challenge made by the other bidder, the Supreme Court held that Courts cannot substitute their own decisions for the decisions of the party awarding the

contract. In Balco Employees Union (supra), a challenge was made by the employees to a disinvestment proposal and the Supreme Court held that it was purely a policy decision, which if otherwise is not unfair or arbitrary, cannot be interfered with. In Life Insurance Corporation of India (supra), the challenge was to the investments by a group of Companies and the legal issue was the lifting of the corporate veil. There cannot be any debate on the settled proposition of law that policy decisions cannot be interfered with unless the same are unfair or arbitrary and the same applies to commercial decisions. However, in the present petitions, the Court is not called upon to adjudicate either a policy decision or a commercial decision. The impugned decision accepts resignations of the Petitioners and the legal issue raised before this Court is the effect of withdrawal of resignations, before they are accepted. Right of an employer to take a policy decision to dispense with the services of its employees is well known to law, however, with a cautious caveat. There is a mechanism known to law which enables an employer to deal with the services of its employees in the wake of an established financial crunch and an action can certainly be taken, following due process of law in that regime. In the present petitions, Respondent is setting up a defence of financial crunch as a ground for accepting resignations, singling out the Petitioners, with nothing on record to show how the alleged financial crunch would be impacted merely by continuation of the Petitioners. The judgements rendered in the context of award of tenders/disinvestments cannot apply even remotely to the present petitions.

85. In Avas Vikas Sansthan & Anr. (supra), the challenge was to the abolition of the posts consequent to the Company, where the Respondents were employed, being dissolved. The Supreme Court held that the abolition

of the posts was in the realm of a policy decision. Unlike in the present cases, in the said case, despite the abolition of posts, the employees were offered Voluntary Retirement Schemes or absorptions with the local Government Institutions etc. and were not left to fend for themselves as an aftermath of a policy decision of the Government. In State of Haryana (supra), a post was abolished on account of a financial crunch of the employer. In the said decision, the Supreme Court held that the decision to abolish a post was the domain of the Government and it was not for the Court to interfere in the said decision. The facts of the case and the issue involved was completely different from the issue at hand before this Court, but what needs to be noted is that while so holding, the Supreme Court observed that the decision must be taken by the Government in good faith and should not be a cloak or pretence to terminate the services of a person holding that post. In fact in both the above-noted cases, a due process of law was followed for abolition of posts, at the same time ensuring that the employee did not suffer the consequences of sudden unemployment. In the present cases, the impugned action of the Respondent by accepting the resignations, has brought the Petitioners to a point where they are worse off than the employees of the other Airlines, whose examples have been cited by the Respondent, wherein they have either been retained with reduction in wages or retrenched under the industrial regime with monetary benefits or offered VRS packages. In Kalpana Mehta (supra), the Supreme Court was examining the issue of administering vaccinations to under-aged women, their untimely deaths and compensations awarded on the touchstone of the Fundamental Right to life guaranteed under the Constitution of India. The Supreme Court held that the Constitutional provisions have to be

dynamically interpreted. The present petitions have no connection with interpretation of any constitutional provision and at this stage I may pen a note that the Petitioners are right in contending that most of the judgements have been cited out of context by the Respondent, picking up lines and words, out of context and have resulted in wastage of judicial time.

86. Once the impugned decision is found to be vitiated in law, the Petitioners who are permanent employees deserve to be reinstated. Those employed under the FTCs, where the initial tenure of 5 years is yet to expire would also be entitled to reinstatement till the expiry of the FTCs. For the third category of Petitioners appointed under the FTCs, but whose initial 5 years contracts expired during the pendency of the litigation cannot be reinstated and would only be entitled to consideration for extension of the FTCs.

87. The next issue therefore which confronts this Court is the grant of back wages to the Petitioners. There is no straitjacket formula or a settled law on the grant of back wages, however, what is clearly settled is that where an employee is willing to work but is kept away by the employer, the principle of 'no work no pay' will not apply. Admittedly after the passing of the impugned orders and in a few cases, after the expiry of the notice period, Petitioners have not been rostered for flight duties. Petitioners approached this Court without any delay and have been vigilantly and diligently pursuing the litigation. Having succeeded in their cause and this Court having found that the action of the Respondent was wrongful, illegal and arbitrary, it would be a travesty of justice if the Petitioners are denied back wages. For the proposition of law on the principle of 'no work no pay', I may refer to the landmark judgement of the Supreme Court in Union of India

vs. K.V. Jankiraman & Ors. **(1991) 4 SCC 109**, relevant paras of which are as follows:

> *"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same…..*
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> *24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.*
>
> *25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.*
>
> *26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated*

meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it……"

88. Applying the said principle and looking into the facts and circumstances of the present petitions, this Court is of the considered view that the Petitioners are entitled to back wages. Under the impugned orders, the Respondent has accepted the resignations of the Petitioners from the date of expiry of the six months' notice period and therefore the back wages are liable to be paid from the said date to the Petitioners.

89. Last but not the least, Petitioners have claimed refund of excess amount in some of these petitions on the ground that for the amounts recovered through deductions from monthly salaries, Bank Guarantees have been encashed and the Respondent has made excess recoveries twice over. In three petitions, being W.P.(C) Nos. 5195/2020, 5230/2020 and 5232/2020, Petitioners have given up their claim for challenging the impugned orders and reinstatement and have only pressed the relief of refund of the excess amount under the Bank Guarantees.

90. To decide this issue, a brief background would be necessary. When the Fixed Term Contracts were executed between the parties, it was a term of the contract that the total cost of training will be recovered from the salary and flying related allowances, in 60 (Sixty) equal monthly installments after release as First Officer. Since the term of the contract was 5 years, a Bank Guarantee equivalent to the amount of training was executed for a period of 5 years and it was provided that in case the incumbent left the Company before completion of 5 years or the FTC was terminated for any reason whatsoever, the Bank Guarantee will be invoked by the Respondent for proportionate amount. Relevant clause from one of the FTCs is extracted hereunder for ready reference:-

> *"V. Recovery of Training Cost & Bank Guarantee:*
> *The total cost of training, which was estimated at Rs. 13,33,000/- (Rupees Thirteen Lacs and Thirty Three Thousand Only) will be recovered from your salary and flying related allowances in 60 (Sixty) equal monthly instalments after your release as First Officer.*
> *You have also executed a Bank Guarantee equivalent to the above amount of training for a period of 5 (five) years. In case, your Fixed Term Contractual engagement is terminated for any reason, whatsoever or you leave the Company before completion of 05 years of this Fixed Term Contractual engagement, the said Bank Guarantee will be invoked by Air India Limited for proportionate amount."*

91. I have perused the terms of the FTCs pertaining to the furnishing of Bank Guarantee. There is merit in the contention of the Petitioners that when the Petitioners tendered resignations, Respondent had encashed the entire amount under the Bank Guarantees overlooking the fact that over the years, cost of training was being deducted from the salaries of the concerned

Petitioners, in equal monthly installments. Therefore, wherever the Respondent had made excess recoveries encashing the Bank Guarantees, pursuant to resignations, excess amounts are liable to be refunded to the Petitioners. Necessary modalities with respect to the Bank Guarantees shall be carried out by the Respondent, on case-to-case basis, taking into account the facts and calculations in each case, with the assistance of the Petitioners in that regard keeping in mind that the impugned orders accepting the resignations of the Petitioners have been quashed by this Court. This exercise would include release of Bank Guarantees by the Respondent, wherever required and/or furnishing of Bank Guarantees for remaining periods under the respective FTCs, in cases where the term of 5 years has not expired and Petitioners are required to be reinstated.

92. In the light of the aforesaid observations, the following directions are passed by the Court:

A. Impugned orders dated 15.08.2020 and 16.10.2020 in W.P.(C) 5599/2020 and W.P.(C) 8625 & 8626/2020 respectively and orders all dated 13.08.2020, in the remaining writ petitions, except in W.P.(C) 5195/2020, 5230/2020 and 5232/2020, are quashed and set aside.

B. Respondent is directed to reinstate the Petitioners who are Permanent Employees with continuity of service from the date of expiry of the six months' notice period. It is made clear that the intervening period from the date of passing the impugned order till reinstatement shall not be treated as break in service for any purpose.

C. Petitioners, who were employed under the Fixed Term Contracts and the 5 years period has not expired, are directed to be reinstated and continued in service till the expiry of the 5 years tenure of their respective contracts.

After the current Fixed Term Contracts expire, Respondent shall consider the renewal/extension of the Contracts, subject to satisfactory performance of the Petitioners, in accordance with the terms of the Contracts.

D. Respondent is directed to consider the extension/renewal of the Fixed Term Contracts of those Petitioners whose initial contracts have expired during the pendency of the present petitions, subject to satisfactory performance of the Petitioners, in accordance with the terms of the contracts.

E. Petitioners are entitled to back wages commencing from the date of expiry of their respective notice periods of six months and upto the date of reinstatement. Since it is an admitted case between the parties that on account of Pandemic Covid-19, an order has been issued by the Ministry of Civil Aviation on 15.07.2020, reducing certain allowances etc. and the Pilots in service are being paid accordingly, the Petitioners shall be paid the back wages in accordance with the order dated 15.07.2020 and/or any other Guidelines of the DGCA and the Ministry of Civil Aviation in this respect and at par with their counterparts in service.

F. Respondent is directed to work out the modalities of the Bank Guarantees furnished by the Petitioners as directed above. In W.P.(C) Nos. 5195/2020, 5230/2020 and 5232/2020, the excess amounts shall be refunded to the Petitioners.

G. The entire exercise including grant of arrears of salary and other emoluments shall be carried out and completed by the Respondent within a period of six weeks from the date of receipt of copy of this judgement. Since the Respondent had tendered one month's salary at the time of passing the impugned orders, if the cheques have been encashed by the Petitioners, the

same shall be adjusted by the Respondent while making the outstanding payments.

93. The original files that were handed over by the Respondent during the course of hearings and retained by the Court are being returned forthwith.

94. Before parting this Court places on record its appreciation for the able assistance rendered by all the counsels on both sides enabling the Court to arrive at a conclusion.

95. The writ petitions are accordingly allowed in the above terms with no orders as to costs.

96. All pending applications are accordingly disposed of.

JYOTI SINGH, J

JUNE 01, 2021
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