



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Case Comment: Air India Express Ltd. vs Capt. Gurdarshan Kaur Sandhu

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Received 25 October 2021; *Accepted* 16 November 2021; *Published* 19 November 2021

INTRODUCTION

With the devastating impact of Covid-19 came many difficult challenges, both for employees and employers. Cruising unemployment rates have already shocked the nation's economy. With that being said, the current state of the people employed has also not been well-off. Long working hours, violation of basic rights, significant pay-cuts and less number of holidays provided still persists. While these are the mainstream problems that are being dealt with by the state and the central government, there exists an ambiguity around the topic of resignation and its withdrawal. Employees have always been encountered cumbersome complications related to their resignation process. The ambiguity that lies here eventually creates a huge obstacle that impends over both employer and employee. The same contention was observed in the aviation industry. Therefore, it automatically became a big issue as huge stakes were invested in the industry which also included the public interest. Reportedly, it was noticed that pilots or in some cases, a group of pilots were resigning without providing any notice period in which the airlines were left with no choice but to cancel or reschedule the flights.

This used to cause major inconvenience to passengers and further loss of reputation to the airlines. Eventually, the matter came into the hands of the Supreme court in 2019, and the judgment was passed after careful consideration of the facts, rules, and precedents.

FACTS

1) In the abovementioned case, the respondent, namely, Gurdarshan Kaur Sandhu,¹ Captain in Air India Charters Limited sent her resignation letter through an e-mail to the Chief of Operations of the first appellant on 3rd July 2017. After approximately 2 months later i.e, on 2nd September 2017, the resignation sent by the respondent was accepted by the appellant.

2) Further, on 18th December 2017, the respondent wrote an e-mail which conveyed her wish to withdraw the resignation and it was stated that since now the resignation letter has been revoked, she will be provided with the duties for the future flights from 2nd January 2018. The appellant then gave the response which clearly stated that the withdrawal of the respondent's resignation cannot be granted as it has already been in effect since 3rd July 2017 and that she'll be relieved of all the duties of the company from 2nd January 2018.²

3) Thereafter, the respondent proceeded with the Writ Petition before the High Court of Delhi challenging the resignation letter and disputing the fact that she might rescind her resignation before the notice term expires.

4) The Writ Petition was allowed by a Single Judge of the High Court by judgment and it was that held that: *"There can be little doubt with respect to the position of law settled on the said subject. In respect of an employee who submitted an application for resignation, it would be open to him to withdraw the same prior to the expiry of the period of notice.It is to be noted that even though the appellants claimed that the Ext.P2 letter of resignation was accepted the tenor of Ext.P5 would reveal that it was ordered to accept only on the expiry of the notice period. In that context, it is relevant to refer to the Ext.P5 letter."*³

¹ *Air India Express Limited v Capt Gurdarshan Kaur Sandhu* Civil Appeal No 6567/2019

² *Ibid*

³ *Ibid*

5) Still dissatisfied, the Appellant filed an appeal before the Hon'ble Supreme Court of India against the Order of the Division Bench of the Hon'ble High Court of Delhi.

ISSUES

Is the withdrawal of the resignation letter by the respondent before the closure of the notice period valid? Provided that the notice of resignation was already accepted by the appellant.

APPELLANT'S ARGUMENT

The appellant contended that in standard situations an employee who has withdrawn his resignation before it has become effective is well within rights doing so subject to two exceptions. This particular case very well comes under one of those very exceptions according to the Learned Additional Solicitor General representing Air India as she made the arguments based on the decisions of this Court in *Union of India v. Gopal Chandra Mishra*⁴ and *Balram Gupta v. Union of India*⁵ and argued that, as noted by the Civil Aviation Requirement, finding a substitute or an alternative for a pilot would necessitate some investment in training the concerned inexperienced recruit.⁶ For these particular circumstances, the Civil Aviation Requirement imposed various limits and established some specific arrangements in the public interest.⁷ The appellants had previously taken necessary efforts to select and train a new inexperienced recruit, and hence the current case fell within the exceptions recognized in this Court's rulings.⁸

RESPONDENT'S ARGUMENT

Learned Senior Advocate representing Capt Gurdashan Kaur Sandhu, in contrast, argued that it is very clear from the laws incorporated in Civil Aviation Requirement that the resignation could be withdrawn or revoked any time before the expiry of the notice period by the pilot. Thus, the respondent made a contention that resignation submitted on 3rd July 2017 by Capt

⁴ *Union of India v Gopal Chandra Mishra* (1981) 1 SCC 405

⁵ *Balram Gupta v Union of India* (1989) Supp 2 SCC 725

⁶ *Ibid*

⁷ Civil Aviation Requirement 2017, s 7, Issue III

⁸ *Ibid*

Gurdarshan Kaur Sandhu will come into effect on 2nd January 2018 i.e six months of the notice period and therefore she can very well withdraw her resignation without any restrictions from CAR rules. The point put forward regarding the huge expenses and resources spent on training the recruit pilot by the appellant was also refuted by the respondent by contending that the objection is of no real relevance as for a government company which is as huge as Air India, the expenses incurred are a regular figure spent on various numerous and continuous pieces of training.⁹

JUDGEMENT

Supreme Court emphasized the appellant's contention that referred to Court's previous judgments in *Union of India and others vs Gopal Chandra Mishra and others* and *Balram Gupta vs Union of India*. The judgments held that, generally, the resignation will come into effect from a prospective date (i.e 2nd January 2018 in the present case) and the employee can at any time before the prospective date withdraw the resignation. But this rule has two exceptions ascribed to it:

- existence of a contradictory clause in the employee's employment contract or a statutory restriction on withdrawal of the resignation¹⁰
- The employer has already commenced with the training of the recruit who came as a replacement in response to the departure of the employee in question.¹¹

Further, the Supreme court accentuated the Civil Aviation Requirement (CAR) issued by the Director-General of Civil Aviation in 2009. It primarily addressed the issue of resignation without giving a notice period and how this act left the airlines with no choice but to cancel or reschedule the flights.¹² This used to cause major inconvenience to passengers and further loss of reputation to the airlines. The government thus decided that such an act caused huge inconvenience and harassment to the passengers and labeled it as against public interest.¹³ The

⁹ *Ibid*

¹⁰ *Union of India* (n 4)

¹¹ *Balram Gupta* (n 5)

¹² Civil Aviation Requirement 2017, Introduction, Issue III

¹³ *Ibid*

court highlighted clause 3.4¹⁴ which stated that *“It has, therefore, been decided that pilots working in an air transport undertaking shall give a ‘Notice Period’ of at least one year in respect of commanders and six months in respect of co-pilots 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, 1937¹⁵.”*¹⁶

The court in the end held that *“The underlying principle and the basic idea behind stipulation of the mandatory notice period is public interest.¹⁷ It is not the interest of the employee which is intended to be safeguarded but the public interest which is to be sub-served.”*¹⁸ The general rule came under the exceptions in the present case as the company had already trained and invested hugely in its recruit. As a result, the Supreme Court overturned the High Court's ruling allowing the respondent to retract his resignation.¹⁹

ANALYSIS

The Supreme Court judiciously mounted on the issue regarding public interest and gave its verdict, rightly so, in the favour of the appellant. The issue of whether a notice period given for resignation is in the public interest or employee interest was in contention. After a thorough analysis, the Supreme court held that the notice period is not for employee's interest, but the public interest. The notice period is imperative as it ensures that no flights are terminated at the eleventh hour which will eventually avoid tremendous annoyance that the passengers would have had to face. The pilot is thus, obligated to serve the company until the expiration of the notice period.

The company, may in some cases find a suitable replacement before the expiration of the notice period. In that case, the employer is empowered with a quick route under Clause 3.7 of

¹⁴ Civil Aviation Requirement 2017, cl 3.4

¹⁵ Aircraft Rules 1937

¹⁶ Civil Aviation 2017 (n 7)

¹⁷ *Ibid*

¹⁸ *Air India Express Limited* (n 1)

¹⁹ *Ibid*

the CAR which states that “*The ‘Notice Period’, however, may be reduced if the air transport undertaking provides a ‘No Objection Certificate’ to a pilot and accepts his resignation earlier than the requisite notice period.*”²⁰ The main motive of giving a notice period is to give an adequate amount of time to the air transport company so that a responsible, skilled and trained pilot succeeds over the post. Thus, after considering the nature of work and responsibility, the duration of the notice period is set to six months. A trained substitute will further secure the passengers' security which brings the whole issue in the ambit of public interest.²¹

Air India Express, in this case, recruited Captain Jiban Mahapatra as a replacement for Capt Gurdarshan Kumar Sandhu. It was clearly evident that actions were being taken to discharge the obligations with Capt Gurdarshan Kumar Sandhu. This all led the Supreme court to consider the exceptions in paragraphs 41 and 50 of the decision in Gopal Chandra Mishra²² and paragraph 12 of the decision in Balram Gupta²³. The withdrawal of the resignation, therefore, came under the exceptions which made the court sure of the fact the resignation couldn't have been withdrawn.²⁴

CONCLUSION

The general rule which empowered the pilot to withdraw his resignation came under the exceptions in the present case as firstly, the company had already trained and invested hugely in its recruit, secondly, clause 3.7 of CAR²⁵ restricted the pilot to withdraw his resignation in the current case. As a result, the Supreme Court overturned the High Court's ruling to allow the respondent to retract his resignation. Employers are likely to cheer the ruling since courts traditionally construe employment and labor regulations in favor of employees. In reaching its conclusion, the Supreme Court attempted to strike a compromise between the interests of both parties. The Supreme Court while acknowledging the right to withdraw the resignation

²⁰ Civil Aviation 2017 (n 7)

²¹ *Ibid*

²² *Union of India* (n 4)

²³ *Balram Gupta* (n 5)

²⁴ *Ibid*

²⁵ Civil Aviation Requirement 2017, cl 3.7

established fair limits for exercising such a right. We also eventually came to see how the exceptions undoubtedly protect an employer's interests, time, money in seeking a successor.²⁶

²⁶ *Ibid*