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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6567 OF 2019
(Arising out of Special Leave Petition (Civil) No.28182 of 2018)

AIR INDIA EXPRESS LIMITED AND ORS. …Appellants

VERSUS

CAPT. GURDARSHAN KAUR SANDHU …Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. This appeal arises out of the judgment and order dated 09.04.2018 passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal No.796 of 2018 preferred by the appellants herein and thereby affirming the view taken by the Single Judge in Writ Petition (Civil)No. 1991 of 2018.

3. The basic issue involved in the instant case is whether the respondent, a pilot working with the appellant, could withdraw her resignation that was tendered on 03.07.2017.

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4. The statutory provisions and the concerned regulations concerning the controversy in issue are as under:-

A] In exercise of powers conferred by Sections 5, 7 and 8(2) of the Air Craft Act, 1934 and by Section 4 of the Indian Telegraph Act, 1885, the Air Craft Rules, 1937 (hereinafter referred to as 'the Rules') were framed by the Central Government. Part XIIA of the Rules deals with "Regulatory Provisions", Rule 133A in said Part is as under:-

> **"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.
>
> (2) The Civil Aviation Requirements under sub-rule(1) shall be issued after placing the draft on the website of the Directorate General of Civil Aviation for a period of thirty days for inviting objections and suggestions from all persons likely to be affected thereby:
>
> Provided that the Director General may, in the public interest and by order in writing dispense with the requirement of inviting such objections and suggestions.
>
> (3) Every direction issued under sub-rule (1) shall be complied with by the person or persons to whom such direction is issued."

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B] On 27.10.2009 the Director General of Civil Aviation (DGCA) issued "Civil Aviation Requirement" ('the CAR' for short) 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."

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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 co-pilot. 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.

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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"

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C] It may be stated here that the revised CAR issued by the Office of the Director General of Civil Aviation, New Delhi on 16.08.2017 now records,

> "3.1 It takes about eight to nine 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 before he is released to fly."

5. The facts leading to the filing of the Writ Petition in the High Court were as under:-

a) On 15.06.2007 the respondent was offered the post of Co-Pilot by Air India Charters Limited on successful completion of B737-800 training on a contract for 5 years with effect from 15.06.2007.

b) On 28.07.2011 the respondent was appointed as Captain by Air India Charters Limited after successful completion of B737-800 training with effect from 26.03.2011. On 25.01.2017 she was appointed as Commander. Clauses 33 and 34 of the Terms and Conditions of the appointment were:-

> "33. In the event of your desiring to leave the services of the Company at any time, you shall give the Company six months' notice, in writing, as per CAR Section 7 – Flight Crew Standards Training & Licensing, Series 'X' Part II, Issue II dated October 27, 2009 and as amended from time to time subject to

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> minimum of six months. You will also be required to serve the Company during the Notice Period.
>
> 34. In the event of your cessation of service for any reason whatsoever or your leaving abandoning the Company, you shall be obliged to account for and return the property of the Company, such as identify cards, instruments, tools, books, uniforms, Company accommodation, if any, in your possession, custody or charge, failing which your stipend/salary shall be withheld and/or equivalent amount will be liable to be recovered or any such other action may be taken as deemed fit. … …"

c) On and with effect from 05.05.2017 the name of the Company was changed from 'Air India Charters Limited' to 'Air India Express Limited'.

d) On 03.07.2017 the respondent sent a communication through e-mail to Chief of Operations of the first appellant submitting her resignation. The relevant assertions in the letter were as under:-

> "I, Capt. G.K. Sandhu, am from the first batch of Air India Express pilot, flying for more than 12 years now, without even a single spot on my flying career.
>
> I am tendering my resignation today. Please consider this as my six months' notice period. I am listing below the reasons of my resignation.
>
> … … …
>
> If any time I am forced to stay away from home for longer periods during this time, it will be legal for me to leave the company without completing the notice period, as these are the least of the reasons I have mentioned."

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e) According to the appellants, in view of the above resignation, a replacement pilot viz. Captain Jiban Mahapatra was engaged on 14.08.2017 as Captain and was given appropriate training by the appellant which cost the appellant more than Rs.12,00,000/-.

f) On 02.09.2017 the resignation sent by the respondent was accepted by the appellants as under:-

> "Dear Madam,
>
> Your resignation dated 03.07.2017 from the services of Air India Express has been accepted by competent authority. Your expected release after completion of six months notice period from your date of resignation.
>
> This is for your kind information. You are requested to complete all the Admin formalities before release."

g) More than three months later, on 18.12.2017 an e-mail was sent by the respondent to the appellants seeking to withdraw her resignation as under:-

> "Respected Sir,
>
> I would like to inform you that I am withdrawing my resignation dated 3rd July, 2017 with immediate effect and will continue serving the company as per my current designation.
>
> Kind Regards,
>
> Capt. G.K. Sandhu
> Staff No. 76002"

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h) On 29.12.2017 a letter was received from the Advocates of the respondent that since she had withdrawn the resignation, the respondent be rostered for future flights with effect from 02.01.2018. A response was, thereafter, sent by the appellants to the respondent on 04.01.2018 stating 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). … …"

6. Thereafter, the respondent filed Writ Petition (Civil)No. 1991 of 2018 before the High Court challenging the letters dated 02.09.2017 and 04.01.2018 and for declaration that the respondent was eligible and entitled to continue with all service benefits without any break in service and that the appellant be directed to forthwith disburse to the respondent the salary and other service conditions. The Writ Petition was allowed by a Single Judge of the High Court by judgment and order dated 22.02.2018. The objection taken by the appellants as regards territorial jurisdiction to consider the controversy in question was rejected. The provisions of the CAR (Ext.P3) were considered and relying upon the

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decisions of this Court in ***Srikantah S.M.*** v. ***Bharath Earth Movers Ltd.***[1], ***J.N. Srivastava*** v. ***Union of India and another***[2], ***Shambhu Murari Sinha*** v. ***Project and Development India Limited and another***[3] it was observed that the resignation tendered by the respondent could be withdrawn by her before she was actually relieved from service. The Single Judge concluded:

> "In the present case also since the resignation was to take effect from 02.01.2018, the petitioner could have very well withdrawn her resignation and the respondents could not have withheld the same or rejected the same. In this case there is one more obligation on the respondents under clause 3.6 of Ext.p3, to issue an NOC on acceptance of resignation. Such a no objection certificate is not granted even when they issued Ext.P8 letter and refused to assign her duty from 02.01.2018 onwards."

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7. The appellants being aggrieved filed Writ Appeal No.796 of 2018 against the decision of the Single Judge. The Division Bench of the High Court rejected the challenge by its judgment and order dated 09.04.2018 which is presently under challenge. The Division Bench relied upon the decisions noted by the Single Judge and concluded:

> "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

1 (2005) 8 SCC 314
2 (1998) 9 SCC 559
3 (2002) 3 SCC 437

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> 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 Ext.P5 letter."

8. In this appeal we heard Ms. Madhavi Divan, learned Additional Solicitor General for the appellants and Mr. Jamshed P. Cama, learned Senior Advocate for the respondent.

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 Mishra***[4] and ***Balram Gupta*** v. ***Union of India and another***[5] 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

4 (1978) 2 SCC 301
5 1987 (Supp) SCC 228

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finding and training an alternative and as such the instant case came within the exceptions acknowledged in the decisions of this Court.

On the other hand, Mr. Jamshed P. Cama, learned Senior Advocate submitted that the law on the point is well settled that an employee could withdraw the resignation before it comes into effect or operation. He submitted that the resignation submitted by the respondent was to come into effect from a prospective date and the respondent was therefore entitled to withdraw the resignation before it became effective. According to him, the fact that the appellant had to incur expenditure in training another pilot would be of no consequence, as for an organisation of the size of Air India the requirement and consequential training of pilots would be a regular feature.

9. Before we deal with the rival submissions an important fact must be noted. After the respondent was not allowed to join her duties, it appears that she was employed as a pilot with Jet Airways for some time. However, with the closing of operations of Jet Airways, she is not presently holding any position as pilot in any airline.

10. The circumstances under which an employee can withdraw the resignation tendered by him and what are the limitations to the exercise of such right, have been dealt by this Court in a number of decisions.

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A] In ***Jai Ram vs. Union of India***[6]**,** the concerned Government servant was to attain age of 55 years on 26.11.1946. He applied on 07.05.1945 for leave preparatory to retirement in terms of Fundamental Rule 86. The request was finally allowed and he was given 6 months' leave which was to expire on 25.05.1947. Ten days before such expiry i.e. on 16.05.1947, he sent an intimation that he would resume his duties which request was rejected. The submission that the age of retirement was 60 years was rejected by this Court. The submission that in terms of Rule 56(b)(i) of Chapter IX of the Fundamental Rules, if found efficient, he could have continued till he attained the age of 60 years, was rejected. It was observed that when a public servant himself expresses his inability to continue in service any longer and seeks permission for retirement, the required exercise in terms of said Rule 56(b)(i) to decide whether to continue him beyond the age of 55 years was rightly not undertaken and the age of retirement for him would be 55 years. In the context whether he could apply for resuming duties on 16.05.1947, it was observed by the Constitution Bench of this Court,:-

> "It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so long as he continues in service and not after it has terminated.

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6 AIR 1954 SC 584

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> As we have said above, the plaintiff's service ceased on the 27th of November 1946; the leave, which was allowed to him subsequent to that date, was post-retirement leave which was granted under the special circumstances mentioned in F. R. 86. He could not be held to continue in service after the 26th of November 1946, and consequently it was no longer competent to him to apply for joining his duties on the 16th of May 1947, even though the post-retirement leave had not yet run out. In our opinion, the decision of the Letters Patent Bench of the High Court is right and this appeal should stand dismissed."

B] In ***Raj Kumar*** v. ***Union of India***[7], an officer belonging to the Indian Administrative Service tendered resignation and addressed a letter to the Chief Secretary to the Government of Rajasthan on 30.08.1964 that it may be forwarded to the Government of India with remarks of the State Government. The State Government recommended that the resignation be accepted and on 31.10.1964 the Government of India requested the Chief Secretary to the State Government "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf". Before the date could be intimated and formal notification could be issued, the officer withdrew his resignation by letter dated 27.11.1964. On 29.03.1965 an order accepting his resignation was issued. The challenge raised by the officer was rejected and the High Court held that the resignation became effective on the date the

7 (1968) 3 SCR 857

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Government of India had accepted it. While dismissing the appeal, a Bench of three Judges of this Court observed:-

> "The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the resignation was not to become effective until acceptances thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Article 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.
>
> Our attention was invited to a judgment of this Court in *State of Punjab v. Amar Singh Harika* (AIR 1966 SCR 1313) in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is 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

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> of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties."

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C] In ***Union of India and others*** v. ***Gopal Chandra Mishra and others***[4] the issue for consideration was whether a High Court Judge, who had by letter in his own hand writing sent to the President intimated his intention to resign the office with effect from a future date would be competent to withdraw the resignation before the date had reached? The decisions in ***Jai Ram***[6] and ***Raj Kumar***[7] were considered and while dealing with the scope of clause(a) of the proviso to Article 217 of the Constitution, the Constitution Bench of this Court stated:-

> **"20.** Here, in this case, we have to focus attention on clause (*a*) of the proviso. In order to terminate his tenure under this clause, the Judge must do three volitional things: Firstly, he should execute a "writing under his hand". Secondly, the writing should be "addressed to the President". Thirdly, by that writing he should "resign his office". If any of these things is not done, or the performance of any of them is not complete, clause (*a*) will not operate to cut short or terminate the tenure of his office.
>
> **22.** It may be observed that the entire edifice of this reasoning is founded on the supposition that the "Judge" had completely performed everything which he was required to do under proviso (*a*) to Article

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> 217(1). We have seen that to enable a Judge to terminate his term of office by his own unilateral act, he has to perform three things. In the instant case, there can be no dispute about the performance of the first two, namely: (*i*) he wrote a letter under his hand, (*ii*) addressed to the President. Thus, the first two pillars of the ratiocinative edifice raised by the High Court rest on sound foundations. But, is the same true about the third, which indisputably is the chief prop of that edifice? Is it a completed act of resignation within the contemplation of proviso (*a*)? This is the primary question that calls for an answer. If the answer to this question is found in the affirmative, the appeals must fail. If it be in the negative, the foundation for the reasoning of the High Court will fail and the appeals succeed."

The tenor and the effect of resignation were then considered in paragraph 28 and it was held that the letter in question was merely an intimation or notice to resign the office on a future date and it was open to withdraw the resignation before the arrival of the indicated future date. The observations were:-

> **"28.** The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated: "I beg to resign my office as Judge, High Court of Judicature at Allahabad." Had this sentence stood alone, or been the only content of this letter, it would operate as a complete resignation *in praesenti*, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977." The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter

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dated May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date viz. August 1, 1977. For the sake of convenience, we might call this communication as a prospective or potential resignation, but before the arrival of the indicated future date it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the writer from the office of the Judge, or terminate his tenure as such."

The Court went on to state the principles as:-

"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.

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

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> 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."

As regards the applicability of the rule in ***Jai Ram***[6], it was stated:-

> **"49.** In our opinion, none of the aforesaid reasons given by the High Court for getting out of the ratio of *Jai Ram case* is valid. Firstly, it was not a "casual" enunciation. It was necessary to dispose of effectually and completely the second point that had been canvassed on behalf of Jai Ram. Moreover, the same principle was reiterated pointedly in 1968 in *Raj Kumar case*. Secondly, a proposal *to retire from* service/office and a tender to resign office from a future date for the purpose of the point under discussion, stand on the same footing. Thirdly, the distinction between a case where the resignation is required to be accepted and the one where no acceptance is required, makes no difference to the applicability of the rule in *Jai Ram case*."

D] In ***Balram Gupta*** v. ***Union of India***[5] the concerned officer was an accountant in the Photo Division of the Ministry of Information and Broadcasting. While holding that the matter was covered by the decisions of this Court in ***Raj Kumar***[7] and ***Gopal Chandra Misra***[4], this Court considered the relevant guidelines and observed:

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> **"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 modern 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 but 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."

E) The principles laid down in ***Union of India and others v. Gopal Chandra Misra***[4] have since then been followed by this Court in ***P. Kasilingam vs. P.S.G. College of Technology***[8]***, Punjab National Bank vs. P.K. Mittal***[9]***, Moti Ram vs. Param Dev***[10]***, Power Finance Corpn. Ltd. vs. Pramod Kumar Bhatia***[11] ***Nand Keshwar Prasad vs. Indian Farmers Fertilizers Coop. Ltd.***[12]***, J.N. Srivastava vs. Union of India***

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8 (1981) 1 SCC 405
9 (1989) Supp 2 SCC 175
10 (1993) 2 SCC 725
11 (1997) 4 SCC 280
12 (1998) 5 SCC 461

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and another[2]***, Union of India vs. Wing Commander T. Parthasarathy***[13]***, Shambhu Murari Sinha vs. Proect & Development India Ltd.***[3]***, Bank of India vs. O.P. Swarnakar***[14]***, Reserve Bank of India vs. Cecil Denis Solomon***[15]***, Srikantha S.M. vs. Bharath Earth Movers Ltd.***[1]***, Secy., Technical Education, U.P. and ors. vs. Lalit Mohan Upadhyay***[16]***, New India Assurance Company Ltd. vs. Raghuvir Singh Narang and another***[17] and ***Union of India and ors. vs. Hitendra Kumar Soni***[18]***.***

F) In ***Punjab National Bank vs. P.K. Mittal***[9] a permanent officer in the bank sent a letter of resignation on 21.01.1986 in terms of Regulation 20 of PNB (Officers) Service Regulation, 1979, which was to become effective on 30.06.1986. By communication dated 07.02.1986, he was informed that his resignation was accepted with immediate effect. The resignation was withdrawn by the officer on 15.04.1986. The issue therefore arose in the context of said Regulation 20, whether the officer could withdraw the resignation. Regulation 20 was as under:

> "20. (1) Subject to sub-regulation (3) of Regulation 16, the bank may terminate the services of any officer by giving him three months' notice in writing or by paying him three months' emoluments in lieu thereof.
> (2) No officer shall resign from the service of the bank otherwise than on the expiry of three months from the

13 (2001) 1 SCC 158
14 (2003) 2 SCC 721
15 (2004) 9 SCC 461
16 (2007) 4 SCC 492
17 (2010) 5 SCC 335
18 (2014) 13 SCC 204

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> service on the bank of a notice in writing of such resignation:
> Provided further that the competent authority may reduce the period of three months, or remit the requirement of notice."

The submission that Clause 2 of Regulation 20 and its proviso were intended only to safeguard the bank's interest and as such the bank could accept the resignation before the date when it was to come into effect was rejected by this Court in following terms:

> **7.** Dr. Anand Prakash emphasises that as clause (2) and its proviso are intended only to safeguard the bank's interests they should be interpreted on the lines suggested by him. We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation. We, therefore, agree with the High Court that in the present case the resignation of the employee could

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> have become effective only on or about 21-4-1986 or on 30-6-1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated 7-2-1986 was, therefore, without jurisdiction.
>
> **8.** The result of the above interpretation is that the employee continued to be in service till 21-4-1986 or 30-6-1986, on which date his services would have come normally to an end in terms of his letter dated 21-1-1986. 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*.

11. It is thus well settled that normally, until the resignation becomes effective, 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***[4], "in the absence of anything to the contrary in the provisions governing the terms and

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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***[5], "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."

12. In the light of the aforementioned principles the issue whether the respondent could have withdrawn her letter of resignation depends upon answers to 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 paragraphs 41 and 50 of the decision in ***Gopal Chandra Mishra***[4] and paragraph 12 of the decision in ***Balram Gupta***[5] thereby disabling the respondent from withdrawing her resignation?

13. The CAR acknowledges that it takes considerable period to train a pilot to operate an aircraft and that as a part of the training, the new incumbent will be required to pass technical and performance examinations and will have to undergo simulator and flying training and to undertake skill test to satisfy the requirements. Even after imparting of such training, said person would function only as a co-pilot till he reaches

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the level of expertise required of a pilot. The CAR states that the resignation without minimum notice of six months could result in last minute cancellation of flights and harassment to passengers. As the pilots are highly skilled personnel, a decision was taken that any act on part of the pilots including resignation from the airlines without minimum notice period of six months be treated as an act against public interest. The CAR, therefore, provides:-

a) During the notice period neither the pilot shall refuse to undertake flight duties nor shall the employer deprive the pilot of his legitimate rights and privileges.

b) In case the air transport undertaking resorts to reduction in the salaries/perks, the pilot will be free to make a request for his release before the expiry of the notice period

c) On the expiry of the notice period an appropriate NOC shall be issued by the air transport undertaking

d) The notice period of six months could however be reduced if the NOC was provided to the pilot and his resignation was accepted earlier than six months.

In terms of the provisions of the CAR, the terms and conditions of appointment in the instant case specifically stated that the respondent

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would give six months' notice in case she desired to leave the services of the appellant.

14. 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 sub-served. 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 concerned pilot is required to serve till the expiry of the notice period. The notice period may stand curtailed if NOC is given to the concerned pilot 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.

The stipulation of notice period is, therefore, only to sub-serve 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

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it would require considerable expenses and efforts to train the concerned replacement 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 paragraphs 41 and 50 of the decision in ***Gopal Chandra Mishra***[4] and paragraph 12 of the decision in ***Balram Gupta***[5]**,** and the respondent could not have withdrawn the resignation.

15. The letter of resignation may now be considered to complete the discussion. Said resignation letter dated 03.07.2017 had three relevant statements: -

1. *I am tendering my resignation letter.*
2. *Please consider this as my six months' notice period*
3. *If any time I am forced to stay away from home for longer periods during this time, it will be legal for me to leave the*

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company without completing the notice period, as these are the least of the reasons I have mentioned.

The first sentence shows that the intimation was unequivocal that the respondent was tendering resignation. The following sentence referred to the notice period of six months, being the requirement under the CAR and the terms and conditions of the appointment. The third sentence clearly suggested that in case the respondent was forced to stay away from home for longer periods during the notice period, it would be open to her to leave the company without completing the notice period. The notice period was thus only in terms of the requirements of the CAR.

16. In the circumstances, we hold that the respondent could not have withdrawn the letter of resignation dated 03.07.2017. We, therefore, allow this appeal, set aside the judgment and orders passed by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition (Civil) No.1991 of 2018. No order as to costs.

……..J.
[Uday Umesh Lalit]

……..J.
[Vineet Saran]

New Delhi;

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August 22, 2019.