

## MOOT COURT COMPETITION

### Facts:

‘Rajnagari’ is a country having its Constitution and laws and regulations identical with the Constitution of India and all the laws etc. in force in India. ‘Ranipur’ is one of the states in the Union of ‘Rajnagari’. Judgements delivered by the superior courts in India have a persuasive force in the courts in ‘Ranipur’.

Ms. Manisha Mishra, a resident of Sripur, the capital of Ranipur, was selected and appointed as an air-hostess with Flysafe Airlines Ltd., [a government of Rajnagari undertaking] on 01/09/1996. In accordance with the policy of the Airlines she was appointed on contract for a period of three years. The contract was renewed from time to time for three years at a time. It was the usual practice to give the airhostess or employee concerned, a brief three day orientation or training and to renew the contract. The last of such renewed contracts expired on 31/12/2014. The same was not renewed further under the following circumstances:

Ms. Manisha had been diagnosed with Tuberculosis of bone in January 2013. In his certificate dated 10/11/2013 issued by Dr. A B Das, a doctor on the Airlines’ panel stated that now (i.e 10/11/2013) Ms. Manisha is fit to resume her duties w.e.f. 11/11/2013. However, when Ms. Manisha reported for duty the in-house doctor on the panel of the Airlines on 11/11/2013, categorized her as not fit on account of being patient of Tuberculosis. By the certificate of the in-house doctor dated 11/11/2013 it was found that Ms. Manisha can apply for fitness certificate only on completion of therapy.

Ms. Manisha thereafter was advised further rest. As per the records of the Airlines, the Medical Review Board certified that Ms. Manisha became fit for duty with effect from 7/11/2014. She claims that the contract ought to have been renewed from 01/01/2015. However, the Airlines did not renew the contract.

Ms. Manisha challenged the non-renewal of her contract before the High Court of Ranipur by way of a writ petition which came up for final hearing on 22/09/2017. Amongst others, Ms. Manisha has raised following grounds in her Writ Petition:

1. The decision not to renew the contract is unfair and unreasonable.
2. It is arbitrary having regard to Art 14 of the Constitution.
3. Various e-mail communications by which the Airlines was informed of the medical condition of Ms. Manisha are on record and are not disputed. The employer was thus informed about the inability of Ms. Manisha to join her duty.
4. The policy of engaging airhostesses on contractual basis, exposes female employees to the likelihood of arbitrary termination.
5. Ms. Manisha relies upon the judgment of the Supreme Court of India in the case of *State Of Haryana and Others –Vs- Piara Singh and others, (1992) 4 SCC 118*.
6. Ms. Manisha also wants to refer to and invoke the principles underlying different provisions [S. 2(h), 2(s), 3(3), 2(k) and 20(4)] of Rights of Persons with Disabilities Act, 2016.

In reply, the Airlines submitted that---

1. As per the terms of the agreement, the fixed term contract automatically expired on 31/12/2014 unless the same was renewed by mutual written consent of both the parties.
2. There is no obligation on the part of the employer to renew the contract.
3. As per internal instructions issued vide circular dt. 01/01/2000 fixed term employment agreements of crew who indulged in unauthorized absence should not be renewed. The circular is not disputed.
4. From Jan 2013, Ms. Manisha stopped reporting for her duty without applying for medical leave. For the same reason her salary was not paid for that period.
5. As per the contract, grant of leave is a matter of discretion of the employer.
6. Following terms of employment incorporated in the contract support the Airlines' case.

## LEAVE

*No leave can be claimed as a right and Grant of any leave shall be at the sole discretion of the management. Any absence without authorised or sanctioned leave shall be leave without pay and the employee will be liable for disciplinary action.*

*All leave will be granted at the discretion of the Company and can only be availed, after the Competent Authority has approved/sanctioned the leave request.*

## CONDITIONS OF LEAVE

- (i) *Prior written permission of the Competent Authority has to be obtained to leave station when availing leave. Permissible to leave station when on sick leave will only be granted if it is necessary for medical reasons.*
- (ii) *Leave for more than 2 days, on sickness grounds shall be supported by a Medical Certificate from a specialist Doctor/Registered Medical Practitioner under Allopathic stream. Moreover, the leave on medical grounds for more than 5 consecutive days shall also require medical fitness certificate from the doctor/Registered Medical Practitioner from Allopathic stream.*
- (iii) *Any casual cum sick leave standing to the credit of the Employee as on 31<sup>st</sup> March shall lapse automatically and no accumulation will be permitted.*
- (iv) *Not more than 3 days of casual leave can be availed at a time with prior permission.*
- (v) *All types of leave will be entered in leave card and approved in advance except 4 sick leave (to be intimated at the earliest) which can be updated immediately on joining"*

Draft memorials on behalf of both the sides.