

# Naresh Kumar Beri & Ors vs Union Of India & Ors on 24 February, 2021

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

\$~33 & 34  
\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 6701/2020  
NARESH KUMAR BERI & ORS. .... Pet  
Through: Mr. Lalit Bhardwaj and Mr. K  
Gopal, Advocates. (M:921211  
versus  
UNION OF INDIA & ORS.  
Through: Mr. Chetan Sh  
Anjana Gosain  
Gupta, Mr. Vi  
Gadeock, Mr.  
Venkat Prabha  
Advocate for  
Mr. Sanjiv Se  
Mr. A.P. Sing  
Das, Advoc  
(M:9545355646  
34 AND  
+ W.P.(C) 8809/2020  
DAVESHWER SHARMA & ANR. .... Peti  
Through: Mr. Lalit Bhardwaj and Mr. K  
Gopal, Advocates.  
versus  
UNION OF INDIA THROUGH: SECRETARY MINISTRY CIVIL  
AVIATION & ORS. .... Re  
Through: Mr. Chetan Sharma, ASG wit  
Anjana Gosain, CGSC, Mr. A  
Gupta, Mr. Vinay Yadav, Mr  
Gadeock, Mr. Sahaj Garg, M  
Venkat Prabhat and Ms. Sha  
Advocate for R-1 & 3.  
Mr. Sanjiv Sen, Senior Adv  
Mr. A.P. Singh and Ms. Aka  
Das, Advocates for R-2/AI.

Signature Not Verified  
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By: PRATHIBA M SINGH  
Signing Date: 26.02.2021 20:06

CORAM:  
JUSTICE PRATHIBA M. SINGH  
ORDER

% 24.02.2021

1. This hearing has been done through video conferencing.
2. Ld. counsel for the Petitioners submits that in terms of order dated 23rd November, 2020, ld. counsel for Respondent No.2, i.e., Air India was to seek instructions as to whether some payment could be made to the pilots who have lost their jobs.
3. Mr. Sen, ld. Senior Counsel appearing for Air India submits that no such instructions were to be sought by him. He wishes to argue on the maintainability of the writ petitions on the ground that the subject matter of the disputes are private contracts and there is no public function involved.
4. Ms. Anjana Gosain, ld. CGSC appearing for Respondent Nos.1 & 3 confirms that Air India was asked to seek instructions as to whether some payments could be made. At this stage, Mr. Sen submits that he has no instructions in the matter.
5. Considering that there was a denial of the fact that any instructions were to be sought by Air India, and Ms. Gosain has now confirmed that instructions, were, in fact, to be sought on 23rd November, 2020, this Court is of the opinion that ld. Counsel for Air India ought to have been fair with the Court.
6. However, in view of the fact that there is no proposal for making any payment, the matter it is now being heard.
7. These two petitions have been filed by a total of 13 Petitioners, who were serving as commanders and co-pilots with Air India prior to their superannuation. They were engaged on a contractual basis by Air India. The termination clause of the contract reads as under:

"VI. TERMINATION The Management reserves the right to terminate your contract by giving one month notice or an amount equivalent to one month's monthly remuneration in lieu thereof for unsatisfactory discharge of duties, unsatisfactory

conduct, dishonesty, fraud or any other act which in view of the Company is contrary to its interest and/or depending upon the requirement of the Company. However, in case you decide to terminate the contract, you would be required to give 6 months notice.

Please sign the duplicate copy of this letter as a token of your acceptance of the terms & conditions of this 'contract'.

You will be required to report to General Manager (Operations), Western Region, for assignment of duties after renewal of your Medical/Licence. The contract will commence from the date you report for assignment of duties. However, your flying allowances shall only be applicable from the date you commence flying on contract, after undergoing requisite training for Recency for flying, medical currency, etc. if required.

You will be under the administrative control of General Manager (Operations), Western Region, or day to day work."

8. As per the above clause, one month's prior notice was to be given by Air India to the Petitioners in case of termination for unsatisfactory discharge of duties, unsatisfactory conduct, dishonesty, fraud etc. and six months' notice was to be given by the Petitioners, in case of termination of the contract from their side.

9. The grievance of the Petitioners is that due to the COVID-19 pandemic, vide email dated 2nd April, 2020, the Petitioners were temporarily suspended with effect from 1st April, 2020. Clearly, the email had taken effect one day prior to the date of temporary suspension. Clearly, one month's notice has not been given to the Petitioners. Subsequently, the Petitioners have in fact been terminated.

10. In this factual background, it is prima facie clear that the suspension which was issued in April 2020 was nothing but termination for which one month notice was to be issued as per the contract. Leaving the question of whether the contracts were rightly terminated or not open at this stage, Id. Counsel for Air India is directed to seek instructions for payment of one month's salary immediately, as an ad-interim arrangement, especially in view of the difficulties being faced by the Petitioners during the COVID-19 pandemic.

11. List for further hearing on 25th March, 2021.

PRATHIBA M. SINGH, J.

FEBRUARY 24, 2021/dk/T