MANU/SC/0688/1981

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IN THE SUPREME COURT OF INDIA

Writ Petitions Nos. 3045, 1107, 2458 and 1624-1628/1981

Decided On: 28.08.1981

AIR India **Vs.** Nergesh Meerza and Ors.

Hon'ble Judges/Coram:
S. Murtaza Fazal Ali, A. Vardarajan and A.N. Sen, JJ.

Counsels:
For Intervenor: Niranjan Alva, Narayan Netter, G.B. Pai, O.C. Mathur and Narain, Advs

Case Note:
Service - validity - Article 14 of Constitution of India - validity of Service Regulations 46 and 47 was in question - Regulations 46 and 47 contended as discriminative and ultra vires by respondents - Regulation 46 related to termination of service of air hostesses (AH) upon attaining age of 35 years or on marriage if takes place within 4 years of service or on first pregnancy whichever occurs earlier - condition 'or on first pregnancy whichever occurs earlier' is unconstitutional, void and violative of Article 14 so liable to be deleted - Regulation 47 provides for extension of service of AH at option of Managing Director (MD) - it conferred wide and uncontrolled power on MD and suffered from excessive delegation of power so violative of Article 14 - Regulation 47 liable to be struck down.

JUDGMENT

S. Murtaza Fazal Ali, J.

1. Transferred Case No. 3 of 1981 and the writ petitions filed by the petitioners raise common constitutional and legal questions and we propose to decide all these cases by one common judgment. So far as Transferred Case No. 3/81 is concerned, it arises out of writ petition No. 1186/1980 filed by Nergesh Meerza and Ors. Respondent No. 1 (Air India) moved this Court for transfer of the writ petition filed by the petitioners, Nergesh Meerza & Ors in the Bombay High Court to this Court because the constitutional validity of Regulation 46(1)(c) of Air India Employees Service Regulations (hereinafter referred to as 'A.I. Regulations') and other questions of law were involved. Another ground taken by the applicant-Air India in the transfer petition was that other writ petitions filed by the Air Hostesses employed by the Indian Airlines Corporation (hereinafter referred to as "I.A.C.") which were pending hearing in this Court involved almost identical reliefs. After hearing the transfer petition this Court by its Order dated 21.1.81 allowed the petition and directed that the transfer petition arising out of writ petition No. 1186/80 pending before the Bombay High Court be transferred to this Court. By a later Order dated 23.3.1981 this Court directed that the Transferred case may be heard alongwith other writ petitions. Hence, all these matters have been placed before us for hearing. For the purpose of brevity, the various petitions, orders, rules, etc. shall be referred to as follows:

(1) Air India as "A.I."

(2) Indian Airlines Corporation as "I.A.C."

(3) Statutory regulations made under the Air India Corporation Act of 1953 or the Indian Airlines Corporation Act of 1953 would be referred to as 'A.I. Regulation' and 'I.A.C. Regulation' respectively.

(4) Nergesh Meerza and Ors. as 'petitioners'.

(5) Declaration by the Central Government under Equal Remuneration Act as "Declaration" and Equal Remuneration Act 1976 as '1976 Act'.

(6) Air Corporation Act of 1953 as '1953 Act.'

(7) Justice Khosla Award as 'Khosla Award' and Justice Mahesh Chandra Award as 'Mahesh Award'.

(8) Assistant Flight Pursers as 'AFPs'

(9) Air Hostess as 'A.H.' and Air Hostesses a 'AHs'.

(10) Air India Cabin Crew as 'A.I. Crew' and Indian Airlines Corporation Cabin Crew as 'IAC Crew'

(11) Flight Steward as "F.S.

2. Before dealing with the facts of the case and the central constitutional controversies and substantial points of law involved in these petitions, it may be necessary to give a brief survey of the history which laid to the formation of the two Corporations, viz., A.I. and I.A.C.

3. By virtue of Section 3 of the 1953 Act, the Central Government by a notification published in the official Gazette created two Corporations known as Indian Airlines and Air India International. Section 3(2) provided that each of the two Corporations would be a body corporate having perpetual succession and a common seal subject to the provisions of the Act to acquire and hold property. Section 4 of the 1953 Act provides for the Constitution of the Corporations and Section 5 deals with the conditions of service of the Chairman and other Directors of the Corporations. Section 7 defines the various functions of the Corporations. Further details regarding the provisions of Section 7 would be dealt with later wherever necessary. Section 8 deals with the appointment of the officers and other employees of the Corporations. Sections 10 to 15 deal with finance, accounts and audit. Section 34 defines the control which the Central Government may exercise over the performance by the Corporation of its functions. The other provisions of the (953 Act are not germane for the purpose of this case.

4. It is manifest therefore from a perusal of the various provisions of the 1953 Act that A. I. and I. A. C. were established as a single entity which was divided into two units in view of the nature of the duties that each Corporation had to perform. We have mentioned this fact particularly because one of the contentions of Mr. Nariman, counsel for A.I., was that A.I. itself was a separate and distinct entity and could not be equated with I.A.C. The provisions of the Act completely nullify this argument and clearly show that the two Corporations formed one single unit to be controlled by the Central Government under the 1953 Act. It may be that the two Corporations may have different functions to perform-A.I. operating international flights and the other (IAC) operating

domestic flights within the country. This fact alone, however, would not make the two Corporations absolutely separate entities. The two Corporations were part of the same organisation set up by the 1953 Act. This fact is fortified by subsequent events such as when disputes arose between the employees of the two Corporations, the dispute with respect to A.I. was referred to Justice Khosla and formed the basis of the Khosla Award. Similarly, dispute between the I.A.C. and its employees was referred to Justice Mahesh Chandra where A.I. filed an application on behalf of the Air Corporation Employees Union (ACEU). The aforesaid Union represented both the A.I. and I.A.C. A prayer of the ACEU was allowed by the Tribunal by its order dated 1.3.1971 (vide p. 1191 of the Gazette of India-Section 3(ii) dated 25.3.72) for being impleaded as a party to the Reference. As a result of the allowing of the application of the ACEU the scope of the Reference was widened to include the demands of I.A.C. & A.I. This, therefore, clearly shows that the two Corporations formed one single entity and whenever any dispute arose they tried to get the dispute settled by a common agency. Thus, the two Corporations before the Industrial Tribunals did not take any stand that they were different entities having two separate individualities. The initial argument of Mr. Nariman on this point is, therefore, overruled at the threshold. In fact, Mr. Nariman having indicated the point did not choose to pursue it further because the sheetanchor of his argument was that so far as AHs in the two Organisations are concerned they constitute a sex-based recruitment and, therefore, a completely separate and different category from the class of AFPs, in that, their service conditions, the mode of recruitment, the emoluments, the age of retirement of these two classes were quite different and, therefore, the question of the applicability of Article 14 did not arise. We may have to dilate on this part of the argument a little later when we examine the respective contentions advanced before us by the counsel for the parties. At the moment, we would like first to complete the history of the circumstances leading to the present controversy between the parties. It appears that there was a good deal of disparity between the pay-scales and the promotional avenues of the male cabin crew consisting of AFPs, FPs and In-flight pursers on the one hand and the AHs, Check AH, Deputy Chief AH, Addl. Chief AH and Chief AH on the other. The case of the AHs was sponsored by the ACEU which made a demand for alteration of the service regulations prejudicial to AHs. This was some time prior to 1964. The said dispute was ultimately referred to a National Industrial Tribunal presided over by Mr. Justice G.D. Khosla who gave his award on 28.7.1965 making some recommendations in order to improve the service conditions of AHs.

5. In fact, the main issue canvassed before the Khosla Tribunal centered round the question of the age of retirement of the AHs and matters connected therewith. A perusal of the Khosla Award shows that the parties entered into a settlement with respect to all other disputes excepting the retirement benefits on which the Tribunal had to give its award. In para 252 of the Award the dispute regarding the retirement age is mentioned thus:

> **252.** At present, the retirement age of the Air India employees is governed by Service, Regulations Nos. 46 and 47. Service Regulation No. 46 is as follows:
>
> > **46.** Retirement Age:
> >
> > . . .
> >
> > (C) An Air Hostess, upon attaining the age of 30 years or on marriage, whichever occurs earlier.

. . .

253. Regulation No. 47 provides for a further extension of the employee beyond the age of retirement for an aggregate period not exceeding two years except in the case of Air Hostesses where the services can be extended upto a period of 5 years. The extension is granted on the employee being found medically fit.

6. Thus, according to the Regulations prevalent in A.I. an AH had to retire at the age of 30 or on marriage whichever was earlier subject to an extension being granted for a period of 5 years if the employee was found to be medically fit. While considering this demand, the Tribunal seems to have upheld the view of the Corporation and found no reason to interfere with Regulation Nos. 46 and 47. In this connection, the Tribunal observed as follows:

> In my view, no case has been made out for raising the age of retirement and in cases where the efficiency of the employee is not impaired, there is suitable provision under Regulation 47 for extending his service upto the age of 60. As observed above, there have been no complaints of any employee being made to retire under the provision of Clause (ii) of Regulation 46.

7. Giving the reasons for its conclusion the Award in Para 256 runs thus:

> With regard to air hostesses, the contention of the Management is that they are in a special class. They have to deal with passengers of various temperaments, and a young and attractive air hostess is able to cope with difficult or awkward situations more competently and more easily than an older person with less personal prepossessions. On this point there can be no two opinions. It was also pointed out that air hostesses do not stay very long in the service of Air India, and young and attractive women are more inclined to look upon service in Air India as a temporary occupation than as a career. Most of them get married and leave the service. Counsel for the Corporation placed before me a table (Exhibit M 14) which shows that the average service of an air hostess for the 5 years between 1960 and 1965 was only two years. Only 2 air hostesses reached the age of 30. None was retired at the age of 30 and in all, 70 air hostesses resigned before reaching the age of retirement. The total number of air hostesses at present is 87 and, therefore, it will at once be seen that most of them chose to leave service of their own free will.

8. It would thus be seen that one of the dominant factors which weighed with the Tribunal was that there were only 87 AHs out of whom quite a large number retired even before reaching the age of 30 years. The Tribunal was also impressed by the argument of the Corporation that AH had to deal with passengers of various temperaments and a young attractive AH was more suitable for doing the job. With due respect to Justice Khosla we may not agree with some of the reasons he had given, but the position has now completely changed as more than 15 years have passed and at present AI employs as many as 737 AHs. However, the matter rested there and the AHs seem to have lost their first battle before the Khosla Tribunal.

9. Thereafter, it appears the same dispute arose between the employees of I.A.C. which, as indicated above, had to be referred to another Tribunal, viz. Mahesh Tribunal, before whom a part of the dispute between several workmen was settled but the dispute which was not settled including the question of the age of retirement of AHs was referred to this Tribunal some time in November 1970 and the Award was given on 25th

February 1972. Before this Tribunal also, the stand taken by the ACEU was that the age of retirement of AH should be fixed at 45 instead of 30 or 35 and the bar of marriage should be removed. The A.I., however, stuck to its original stand that having regard to the strenuous work to be put in by an AH, the age of retirement should be kept at 30. In this connection, the Mahesh Tribunal indicated the stand of the parties thus:

> The ACEU contends that age of retirement of air hostesses should be fixed at 45 instead of 30 or 35 as at present; that this demand for increase in the age of retirement is in accordance with Geneva Convention and that the bar of marriage on air hostesses should be removed.
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> The Air India's contention is that the nature and underlying object of the job of an air hostess requires that their age of retirement should be kept at 30 as at present. It has also been pointed out that after 30, the General Manager of the Corporation has the discretion to extend the age of retirement of an air hostess by one year at a time till she reaches the age of 40 years. As for the retirement on Marriage, the Air India's contention is that it is necessary and a desirable provision as otherwise after marriage they will not be able to fulfil adequately the main purpose of their employment.
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> . . .
>
> The rule regarding extension of service in the Settlement between the ACEU and the Indian Airlines of January 10, 1972 is better worded and it should be adopted by the Air India also in its entirety.

10. This appears to be the position upto the year 1972. Subsequent events, however, show that both A.I. and I.A.C. later realised that the Rules regarding the age of retirement and termination of Ahs work serious injustice and made several amendments. We would first take up the various amendments made by the I.A.C.

11. The previous regulation regarding the retirement age of I.A.C. AH was regulation No. 12 which may be extracted thus:

> Flying Crew shall be retained in the service of the Corporation only for so long as they remain medically fit for flying duties...Further, an Air hostess shall retire from the service of Corporation on her attaining the age of 30 years or when she gets married whichever is earlier. An unmarried Air Hostess may, however, in the interest of the Corporation be retained in the service of the Corporation upto the age of 35 years with the approval of the General Manager. (Vide counter-affidavit of Wing Commander N.C. Bharma)

12. This regulation was further amended on 13.7.68 which ran thus:

> An Air hostess shall retire from the service of the Corporation on her attaining the age of 30 years or when she gets married, whichever is earlier. The General Manager, may, however, retain in service an unmarried Air Hostess upto the age of 35 years.

13. Then followed the Settlement dated 10.1.1972 between the I.A.C. and ACEU under which AH was to retire at the age of 30 or on marriage. The General Manager, however, could retain an unmarried AH in service upto the age of 40 years. Thus, the only difference that the Settlement made was that the discretion to extend the age of retirement of AH was increased by 5 years, i.e. from 35 years to 40 years. Ultimately,

however, the old Regulation underwent a further change and by virtue of a Notification published in the Gazette of India on 12.4.1980 in Part III, Section 4, para 3 of the amended Regulation 12 was further amended thus:

> An Air Hostess shall retire from services of the Corporation upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.

14. This amendment seems to have made a slight improvement in the condition of service of AHs inasmuch as the age of retirement was fixed at 35 years and the bar of marriage was restricted only to a period of four years, that is to say, if an AH did not marry within a period of 4 years of her entry into service, she could retire at the age of 35. This amendment was not in supersession of but but supplemental to the ACEU Settlement dated 10.1.1972. In other words, the position was that an AH if she did not marry within 4 years, could go upto 35 years extendable to 40 years, if found medically fit. This was the historical position so far as the retirement age of AHs working with IAC is concerned. As regards AHs employed by AI the latest position is to be found in Regulations 46 and 47, the relevant portions of which may be extracted thus:

> **46.** Retiring Age:
>
> Subject to the provisions of Sub-regulation (ii) hereof an employee shall retire from the service of the Corporation upon attaining the age of 58 years, except in the following cases when he/she shall retire earlier:
>
> (c) An Air Hostess, upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.
>
> . . .
>
> **47.** Extension of Service.
>
> Notwithstanding anything contained in Regulation 46, the services of any employee, may, at the option of the Managing Director but on the employee being found medically fit, be extended by one year at a time beyond the age of retirement for an aggregate period not exceeding two years, except in the case of Air Hostesses and Receptionists where the period will be ten years and five years respectively.

15. Thus, an AH under A.I. was retired from service in the following contingencies:

(1) on attaining the age of 35 years ;

(2) on marriage if it took place within 4 years of the service, and

(3) on first pregnancy.

16. The age of retirement of AH could be extended upto ten years by granting yearly extensions at the option of the Managing Director. Thus, if the Managing Director chose to exercise his discretion under Regulation 47 an AH could retire at the age of 45 years.

17. Thus, the only difference regarding the service conditions pertaining to the age of retirement or termination is that whereas the services of an I.A.C. AH could be extended

upto 40 years, those of the A.l. AH could be extended upto 45 years, subject to the conditions indicated above. This appears to be the position regarding the service conditions of the AHs belonging to both the Corporations which form the cornerstone of their grievances before us.

18. Having given a brief history of the dispute between the parties we would now indicate the contentions advanced before us by the petitioners (AHs) and the counsel for the Corporations and other respondents. As the service conditions of AHs employed by the two Corporations are almost identical the arguments put forward by them also are almost the same with slight variations which will be indicated by us when we deal with the arguments.

19. Mr. Atul Setalvad appearing for the AHs in Transfer case No. 3 of 1981 has submitted some important and interesting points of law which may to summarised as follows:

(1) The AHs employed by one Corporation or the other form the same class of service as the AFPs and other members of the cabin crew. Both the male pursers and the AHs are members of the same cabin crew, performing identical or similar duties and hence any discrimination made between these two members who are similarly circumstanced is clearly violative of Article 14 of the Constitution of India.

(2) Even if the AHs are a separate category or class, there is an inter se discrimination between the AHs posted in the United Kingdom and those serving in the other Air India flights.

(3) That the AHs have been particularly selected for hostile discrimination by the Corporation mainly on the ground of sex or disabilities arising from sex and therefore, the regulations amount to a clear infraction of the provisions of Article 15(1) and Article 16 of the Constitution of India.

(4) The termination of the services of AHs on the ground pregnancy or marriage within four years is manifestly unreasonable and wholly arbitrary and violative of Article 14 of the Constitution and should, therefore, be struck down.

(5) The contention that a woman in view of strenuous work that she is called upon to perform, becomes tired or incapable of doing the work of catering to the passengers is based on pure speculation and being against the well established facts and norms set up by the Geneva Convention is clearly inconsistent with the concept of emancipation of women. No material has been placed before the Court to prove that the efficiency of the AHs is in any way impaired at the age of 40 or 45 years so as to make a gross discrimination between the male pursers and AHs.

(6) Apart from the discrimination regarding the age of retirement, the AHs have been completely deprived of promotional opportunities available to the male members of the cabin crew.

20. For the aforesaid reasons, it was contended that Regulations 46 and 47 of Air-India Employee's Service Regulations and Regulation No. 12 of the Indian Airlines (Flying Crew) Service Regulations must be struck down as being discriminatory and ultra vires.

21. The counsel appearing for the petitioners in the writ petitions more or less adopted

the arguments of Mr. Atul Setalvad in one form or the other.

22. In answer to the contentions raised by Mr. Setalvad and the counsel who followed him, Mr. Nariman appearing for A.I. and Mr. G.B. Pai for the I.A.C., adumbrated the following propositions:

(1) That having regard to the nature of job functions, the mode of recruitment of AHs, their qualifications, their promotional avenues and the circumstances in which they retire AHs fall within a category separate from the class to which the pursers belong and if AHs from a separate class or category by themselves, then there can be no question of discrimination or contravention of Article 14 which would apply if there is discrimination between the members of the same class inter se.

(2) The recruitment of the AHs is actually sex based recruitment made not merely on the ground of sex alone but swayed by a lot of other considerations: hence Article 15(2) of the Constitution was not attracted. To buttress this argument reliance was placed by Mr. Nariman on the Declaration made by the Government under the 1976 Act.

(3) As the conditions mentioned in Regulation 46 of A.I. Regulations and 12 of the IAC Regulations have been upheld by the Khosla and Mahesh Awards, they have statutory force and unless they are per se arbitrary or discriminatory, the court ought not to interfere with them particularly when those two Awards are binding on the parties even though their period may have expired.

(4) Having regard to the circumstances prevailing in India and the effects of marriage, the bar of pregnancy and marriage is undoubtedly a reasonable restriction placed in public interest.

(5) If the bar of marriage or pregnancy is removed, it will lead to huge practical difficulties as a result of which very heavy expenditure would have to be incurred by the Corporations to make arrangements for substitutes of the working AHs during their absence for a long period necessitated by pregnancy or domestic needs resulting from marriage.

(6) The court should take into consideration the practical aspects of the matter which demonstrate the fact that a large number of AHs do not stick to the service but leave the same well before the age of retirement fixed under the Regulation.

23. Finally, as a very fair and conscientious counsel Mr. Nariman placed a few proposals which might mitigate the inconvenience caused to the AHs and remove a large bulk of their grievances. It was submitted by Mr. Nariman that he would in all probability persuade the management to accept the proposals submitted by him which will be referred to when we deal with the contentions of the parties at length.

24. We shall now proceed to deal with the respective contentions advanced before us indicating the reply of the respondents to the arguments raised by the petitioners.

25. It was vehemently argued by Mr. Setalvad that having regard to the nature of the duties and functions performed during the flight by AFPs and AHs both the groups constitute the same class or category of service under the Corporation and hence any difference or discrimination between the members in the same class is clearly violative

of Article 14 of the Constitution. A second limb of the argument which flows from the first contention was that the AHs were selected for hostile discrimination by the Corporation in the matter of retirement, termination and promotional avenues which was manifestly unreasonable so as to attract Article 14 of the Constitution.

26. The counsel for the Corporation, however, countered the arguments of the petitioners on two grounds:

> (1) That in view of the mode of recruitment, qualifications, retiral benefits and various other factors the AHs constitute a special category or class of employees different from the AFPs and, therefore, they could not be in any way equated with them.
>
> (2) That in fact the recruitment of AHs was sex-based and swayed by a number of other considerations and not based on sex only.

27. In order to appreciate the arguments of the parties on this point it may be necessary to refer to the law on the subject which is now well settled by a long course of decisions of this Court. It is undisputed that what Article 14 prohibits is hostile discrimination and not reasonable classification. In other words, if equals and un-equals are differently treated, no discrimination at all occurs so as to amount to an infraction of Article 14 of the Constitution. A fortiori if equals or persons similarly circumstanced are differently treated, discrimination results so as to attract the provisions of Article 14.

28. In our opinion, therefore, the inescapable conclusion that follows is that if there are two separate and different classes having different conditions of service and different incidents, the question of discrimination does not arise. On the other hand, if among the members of the same class, discriminatory treatment is meted out to one against the other, Article 14 is doubtless attracted.

29. In Kathi Ratting Rawat v. The State of Saurashtra MANU/SC/0041/1952 : 1952CriLJ805 Sastri, C.J. observed thus:

> Though the differing procedures might involve disparity in the treatment of the persons tried under them, such disparity is not by itself sufficient, in my opinion, to outweigh the presumption and establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands as, for instance, when it amounts to a denial of a fair and impartial trial.

30. Fazal Ali J. as he then was, pithily observed as follows:

> I think that a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances.

31. Similar observations were made by Mukherjee, J. who remarked thus:

> The legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no

rational relation to the objectives of the legislation, that necessity of judicial interference arises.

32. The most apposite decision on the subject is the case of All India Station Master's & Assistant Station Master's Association and Ors. v. General Manager, Central Railways and Ors. MANU/SC/0192/1959 : [1960]2SCR311 where the law on the subject was succinctly stated by Das Gupta, J. who speaking for the Court as follows:

> So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes. For each such class there are separate rules fixing the number of personnel of each class, posts to which the men in that class will be appointed, questions of seniority, pay of different posts, the manner in which promotion will be effected from the lower grades of pay to the higher grades, e.g., whether on the result of periodical examination or by seniority, or by selection or on some other basis and other cognate matters. Each such class can be reasonably considered to be a separate and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably between one class and Anr.
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> . . .
>
> It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State ? In our opinion, the answer must be in the negative.

33. The same view was reiterated by another decision of this Court in The General Manager, Southern Railway v. Rangachari MANU/SC/0388/1961 : (1970)IILLJ289SC where Gajendragadkar, J. pointed out thus:

> *Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar post?* On the narrow construction of Article 16(1) even if such a discriminatory courses are adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16(1). Such a result could not obviously have been intended by the Constitution....The three provisions form part of the same constitutional code of guarantees and supplement each other.
>
> If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.
>
> . . .
>
> It is common ground that Article 16(4) does not cover the entire field covered by Article 16(1) and (2). Some of the matters relating to employment in respect of which equality of opportunity has been guaranteed by Article 16(1) and (2)

do not fall within the mischief of non-obstante clause in Article 16(4).

(Emphasis ours)

34. In State of Punjab v. Joginder Singh MANU/SC/0363/1962 , Ayyangar, J while delivering the majority judgment clearly elucidated the various spheres where Article 14 could operate and observed thus:

> *As we have stated already, the two Services started as independent services. The qualifications prescribed for entry into each were different, the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes.* If the government order of September 27, 1957, did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. *If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two Articles.* The foundation therefore, of the judgment of the learned Judges of the High Court that the impugned rules created two classes out of what was formerly a single class and introduced elements of discrimination between the two, has no factual basis if, as we hold, the order of September 27, 1957, did not effectuate a complete integration of the two Services, On this view it would follow that the impugned rules cannot be struck down as violative of the constitution. (Emphasis supplied)

35. The same dictum was followed by this Court in a later case- Sham Sunder v. Union of India and Ors. MANU/SC/0371/1968 : (1970)ILLJ6SC -where it was pointed out that Article 16(1) would be attracted only if there is a breach of equality between members of the same class of employees and Article 14 did not contemplate equality between members of separate or independent classes. In this connection Bachawat, J. held thus:

> For purposes of promotion, all the enquiry-cum-reservation clerks on the Northern Railway form one separate unit. Between members of this class there is no discrimination and no denial of equal opportunity in the matter of promotion.... Equality of opportunity in matters of employment under Article 16(1) means equality as between members of the same class of employees and not equality between members of separate, independent classes.

36. The same principle was reiterated by this Court in Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. and Anr. MANU/SC/0074/1969 : [1969]3SCR865 where Shah. J. observed thus:

> Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.

37. In a recent decision of this Court in Ramesh Prasad Singh v. State of Bihar and Ors. MANU/SC/0329/1977 : (1978)ILLJ197SC to which one of us (Fazal Ali, J.) was a party, the same principle was reiterated thus:

> Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the guarantee enshrined in Articles 14 and 16 of the Constitution cannot be carried beyond the point which is well settled by a catena of decisions of the Court.

38. Similarly, in The State of Gujarat and Anr. v. Shri Ambica Mills Ltd. etc. MANU/SC/0401/1973 : (1974)ILLJ121SC Mathew, J. speaking for the Court pointed out that classification is inherent in legislation and expounding the concept of equality contained in Article 14 observed thus:

> It may be remembered that Article 14 does not require that every regulatory statute apply to all in the same business ; where size is an index to the evil at which the law is directed, discriminations between the large and small are permissible, and it is also permissible for reform to take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

. . .

> Classification is inherent in legislation. To recognize marked differences that exist in fact is living law: to disregard practical differences and concentrate on some abstract identities is lifeless logic. (Morey v. Doud U.S. 457, 472)

39. In State of Jammu and Kashmir v. Triloki Nath Khosa and Ors. MANU/SC/0092/1974 : [1974]3SCR760 it was clearly pointed out that equality is only for equals and even in cases of promotion Article 14 would apply only if promotional facility is denied to equals within the same class. In this connection, Chandrachud, J. (as he then was) pithily observed thus:

> But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.
>
> Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class.
>
> In United States v. James Griggs Raines 4L Ed 2d 524 it was held that one to whom application of statute is constitutional cannot be heard to attack the statute on the ground that impliedly if it applied to other persons it might be unconstitutional. These observations, in our opinion, furnish a complete answer to the argument of the petitioners that Article 14 is violated in the instant case.

40. Similar observations were made in Vol. 16 (PP. 236-237) of Corpus Juris Secundum which are extracted below:

> A person ordinarily is precluded from challenging the constitutionality of governmental action by invoking the rights of others and it is not sufficient that the statute or administrative regulation is unconstitutional as to other persons

or classes of persons; it must affirmatively appear that the person attacking the statute comes within the class of persons affected by it.

41. Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge:

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category.

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not to be found in other classes, and the like.

42. It is difficult to lay down a rule of universal application but the circumstances mentioned above may be taken to be illustrative guidelines for determining the question.

43. Applying these tests we now proceed to examine the correctness of the first contention advanced by Mr. Atul Setalvad and counsel for other petitioners and

countered by the Corporations.

44. A very large number of affidavits and documents have been filed by the parties in support of their respective cases but in view of the arguments of the parties, the matter falls, in our opinion, within a very narrow compass and we shall refer only to those affidavits and documents which are germane for deciding the case on the basis of contentions advanced before us.

45. In order to test whether the category of AHs constitutes the same class as AFPS or is a separate category by itself, we shall detail the materials placed before us by the parties on this aspect of the matter. We shall first deal with the case of AHs employed by A.I.

46. To begin with, it is not disputed that at the initial recruitment a classification for appointment of AH and AFP is essentially different. For instance, while in the case of AFP the necessary qualifications are as follows:

(1) SCC or its equivalent

(2) Minimum three years' training experience in any Airline or three years Diploma in Catering from a recognised Institute or a Graduate.

(3) There is no requirement that AFP should be unmarried.

(4) The AFP has to appear for a written I.C. test.

47. As against these basic requirements for entry into service for the class known as 'AFP', the requirements for AHs are as follows:

(1) SCC or its equivalent

(2) AH must be unmarried

(3) No other requirement is needed for entry into service so far as AH is concerned.

48. Mr. Setalvad however, argued that both AHs and AFPs being members of the same cabin crew must be taken to belong to the same class. This argument fails to take into consideration the fact that if at the threshold the basic requirements of the two classes, viz., AFP and AH, for entry into service are absolutely different and poles apart even though both the classes may during the flight work as cabin crew, they would not become one class of service.

49. Secondly, while AFP starts with a grade of Rs. 385-535, the AH starts her career with the grade of Rs. 485-25-560-40-770. This is also a very material difference which points to the AHs being a separate category both in respect qualifications at the entry into service and also in respect of starting salaries.

50. Another important distinction between AFPs and AHs is that whereas the total number of posts in AJ. of AFPs are 494, in the case of AHs is 737. Thus, to begin with, the two classes differ in qualifications, in grades and also in the number of posts.

51. The matter does not rest there. Even the promotional avenues or channels of the two categories of service are quite different and so is their seniority. So far as the AFPs are concerned, the hierarchy is as follows:

(1) A.F.P.

(2) F.P. (Grade: Rs. 485-25-560-40-720-50-1020)

52. The total number of posts of FPs are 372. Thus, by and large AH starts almost in the same grade as F.P. which is a higher post than AFP. The third higher category is Check F.P. which has the same emoluments as FPs with the difference that the Check FPs get an additional allowance of Rs. 200/- p.m. and the number of posts are 61. The next promotional avenue is the post of Inflight Supervisor. The total posts are 69 and the Grade is Rs. 1100-50-1600-60-1780-100-1880

	No. of posts	Grade
(5) Dy. Manager	8	1400—50—1600—60—1780—100—1880.
(6) Manager	7	1720—60—1780—100—2180.
(7) Manager, Cabin Crew.	1	1880—100—2480.

53. It is asserted by the A.I. that it takes about 15 to 20 years for a F.P. to reach the promotional posts of Inflight Supervisor and 25 years to reach the post of Dy. Manager. As against this, the hierarchy of AH is as follows:

	No. of posts	Grade
1. AH	737	
2. Check AH	72	
3. Dy. Chief AH	3	1100—50—1600—60—1780—100—1880.
4. Addl. Chief AH	3	1400—50—1600—60—1780—100—1980.
5. Chief AH	1	1720—60—1780—100—2180.

54. It may be mentioned here that so far as the post of Dy. Chief AH is concerned, by virtue of an agreement dated 30th May 1977 between the male members of the cabin crew it was decided to phase them out. A serious exception has been taken against the Corporation for having acceded to the demand for phasing out a post belonging to the category of AHs and that too without taking the consent of AHs. A serious protest on this account was lodged by the AHs which is to be found at page 166 of Vol. II of the Paperbook, the relevant portion of which of may be extracted thus:

> We do not see how any Flight Purser or Assistant Flight Purser could suggest a viable proposal regarding our promotion considering this matter is in direct relation to Air Hostesses and their future.
>
> In the past the Flight Pursers and the Assistant Flight Pursers took away our promotional avenue to Deputy Chief Air Hostess without even consulting us.

55. At page 148 of Vol. II of the Paper Book, the affidavit details the circumstances under which the post of Dy. Chief AH was agreed to be phased out. In this connection, the following extracts are relevant:

> The Association also went into the grades of different categories of cabin crew and found that while the Deputy Chief Air Hostesses functioned on board the

> flight only as Check Air Hostesses and/or Air Hostess her grade was much higher than that of a Flight Purser who was in a higher status or cadre and had supervisory responsibilities. The management therefore was approached by the Association resulting in the said agreement of 30.5.1977 which is already annexed hereto and marked Exhibit V above by which the category of Deputy Chief Air Hostesses was made redundant.

56. We are also unable to understand how the Management could phase out a post available to the AHs exclusively at the instant of Pursers when they had absolutely no concern with this particular post nor had the Pursers any right to persuade the Management to abolish a post which was not meant for them. The AHs have rightly protested that the Agreement to phase out the post was unilaterally taken by the Management without even consulting the AHs although they were the only ones who were most adversely affected by this decision. In para 25 of the Affidavit at P. 58 of the same volume a statement is made regarding the circumstances under which the post of Dy. Chief AH was phased out, which is extracted below:

> On May 30, 1977, as a result of discussions with the Air-India Cabin Crew Association representing the flight pursers, assistant flight pursers and air hostesses, it was decided that the category of Deputy Chief Air Hostess would be phased out, i.e., as and when the then existing Deputy Chief Air Hostesses retired or resigned the consequent vacancies would not be filled. At present the promotional avenues for Air Hostesses are the post of Additional Chief Air Hostess, Chief Air Hostess and Deputy Manager Air Hostesses.

57. Unfortunately, however, as the decision was taken as far back as 1977 and no grievance was made by the AHs before the High Court and as this is not a matter which is covered by Article 32 of the Constitution, we are unable to give any relief to the AHs on this score. We would, however, like to observe that in view of the limited promotional channels available to the AHs, the A.I. should seriously consider the desirability of restoring the post of Dy. Chief AH and thereby remove the serious injustice which has been done to the AHs in violation of the principles of natural justice.

58. We have touched this aspect of the matter only incidentally as it was mentioned in the Affidavit filed before us and appeared to us to be of some consequence.

59. Thus, from a comparison of the mode of recruitment the classification, the promotional avenues and other matters which we have discussed above, we are satisfied that the AHs from an absolutely separate category from that of AFPs in many respects having different grades, different promotional avenues and different service conditions. Finally, it may also be noted that even though the AHs retire at the age of 35 (extendable) to 45 they get retiral benefits quite different from those available to the AFPs. For instance, at pages 68-69 of Vol. II of the Paperbook the following averments may be specially noticed:

> The benefits particularly the retirement benefits for male cabin crew and female cabin crew in service have been and are materially different and the expectations raised on the basis of these benefits are also viewed differently. Thus, for instance, an Air Hostess, who is recruited between the age of 19 and 25 on a higher pay scale than that of an Assistant Flight Purser and who retires after service of 10 years, is entitled to the same quantum of free air passages, which she was entitled to in the 10th year of her service, for a continuous period of five years thereafter. Similarly, an Air Hostess who has completed 15

years of service and retires thereafter is entitled to free air passages for a continuous period of 10 years thereafter on the basis of the total number of free air passages she was entitled to in the 15 years of her service. On the other hand, Assistant Flight Pursers who are recruited between the ages of 21 and 26 are entitled to retirement benefit of free air passage only if they voluntarily retire after 25 years of continuous service or on attaining the age of superannuation, i.e., 58 years. If the retirement age of air hostess were extended to 58 years, they would be subjected to the same discipline and reaction of many of the existing air hostesses in Air India is that the differentiation in retirement ages between men and women is fair and reasonable and to their advantage. In fact most of the air hostesses are anxious to complete 10 years of service and retire to become eligible for these benefits.

60. These benefits are further explained in a chart given in Ext. D which extracts the relevant portions of Air India Employees Passage Regulations, 1960. The relevant portion of the provisions may be extracted thus:

Category	Scale of Concession	Period for which concession would be admissible
(a) Employees retiring on reaching the age of 58 years or 55 years, as the case may be, provided they have rendered continuous service for a minimum period of 20 years.	One free passage every year or two free passages every alternate year and not more than two 90% free passages every alternate year and not more than two 90% rebated passages every year.	Till the death of the retired employee.
(b) Employees retiring on reaching the age of 58 years or 55 years, as the case may be, provided they have rendered continuous service for a minimum of 25 years.	Two free passages every year and not more than two 90% rebated passages every year.	Till the death of the retired employee.
(c) Employees permitted by competent authority to retire voluntarily after completion of a continuous service of not less than 25 year.	One free passage every year or two passages every alternate year and not more than two 90% rebated passages every year.	Till the death of the retired employee.
(d) Air Hostesses retiring after rendering continuous service for a minimum period of 10 years, but less than 15 years.	One free passage every year or two free passages every alternate year and one 75% rebated passage every year or two 75% rebated passages every alternate year.	For a period not exceeding five years from the date of retirement or from April 1, 1974, whichever is later.
(e) Instructress, Air Hostess/Lady Receptionists retiring after rendering continuous service for a minimum period of 15 years.	One free passage every year or two free passages every alternate year one 75% rebated passage every rebated passages every alternate year.	For a period not exceeding ten years from the date of retirement or from April 1, 1974, whichever is later.
(f) Employees retiring permanently due to medical unfitness provided that they have retired after rendering continuous service for a minimum period of 15 years.	--do--	--do--

61. Thus, although the AFPs also get retiral benefits which continue upto their death yet

they get these benefits only after having put in 20 years of service or reaching the age of superannuation which in their case is 55 or 58 years; whereas; the AHs get almost the same concessions, though for a lesser period, even after serving the Corporation for a much shorter period. This is yet another distinctive feature of the separate category of AHs.

62. Having regard, therefore, to the various circumstances, incidents, service conditions, promotional avenues, etc. of the AFPs and AHs, the inference is irresistible that AHs though members of the cabin crew are an entirely separate class governed by different set of rules, regulations and conditions of service. Mr. Nariman submitted that job functions performed by the AFPs and AHs being entirely different, is also an important circumstance to prove that AHs is a class completely separate from the class of AFPs. We are, however, not impressed with this argument because a perusal of the job functions which have been detailed in the affidavit, clearly shows that the functions of the two, though obviously different overlap on some points but the difference, if any, is one of degree rather than of kind. Moreover, being members of the crew in the same flight, the two separate classes have to work as a team, helping and assisting each other particularly in case of emergency. This aspect of the matter was highlighted by the Mahesh Award which observed thus:

> The management claims that there cannot be and should not be, any inflexibility or rigidity regarding the functions and duties of the different categories of cabin crew and the Management should have full authority and discretion as regards the interchangeability of job allocations and functions and duties of the different categories of cabin crew and for effecting from time to time such interchanges of job allocations and of functions and duties as it might think fit.
>
> . . .
>
> There is not the slightest doubt that the Cabin Crew have to work as a team as pointed out by Shri S.S. Hemmadi (AMW-5). Although there are different duties fixed for different categories, it is necessary for each category to give help and do the work of other categories for the smooth flight.
>
> (vide pp. 1259-60 of the Mahesh Award)

63. We entirely agree with the observations made in the Mahesh Award and, therefore, do not attach much importance to this circumstance relied upon by the Corporation.

64. In the same token, an additional argument advanced by Mr. Setalvad was that certain terms and conditions of AHs were palpably discriminatory and violative of Article 14. For instance, under the Regulations concerned, AHs suffered from three important disabilites-(1) their services were terminated on first pregnancy, (2) they were not allowed to marry within four years from the date of their entry into service, and (3) the age of retirement of AHs was 35 years, extendable to 45 years at the option of the Managing Director, as against the retirement age of AFPs who retired at the age of 55 or 58 years. There can be no doubt that these peculiar conditions do form part of the Regulations governing AHs but once we have held that AHs from a separate category with different and separate incidents the circumstances pointed out by the petitioners cannot amount to discrimination so as to violate Article 14 of the Constitution on this ground. There is no complaint by the petitioners that between the separate class of AHs inter se there has been any discrimination regarding any matter. In fact, the only point raised on this aspect was that AHs employed by A.I. in U.K. have different conditions of

service from AHs serving A.I. in countries other than U.K. Doubtless this distinction is there but this is really a fortuitous circumstance because A.I. was forced to comply with the local laws of U.K. in order to increase the age of retirement of AHs posted in England. Surely we cannot expect A.I. to commit an offence by violating the laws of U.K. In Navy, Army and Air Force Institutes v. Varely [1977] 1 All. ER 840 the variation between the hours of work by female employees in Nottingham and the hours of work by male employees in London was held to be valid and did not violate the principle of Equality. Phillips, J. made the following observations:

> An example which we gave the other day was of a case where all the conditions are satisfied for the operation of an equality clause-because, for instance, there is a variation in that a woman is paid less-but it is found on investigation that the employers can establish (and the burden of proof, which is a heavy burden, is always on them) that the reason the man is paid more than the woman has nothing whatever to do with sex but is due to the fact that the employers have in force a system under which a long-service employee is paid more so the variation there is due, not to a difference of sex, but to that material difference. It is important to note there that the women, if she remains sufficiently long in the company's employ, will of course one day herself qualify to receive a long-service increment.
>
> It is common ground in this case that the variation-that is to say, the difference in the hours worked in London and those worked in Nottingham-is not due to a difference of sex.

65. On a parity of reasoning in the instant case, therefore, the violation of Article 14 is not due to any fault of the Corporation which only seeks to abide by the local laws of United Kingdom nor could it be said that the higher retirement age was fixed for AHs posted in U.K. only on the ground of sex.

66. Coming now to the next limb of the argument of Mr. Setalvad that even if there is no discrimination inter se between AHs, the conditions referred to above are so unreasonable and arbitrary that they violate Article 14 Hand must, therefore, be struck down, we feel that the argument merits serious consideration. Before, however, we deal with the various aspects of this argument, we might mention an important argument put forward by the Corporation that the class of AHs is a sex-based recruitment and, therefore, any, discrimination made in their service conditions has not been made on the ground of sex only but due to a lot of other considerations also. Mr. Setalvad tried to rebut this argument by contending that the real discrimination is based on the basis of sex which is sought to be smoke-screened by giving a halo of circumstances other than sex. Both parties placed reliance on the 1976 Act. It may be necessary to examine the relevant section of the 1976 Act. Sub-sections (1) and (3) Section 4 of the 1976 Act may be extracted thus:

> **4 .** (1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the works of the opposite sex in such establishment or of a similar nature.
>
> **. . .**
>
> (3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of

sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

67. There is no doubt that the statutory mandate prohibits any employer from making a distinction in wages between male and female. Had the matter rested here, there could have been no option but to accept the argument of Mr. Setalvad. It would, however, appear that the benefit conferred on the females under the 1976 Act is not absolute and unconditional. Section 16 clearly authorises restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate Government, which may be extracted thus:

16. Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishments or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.

68. In the instant case, the Central Government has made a declaration by virtue of a Notification dt. 15.6.79 published in the Gazette of India, Part II-Section 3, Sub-section (ii) dated 30. 6.79, which runs thus:

New Delhi, the 15th June 1979.

S.C. 2258-In exercise of the powers conferred by Section 16 of the Equal Remuneration Act, 1976 25 of 1976) the Central Government having considered all the circumstances relating to, and terms and conditions of employment of Air Hostesses and Flight Stewards, are satisfied that the difference in regard to pay, etc. of these categories of employees are based on different conditions of service and not on the difference of sex. The Central Government, therefore, declares that any act of the employer attributable to such differences shall not be declared to be in contravention of any of the provisions of the Act.

69. Thus, the declaration is presumptive proof of the fact that in the matter of allowances, conditions of service and other types of remuneration, no discrimination has been made on the ground of sex only. The declaration by the Central Government, therefore, completely concludes the matter.

70. Even otherwise, what Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations. On this point, the matter is no longer res integra but is covered by several authorities of this Court. In Yusuf Abdul Aziz v. The State of Bombay and Husseinbhoy Laljee MANU/SC/0124/1954 : [1954]1SCR930 sex was held to be a permissible classification. While dealing with this aspect of the matter this Court observed thus:

Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two

articles read together validate the impugned clause in Section 497 of the Indian Penal Code.

71. The same view was taken by this Court in a later decision in Miss C.B. Muthamma v. U.O.I, and Ors. MANU/SC/0580/1979 : [1980]1SCR668 where Krishna Iyer, J. speaking for the Court made the following observations:

> We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern.

72. For these reasons, therefore, the argument of Mr. Setalvad that the conditions of service with regard to retirement, etc., amount to discrimination on the ground of sex only is overruled and it is held that the conditions of service indicated above are not violative of Article 16 on this ground.

73. This brings us now to the next limb of the argument of Mr. Setalvad which pertains to the question as to whether and not the conditions imposed on the AHs regarding their retirement and termination are manifestly unreasonable or absolutely arbitrary. We might mention here that even though the conditions mentioned above may not be violative of Article 14 on the ground of discrimination but if it is proved to our satisfaction that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down.

74. This argument was sought to be rebutted by Mr. Nariman on the ground that the conditions mentioned above formed the subject-matter of the two Awards which have upheld the conditions to be valid. It was also contended that even though the period of the Award has expired, they continue to be binding on the parties and as these matters pertain to industrial dispute, this Court should not disturb the settlement arrived at or the Awards given by the National Tribunals and allow the disputes to be settled in the proper forum, viz., Industrial courts. To buttress this argument, reliance was placed on certain observations in the two Awards as also some authorities.

75. In this connection, while dealing with this particular demand of the AHs, the Khosla Award observed thus:

> **256.** With regard to air hostesses, the contention of the Management is that they are in a special class. They have to deal with passengers of various temperaments, and a young and attractive air hostess is able to cope with difficult or awkward situations more competently and more easily than an older person with less personal prepossessions. On this point there can be no two opinions. It was also pointed out that air hostesses do not stay very long in the service of Air India, and young and attractive women are more inclined to look upon service in Air India as a temporary occupation than as a career. Most of them get married and leave the service.
>
> . . .
>
> **260.** In my view, no case has been made out for raising the age of retirement and in cases where the efficiency of the employee is not impaired, there is suitable provision under Regulation 47 for extending his service upto the age of

> 60. As observed above, there have been no complaints of any employee being made to retire under the provision of Clause (ii) of Regulation 46....

76. Similar demands were made before the Mahesh Tribunal which have been extracted earlier. The observations of the Mahesh Tribunal may be extracted as follows:

> There is no reason to have a different provision regarding the air hostesses in Air India. The social conditions in Europe and elsewhere are different from the social conditions in India. The work of an air hostess involves running hither and thither and flying at the same time. In case of an air hostess, her appearance, glamour and weight are important. The working hours are also odd. She has to walk up and down the aisles and has to be away from home for a number of days at a time. All this will not suit an Indian married woman and also places the category of an air hostess on an entirely different level from all those employed in a pharmaceutical concern. The work of an air hostess is more arduous. It seems, however, reasonable that the present practice of restricting the extension beyond 30 years to one year at a time need not be a part of the rules. The rule regarding extension of service in the settlement between the ACEU and the Indian Airlines of January 10, 1972 is better worded and it should be adopted by the Air India also in its entirety. It enables the General Manager to give extension for periods longer than one year at a time, if he considers it proper. The bar of retirement on marriage should remain.

77. With due respect to Justice Khosla, we find ourselves unable to agree with most of the observations that he has made and we shall give detailed reasons for the same a little later when we deal with the validity of the impugned regulations.

78. It is true that even though the period of the Awards may have expired yet it continues to be binding on the parties as an agreement. In South Indian Bank Ltd. v. A.R. Chacko MANU/SC/0175/1963 : (1964)ILLJ19SC it was held that even if the Award has ceased to be operative, it would continue to be binding on the parties as a contract. In this connection, Das Gupta, J. made the following observations:

> Quite apart from this, however, it appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of Section 19(6) it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract.

79. The same view was taken in Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works v. Muhammad Samsuddin and Anr. MANU/SC/0199/1964 : (1964)IILLJ430SC and reiterated in Life Insurance Corporation of India v. D.J. Bahadur and Ors. MANU/SC/0305/1980 : (1981)ILLJ1SC where the following observations were made:

> It is obvious from Section 18 that a settlement, like an award, is also binding. What I emphasise is that an award, adjudicatory or arbitral, and a settlement during conciliation or by agreement shall be binding because of statutory sanction. Section 19 relates to the period of operation of settlements and awards and here also it is clear that both settlements and awards, as is evident from a reading of Section 19(2) and (6), stand on the same footing.
>
> . . .
>
> The power of reasoning, the purpose of industrial jurisprudence and the logic of

the law presented with terse force in this pronouncement cannot be missed. The new contract which is created by an award continues to govern the relations between the parties till it is displaced by another contract.

. . .

The law is lucid and the justice manifest on termination notice or notice of change the award or settlement does not perish but survives to bind until reincarnation, in any modified form, in a fresh regulation of conditions of service by a settlement or award.

80. In view of the authorities indicated above assuming that the two awards are binding on the petitioners, the serious question for consideration is whether the agreement, which may be binding on the parties, would estop them from challenging the Regulations on the ground that the same are void as being violative of Articles 14 or 19 of the Constitution. It is well settled that there can be no estoppel against a statute much less against constitutional provisions. If, therefore, we hold in agreement with the argument of the petitioners that the provisions for termination and retirement are violative of Article 14 as being unreasonable and arbitrary, the Awards or the agreements confirmed by the Awards would be of no assistance to the Corporations.

8 1 . We now proceed to determine the constitutional validity of the impugned Regulations. Taking the case of A.I. AHs. it would appear that their conditions of service are governed by Regulations 46 and 47, the relevant portions of which are extracted below:

46. Retiring Age:

(i) Subject to the provision of Sub-regulation (ii) hereof, an employee shall retire from the service of the Corporation upon attaining the age of 58 years, except in the following cases when/he/she shall retire earlier:

. . .

(c) An Air Hostess, upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier;

. . .

(47) Extension of Service:

Notwithstanding anything contained in Regulation 46, the services of any employee, may, at the option of the Managing Director but on the Employee being found medically fit, be extended by one year at a time beyond the age of retirement for an aggregate period not exceeding two years except in the case of Air Hostesses and Receptionists where the period will be ten years and five years respectively.

82. A perusal of the Regulations shows that the normal age of retirement of an AH is 35 years or on marriage, if it takes place within four years of service, or on first pregnancy whichever occurs earlier. Leaving the age of retirement for the time being, let us examine the constitutional validity of the other two conditions, viz., termination if marriage takes place within four years or on first pregnancy So far as the question of

marriage within four years is concerned, we do not think that the provisions suffer from any constitutional infirmity. According to the regulations an AH starts her career between the age of 19 to 26 years. Most of the AHs are not only SSC which is the minimum qualification but possess even higher qualifications and there are very few who decide to marry immediately after entering the service. Thus, the Regulation permits an AH to marry at the age of 23 if she has joined the service at the age of 19 which is by all standards a very sound and salutary provision. Apart from improving the health of the employee, it helps a good in the promotion and boosing up of our family planning programme. Secondly, if a woman marries near about the age of 20 to 23 years, she becomes fully mature and there is every chance of such a marriage proving a success, all things being equal. Thirdly, it has been rightly pointed out to us by the Corporation that if the bar of marriage within four years of service is removed then the Corporation will have to incur huge expenditure in recruiting additional AHs either on a temporary or on ad hoc basis to replace the working AHs if they conceive and any period short of four years would be too little a time for the Corporation to phase out such an ambitious plan.

83. Having regard to these circumstances, we are unable to find any unreasonableness or arbitrariness in the provisions of the Regulations which necessitate that the AHs should not marry within four years of the service failing which their services will have to be terminated. Mr. Setalvad submitted that such a bar on marriage is an outrage on the dignity of the fair sex and is per se unreasonable. Though the argument of Mr. Setalvad is extremely attractive but having taken into consideration an overall picture of the situation and the difficulties of both the parties, we are unable to find any constitutional infirmity or any element of arbitrariness in the aforesaid provisions. The argument of Mr. Setalvad as also those who followed him on this point is, therefore, overruled.

84. Coming now to the second limb of the provisions according to which the services of AHs would stand terminated on first pregnancy, we find ourselves in complete agreement with the argument of Mr. Setalvad that this is a most unreasonable and arbitrary provision which shocks the conscience of the Court. The Regulation does not prohibit marriage after four years and if an AH after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities which may stand in the efficient discharge of the duties by the AHs. It was said that even in the early stage of pregnancy some ladies are prone to get sick due to air pressure, nausea in long flights and such other technical factors. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and The Maharashtra Maternity Rules, 1965 (these apply to both the Corporations as their Head offices are at Bombay), she is entitled to certain benefits including maternity leave. In case, however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the AHs, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional AHs. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us

that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution. In fact, as a very fair and conscientious counsel Mr. Nariman realised the inherent weakness and the apparent absurdity of the aforesaid impugned provisions and in the course of his arguments he stated that he had been able to persuade the Management to amend the Rules so as to delete 'first pregnancy' as a ground for termination of the service and would see that suitable amendments are made to Regulation 46(i)(c) in the following manner:

(a) Regulation 46(i)(c) will be amended so as to substitute for the words "or a first pregnancy", the words "or on a third pregnancy".

(b) There will be a suitably framed Regulation to provide for the above and for the following:

(i) An air hostess having reason to believe that she is pregnant will intimate this to Air India and will also elect in writing within a reasonable time whether or not to continue in service.

(ii) If such air hostess elects to continue in service on pregnancy, she shall take leave from service for a period not later than that commencing from 90 days after conception and will be entitled to resume service only after confinement (or premature termination of pregnancy) and after she is certified by the Medical Officer of AIR INDIA as being fit for resuming her duties as an air hostess after delivery or confinement or prior termination of pregnancy. The said entire period will be treated as leave without pay subject to the air hostess being entitled to maternity leave with pay as in the case of other female employees and privilege leave under the Regulations.

(iii) Every such air hostess will submit to an annual medical examination by the Medical Officer of AIR INDIA for certification of continued physical fitness or such other specifications of health and physical condition as may be prescribed by AIR INDIA in this behalf in the interest of maintenance of efficiency.

(iv) It will be clarified that the provisions relating to continuance in service on pregnancy will only be available to married women-an unmarried woman on first pregnancy will have to retire/ from service.

85. The proposed amendment seems to us to be quite reasonable but the decision of this case cannot await the amendment which may or may not be made. We would, therefore, have to give our decision regarding the constitutional validity of the said provision. Moreover, Clause (b)(iv) above, which is the proposed amendment, also suffers from the infirmity that if an unmarried woman conceives then her service would be terminated on first pregnancy. This provision also appears to us to be wholly unreasonable because apart from being revolting to all sacred human values, it fails to take into consideration cases where a woman becomes a victim of rape or other circumstances resulting in pregnancy by force or fraud for reasons beyond the control of

the woman and having gone through such a harrowing experience she has to face termination of service for no fault of hers. Furthermore, the distinction of first pregnancy of a married woman and that of an unmarried woman does not have any reasonable or rational basis and cannot be supported.

86. In General Electric Co. v. Martha V. Gilbert 50 L. Ed. 2d 343 although the majority of the Judges of the U.S. Supreme Court were of the opinion that exclusion of pregnancy did not constitute any sex discrimination in violation of Title VII nor did it amount to gender based discrimination; three judges, namely Brennan, Marshall and Stevens, JJ. dissented from this view and held that the pregnancy disability exclusion amounted to downgrading women's role in labour force. The counsel for the Corporation relied on the majority judgments of Rehnquist, Burger, Stewart, White and Powell, JJ. while the petitioners relied strongly on the dissenting opinion. We are inclined to accept the dissenting opinion which seems to take a more reasonable and rational view. Brennan, J. with whom Marshall, J. agreed, observed as follows:

> (1) the record as to the history of the employer's practices showed that the pregnancy disability exclusion stemmed from a policy that purposefully downgraded women's role in the labour force, rather than from gender-neutral risk assignment considerations.

87. Stevens, J, while endorsing the view of Brennan, J. observed thus:

> The case presented only a question of statutory construction, and (2) the employers rule placed the risk of absence caused by pregnancy in a class by itself, thus violating the statute as discriminating on the basis of sex, since it was the capacity to become pregnant which primarily differentiated the female from the male.

88. In the instant case, if the Corporation has permitted the AHs to marry after the expiry of four years then the decision to terminate the services on first pregnancy seems to be wholly inconsistent and incongruous with the concession given to the AHs by allowing them to marry. Moreover, the provision itself is so outrageous that it makes a mockery of doing justice to the AHs on the imaginative plea that pregnancy will result in a number of complications which can easily be avoided as pointed out by us earlier. Mr. Setalvad cited a number of decisions of the U.S. Supreme Court on the question of sex but most of these decisions may not be relevant because they are on the question of denial of equality of opportunity. In view of our finding, however, that AHs form a separate class from the category consisting of AFPs, these authorities would have no application particularly in view of the fact that there is some difference between Articles 14, 15 and 16 of our Constitution and the due-process-clause and the 14th Amendment of the American Constitution. This Court has held that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution. While some of the principles adumbrated by the American decisions may provide a useful guide yet this Court did not favour a close adherence to those principles while applying the same to the provisions of our Constitution, because the social conditions in this country are different. In this connection in the State of West Bengal v. Anwar Ali Sarkar MANU/SC/0033/1952 Mukherjea, J, observed thus:

> A number of American decisions have been cited before us on behalf of both parties in course of the arguments; and while a too rigid adherence to the views expressed by the Judges of the Supreme Court of America while dealing with the equal protection clause in their own Constitution may not be necessary

> or desirable for the purpose of determine the true meaning and scope of Article 14 of the Indian Constitution, it cannot be denied that the general principle enunciated in many of these cases do afford considerable help and guidance in the matter.

89. Same view was taken in a later decision of this Court in A. S. Krishna v. State of Madras [1957] SCR 399 where it was held that the due process clause in the American Constitution could not apply to our Constitution. In this connection Venkatarama Ayyar, J. observed thus:

> The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution.

90. At any rate, we shall refer only to those authorities which deal with pregnancy as amounting to per se discriminatory or arbitrary. In Clevel and Board of Education v. Jo Carol La Flour 39 L. Ed 2d 52 the U.S. Supreme Court made the following observations:

> As long as the teachers are required to give substantial advance notice of their condition, the choice of firm dates later in pregnancy would serve the boards objectives just as well, while imposing a far lesser burden on the women's exercise of constitutionally protected freedom.
>
> . . .
>
> While it might be easier for the school boards to conclusively presume that all pregnant women are unfit to teach past the fourth or fifth month or even the first month, of pregnancy, administrative convenience alone is insufficient to make valid what otherwise is a violation of due process of law. The Fourteenth Amendment requires the school boards to employ alternative administrative means, which do not so broadly infringe upon basic constitutional liberty, in support of their legitimate goals....
>
> While the regulations no doubt represent a good-faith attempt to achieve a laudable goal, they cannot pass muster under the Due Process Clause of the Fourteenth Amendment, because they employ irrebuttable presumptions that unduly penalize a female teacher for deciding to bear a child.

91. The observations made by the U.S. Supreme Court regarding the teachers fully apply to the case of the pregnant AHs. In Sharron A. Frontiero v. Filliot L. Richardson 36 L. Ed. 2d 583 the following observations were made:

> Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility.

92. What is said about the fair sex by Judges fully applies to a pregnant woman because pregnancy also is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life. Any distinction therefore, made on the ground of pregnancy cannot but be held to be extremely arbitrary.

93. In Mary Ann Turner v. Department of Employment Security 46 L. Ed. 2d 181 the U.S. Supreme Court severely criticised the maternity leave rules which required a

teacher to quit her job several months before the expected child. In this connection the court observed as follows:

> The Court held that a school board's mandatory maternity leave rule which required a teacher to quit her job several months before the expected birth of her child and prohibited her return to work until three months after child birth violated the Fourteenth Amendment...the Constitution required a more individualized approach to the question of the teacher's physical capacity to continue her employment during pregnancy and resume her duties after childbirth since "the ability of any particular pregnant women to continue at work past any fixed time in her pregnancy is very much an individual matter.
>
> It cannot be doubted that a substantial number of women are fully capable of working well into their last trimester of pregnancy and of resuming employment shortly after childbirth.
>
> We conclude that the Utah unemployment compensation statute's incorporation of a conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid under the principles of the La Fleur case.

94. We fully endorse the observations made by the U.S. Supreme Court which, in our opinion, aptly apply to the facts of the present case. By making pregnancy a bar to continuance in service of an AH the Corporation seems to have made an individualised approach to a women's physical capacity to continue her employment even after pregnancy which undoubtedly is a most unreasonable approach.

95. Similarly, very pregnant observations were made by the U.S. Supreme Court in City of Los Angeles, Department of Water and Power v. Marie Manhart 55 L Ed 2d 657 thus:

> It is now well recognized that employment decisions cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females. Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less...The question, therefore, is whether the existence or non-existence of "discrimination" is to be determined by comparison of class characteristics or individual charcteristics. A 'stereotyped' answer to that question may not be the same as the answer that the language and purpose of the statute command.
>
> . . .
>
> Even if the statutory language were less clear, the basic policy of the statute requires that we focus on fairness to individuals rather than fairness to classes. Practices that classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals.

96. These observations also apply to the bar contained in the impugned regulation against continuance of service after pregnancy. In Bombay Labour Union Representing the Workmen of International Franchises Pvt. Ltd., v. International Franchises Pvt. Ltd. (2) this Court while dealing with a rule barring married women from working in a particular concern expressed views almost similar to the views taken by the U. S. Supreme Court in the decisions referred to above in that case a particular rule required

that unmarried women were to give up service on marriage-a rule which existed in the Regulations of the Corporation also but appears to have been deleted now. In criticising the validity of this rule this Court observed as follows:

> We are not impressed by these reasons for retaining a rule of this kind. Nor do we think that because the work has to be done as a team it cannot be done by married women. We also feel that there is nothing to show that married women would necessarily be more likely to be absent than unmarried women or widows. If it is the presence of children which may be said to account for greater absenteeism among married women, that would be so more or less in the case of widows with children also. The fact that the work has got to be done as a team and presence of all those workmen is necessary, is in our opinion no disqualification so far as married women are concerned. It cannot be disputed that even unmarried women or widows are entitled to such leave as the respondent's rules provide and they would be availing themselves of these leave facilities.

97. These observations apply with equal force to the bar of pregnancy contained in the impugned Regulation.

98. It was suggested by one of the Corporations that after a woman becomes pregnant and bears children there may be lot of difficulties in her resuming service, the reason being that her husband may not permit her to work as an AH. These reasons, however do not appeal to us because such circumstances can also exist even without pregnancy in the case of a married woman and if a married woman leaves the job, the Corporation will have to make arrangements for a substitute. Moreover, whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the AH concerned and the Corporation has nothing to do with the same. These are circumstances which happen in the normal course of business and cannot be helped. Suppose fan AH dies or becomes incapacitated, it is manifest that the Corporation will have to make alternative arrangements for her substitute. In these circumstances, therefore, we are satisfied that the reasons given for imposing the bar are neither logical nor convincing.

99. In view of our recent decision explaining the scope of Article 14, it has been held that any arbitrary or unreasonable action or provision made by the State cannot be upheld. In Dwarka Prasad Laxmi Naraian v. The State of Uttar Pradesh and Ors. MANU/SC/0030/1954 this Court made the following observations:

> Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness.

100. In Maneka Gandhi v. Union of India MANU/SC/0133/1978 : [1978]2SCR621 Beg, C.J. observed as follows:

> The view I have taken above proceeds on the assumption that there are inherent or natural human rights of the individual recognised by and embodied in our Constitution....If either the reason sanctioned by the law is absent, or the procedure followed in arriving at the conclusion that such a reason exists is unreasonable, the order having the effect of deprivation or restriction must be quashed.

and Bhagwati, J. observed thus:

> Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits...Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence...It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

101. In an earlier case in E. P. Royappa v. State of Tamil Nadu and Anr. MANU/SC/0380/1973 : (1974)ILLJ172SC Similar observations were made by this Court thus:

> In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.

102. In State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors. MANU/SC/0041/1967 : [1967]3SCR28 this Court made the following observations:

> Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately.

103. The impugned provisions appear to us to be a clear case of official arbitrariness. As the impugned part of the regulation is severable from the rest of the regulation, it is not necessary for us to strike down the entire Regulation.

104. For the reasons given above, we strike down the last portion of Regulation 46(i)(c) and hold that the provision 'or on first pregnancy whichever occurs earlier' is unconstitutional, void and is violative of Article 14 of the Constitution and will, therefore, stand deleted. It will, however, be open to the Corporation to make suitable amendments in the light of our observations and on the lines indicated by Mr. Nariman in the form of draft proposals referred to earlier so as to soften the rigours of the provisions and make it just and reasonable. For instance, the rule could be suitably amended so as to terminate the services of an AH on third pregnancy provided two children are alive which would be both salutary and reasonable for two reasons. In the first place, the provision preventing third pregnancy with two existing children would be in the larger interest of the health of the AH concerned as also for the good upbringing of the children. Secondly, as indicated above while dealing with the rule regarding prohibition of marriage within four years, same considerations would apply to a bar of third pregnancy where two children are already there because when the entire world is faced with the problem of population explosion it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of over population which, if not controlled, may lead to serious social and economic problems throughout the world.

105. The next provision which has been the subject matter of serious controversy

between the parties, is the one contained in Regulation 46(i)(c). According to this provision, the normal age of retirement of an AH is 35 years which may at the option of the Managing Director be extended to 45 years subject to other conditions being satisfied. A similar regulation is to be found in the Rules made by the I.A.C. to which we shall refer hereafter. The question of fixation of retirement age of an AH is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like. In Imperial Chemical Industries (India) Pvt. Ltd. v. The Workmen MANU/SC/0204/1960 : (1960)IILLJ716SC this Court pointed out that in fixing the age of retirement, changing the terms and conditions of service, the determination of the age on industry-cum-region basis would undoubtedly be a relevant factor. In this connection, Gajendragadkar, J. made the following further observations:

> There is no doubt that in fixing the age of retirement no hard and fast rule can be laid down. The decision on the question would always depend on a proper assessment of the relevant factors and may conceivably vary from case to case.

106. Similarly, in an earlier case in Guest, Keen, Williams Pvt. Ltd. v. P.J. Sterling and Ors. MANU/SC/0144/1959 : (1959)IILLJ405SC , this Court made the following observations:

> In fixing the age of superannuation industrial tribunals have to take into account several relevant factors. What is the nature of the work assigned to the employees in the course of their employment....What is generally the practice prevailing in the industry in the past in the matter of retiring its employees ? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute.

107. It is, therefore, manifest that the factors to be considered must be relevant and bear a close nexus to the nature of the organisation and the duties of the employees. Where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny.

108. The stand taken by A.I. regarding this particular provision is that there are several reasons which prompted the Management to persuade the Government to make this Regulation. In the first place, it was contended that in view of the arduous and strenuous work that the AHs have to put in an early date of retirement is in the best interest of their efficiency and also in the interest of their health. Another reason advanced by A.I. is that several years experience of the working of AHs shows that quite a large number of them retire even before they reach the age of 35; hence a lower age for retirement is fixed in their case under the Regulation with a provision for extension in suitable cases. These reasons are no doubt understandable and prima facie appear to be somewhat sound. We are, however, not quite sure if the premises on the basis of which these arguments have been put forward are really correct. In the present times with advancing medical technology it may not be very correct to say that a woman loses her normal faculties or that her efficiency is impaired at the age of 35, 40 or 45, years. It is difficult to generalise a proposition like this which will have to vary from individual to individual. On the other hand, there may be cases where an AFP may be of so weak and unhealthy a Constitution that he may not be able to function upto the age of 58, which is the age of retirement of AFP according to the Regulalion. As, however, the distinction regarding the age of retirement made by the Regulation between AHs and AFPs cannot be said to be discriminatory because AHs have been held by us to be a

separate class yet we will have to examine the provision from other points of view as well. Another line of reasoning which has been placed before us and which smacks of a most perverse and morbid approach is to be found in para 9 of the counter-affidavit in vol. II of the Paperbook where the following averments have been made:

> With reference to paragraph 30 of the Affidavit, I repeat that Air Hostesses are recruited for providing attractive and pleasing service to passengers in a highly competitive field and consequently stress is laid on their appearance, youth, glamour and charm.

109. We are rather surprised that similar arguments made before the two Tribunals seem to have found favour with them because at page 204 (para 256) the Khosla Award having been carried away by the arguments of the Corporation made the following observations:

> They have to deal with passengers of various temperaments, and a young and attractive air hostess is able to cope with difficult or awkward situations more competently and more easily than an older person with less personal prepossession.

110. We fail to see how a young and attractive AH would be able to cope with difficult or awkward situations more effectively than others because smartness or beauty cannot be the only hallmark of competency. Similar observations were made by the Mahesh Tribunal in the following terms.

> The management claims this on the ground that the cabin crew service has to be attractive to passengers.

111. The argument that AHs should be young and attractive and should possess pleasing manners seems to suggest that AHs should by their sweet smiles and pleasant behaviour entertain and look after the passengers which cannot be done by women of older age. This argument seems to us to be based on pure speculation and an artificial understanding of the qualities of the fair sex and, if we may say so, it amounts to an open insult to the institution of our sacred womanhood. Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother, a wife, a companion and a social worker. It is idle to contend that young women with pleasing manners should be employed so as to act as show pieces in order to cater to the varied tastes of the passengers when in fact older women with greater experience and goodwill can look after the comforts of the passengers much better than a young woman can. Even if the Corporation had been swayed or governed by these considerations, it must immediately banish or efface the same from its approach. More particularly such observations coming from a prestigious Corporation like A.I. appear to be in bad taste and is proof positive of denigration of the role of women and a demonstration of male chauvinism and verily involves nay discloses an element of unfavourable bias against the fair sex which is palpably unreasonable and smacks of pure official arbitrariness. The observations of Sastri, C.J. in Kathi Raning Rawat's case (supra) may be extracted thus:

> All legislative differentiation is not necessarily discriminatory....Discrimination this involves an element of unfavourable bias...If such bias is disclosed...it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition.

112. At any rate, it is not possible for us to entertain such an argument which must be

rejected outright. In fact, there is no substantial and weighty reason for upholding the impugned provisions and this part of the line of reasoning adopted by the respondent-Corporations cannot be countenanced.

113. In the same token it was contended by the counsel for the petitioners that whereas the retirement age in a number of other international airlines is 50 to 55 years, there is no reasonable basis for keeping the retirement age of A.I. AHs at 35, extendable to 45 years. In proof of this argument a chart was submitted before us of the various international airlines to show that the age of retirement of AHs of those airlines was much more than those of AHs employed by A.I.

114. In the first place, it is difficult to agree that the service conditions which apply to foreign airlines, should pro tanto apply to the employees of A.I. because the conditions of service including the age of retirement depend on various geographical and economic factors. Sometimes a small country may be rich enough or in view of limited number of flights or small population, it can afford to keep the AHs in service for a longer time. Local influences, social conditions and legal or political pressures may account for the terms and conditions to be fixed in the case of the AHs employed by international airlines other than A.I. In view of these diverse factors, it is not possible to easily infer unfavourable treatment to the petitioners because certain more favourable conditions of service are offered by international airlines of other countries. For instance, the retirement age of AHs in KLM (Royal Dutch) and Ghana airlines is 50 years whereas in the case of Swiss airlines it is 57 and in the case of Malaysian airlines it is 45 years. In the case of Singapore airlines the retirement age of Check stewardess is 45 years. Similarly, in other airlines like Austrian, Germanair, Lufthansa and Nigeria Airways the retirement age of female AHs is 55 whereas in the case of Air International, U.T.A. (France) and Air France it is 50. In case of Sudan Airways and British Airways the retirement age is 60 whereas in Nordair (Canada) and Transair (Canada) airlines the age is 65 years.

115. A perusal of the scheme of retirement age given above would clearly show that several considerations weigh with the Governments or Corporations concerned in fixing the retirement age which would naturally differ from country to country having regard to the various factors mentioned above. In fact, a similar grievance seems to have been made before the Mahesh Tribunal which also pointed out that the social conditions in Europe and other countries being different, the same rules could not apply to A.I. In this connection, the Tribunal observed thus:

> There is no reason to have a different provision regarding the air hostesses in Air India. The social conditions in Europe and elsewhere are different from the social conditions in India.

116. In this view of the matter the argument on this score must be rejected. This Court has pointed out that there cannot be any cut and dried formula for determining the age of retirement which is to be linked with various circumstances and a variety of factors.

117. We might further mention that even before the Mahesh Tribunal, the stand taken by the AHs was merely that their age of retirement should be extended to 45 years and they never put forward or suggested any claim to increase the retirement age to 58 which clearly shows that their present claim is not merely belated but an afterthought particularly because the Mahesh Tribunal was dealing with this particular grievance and if the AHs were really serious in getting their retirement age equated with that of the AFPs, i.e. 58, they would not have failed to put forward this specific claim before the

Tribunal. This is yet another ground on which the claim of the AHs to be retired at the age of 58 cannot be entertained because as we have already shown the Award binds the parties even though its period may have expired.

118. This brings us now to the question as to whether or not the impugned regulation suffers from any constitutional infirmity as it stands. The fixation of the age of retirement of AHs who fall within a special class depends on various factors which have to be taken into consideration by the employers. In the instant case, the Corporations have placed good material before us to show some justification for keeping the age of retirement at 35 years (extendable upto 45 years) but the regulation seems to us to arm the Managing Director with uncanalized and unguided discretion to extend the age of AHs at his option which appears to us to suffer from the vice of excessive delegation of powers. It is true that a discretionary power may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles norms the power has to be struck down as being violative of Article 14.

119. The doctrine of a provision suffering from the vice of excessive delegation of power has been explained and discussed in several decisions of this Court. In Anwar Ali Sarkar's case (supra) which may justly be regarded as the locus classicus on the subject, Fazal Ali, J. (as he then was) clearly observed as follows:

> but the second criticism cannot be so easily met, since an Act which gives uncontrolled authority to discriminate cannot but be hit by Article 14 and it will be no answer simply to say that the legislature having more or less the unlimited power to delegate has merely exercised that power.
>
> . . .
>
> Secondly, the Act itself does not state that public interest and administrative exigencies will provide the occasion for its application. Lastly, the discrimination involved in the application of the Act is too evident to be explained away.

and Mahajan, J. agreeing with the same expressed his views thus:

> The present statute suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of the Special Act. The Act has left this matter entirely to the unregulated discretion of the provincial government.

Mukherjea, J. observed thus:

> In the case before us the language of Section 5(1) is perfectly clear and free from any ambiguity. It vests an unrestricted discretion in the State Government to direct any cases or classes of cases to be tried by the Special Court in accordance with the procedure laid down in the Act....I am definitely of opinion that the necessity of a speedier trial is too vague, uncertain and elusive a criterion to form a rational basis for the discriminations made....But the question is: how is this necessity of speedier trial to be determined ? Not by reference to the nature of the offences or the circumstances under which or the area in which they are committed, nor even by reference to any peculiarities or

> antecedents of the offenders themselves, but the selection is left to the absolute and unfettered discretion of the executive government with nothing in the law to guide or control its action. This is not a reasonable classification at all but an arbitrary selection.

and Chandrasekhara Aiyar, J. elucidated the law thus:

> If the Act does not state what exactly are the offences which in its opinion need a speedier trial and why it is so considered, a mere statement in general words of the object sought to be achieved, as we find in this case, is of no avail because the classification, if any, is illusive or evasive. The policy or idea behind the classification should at least be adumbrated, if not stated, so that the Court which has to decide on the constitutionality might be seized of something on which it could base its view about the propriety of the enactment from the standpoint of discrimination or equal protection. Any arbitrary division or ridge will render the equal protection clause moribund or lifeless.
>
> Apart from the absence of any reasonable or rational classification, we have in this case the additional feature of a carte blanche being given to the State Government to send any offences or cases for trial by a Special Court.

and Bose, J. held thus:

> It is the differentiation which matters; the singling out of cases or groups of cases, or even of offences or classes of offences, of a kind fraught with the most serious consequences to the individuals concerned, for special, and what some would regard as peculiar, treatment.

120. The five Judges whose decisions we have extracted constituted the majority decision of the Bench.

121. In Lala Hari Chand Sard v. Mizo District Council and Anr. MANU/SC/0058/1966 : [1967]1SCR1012 it was highlighted that where a Regulation does not contain any principles or standard for the exercise of the executive power, it was a bad regulation as being violative of Article 14. In this connection, the Court observed as follows:

> A perusal of Regulation shows that it nowhere provides any principles or standards on which the Executive Committee has to act in granting or refusing to grant the licence...There being no principles or standards laid down in the Regulation there are obviously no restraints or limits within which the power of the Executive Committee to refuse to grant or renew a licence is to be exercised...The power of refusal is thus left entirely unguided and untrammelled.
>
> . . .
>
> A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable. Section 3 of the Regulation is one such provision and is therefore liable to be struck down as violative of Article 19(1)(g).

122. To the same effect is another decision of this Court in State of Mysore v. S.R. Jayaram MANU/SC/0362/1967 : [1968]1SCR349 where the following observations were made:

> The Rules are silent on the question as to how the Government is to find out the suitability of a candidate for a particular cadre...It follows that under the latter part of Rule 9(2) it is open to the Government to say at its sweet will that a candidate is more suitable for a particular cadre and to deprive him of his opportunity to join the cadre for which he indicated his preference.
>
> . . .
>
> We hold that the latter part of Rule 9(2) gives the Government an arbitrary power of ignoring the just claims of successful candidates for recruitment to offices under the State. It is violative of Articles 14 and 16(1) of the Constitution and must be struck down.

123. Here also the Rules were struck down because no principle or guidelines were given by the statute to determine the suitability of a particular candidate.

124. Regulation 46(i)(c) provides that an AH would retire on attaining the age of 35 years or on marriage if it takes place within four years of service. The last limb of this provision relating to first pregnancy in the case of AHs has already been struck down by us and the remaining Sub-clause (c) has to be read with Regulation 47 which provides that the services of any employee may, at the option of the Managing Director, on the employee being found medically fit, be extended by one year beyond the age of retirement, the aggregate period not exceeding two years. This provision applies to employees who retire at the age of 58. So far as the AHs are concerned, under the Regulation the discretion is to be exercised by the Managing Director to extend the period upto ten years. In other words, the spirit of the Regulation is that an AH, if medically fit, is likely to continue upto the age of 45 by yearly extensions given by the Managing Director. Unfortunately, however, the real intention of the makers of the Regulations has not been carried out because the Managing Directors has been given an uncontrolled, unguided and absolute discretion to extend or not to extend the period of retirement in the case of AHs after 35 years. The words 'at the option' are wide enough to allow the Managing Director to exercise his discretion in favour of one AH and not in favour of the other which may result in discrimination. The Regulation does not provide any guidelines, rules, or principles which may govern the exercise of the discretion by the Managing Director. Similarly, there is also no provision in the Regulation requiring the authorities to give reason for refusing to extend the period of retirement of AHs. The provision does not even give any right of appeal to higher authorities against the order passed by the Managing Director. Under the provision, as it stands, the extension of the retirement of an AH is entirely at the mercy and sweet will of the Managing Director. The conferment of such a wide and uncontrolled power on the Managing Director is clearly violative of Article 14, as the provision suffers from the vice of excessive delegation of powers.

125. For these reasons, therefore, we have no alternative but to strike down as invalid that part of Regulation 47 which gives option to the Managing Director to extend the service of an AH. The effect of striking down this provision would be that an AH, unless the provision is suitably amended to bring it in comfirmity with the provisions of Article 14 would continue to retire at the age of 45 years and the Managing Director would be bound to grant yearly extensions as a matter of course, for a period of ten years if the AH is found to be medically fit. This will prevent the Managing Director from discriminating between one AH and Anr..

126. So far as the case of the AHs employed by I.A.C. is concerned, the same reasons

which we have detailed in the case of AHs employed by A.I. would apply with slight modifications which we shall indicate hereafter. So far as the organisation of AHs employed by I.A.C. is concerned, the cabin crew consisting of males are known as flight stewards (F.S.) and those consisting of females as AHs. There are 105 posts of F.Ss and 517 of AHs. It is also not disputed that job functions of F.S. and the AHs are the same and in fact there are some flights in which the cabin crew consists only of AHs. But like the A,I. AHs, the mode of recruitment, conditions of service, etc., are quite different in the case of F.Ss and AHs. The I.A.C. also contended that FSs and AHs are two different categories with different avenues of promotion. As in the case of A.I. AHs, a declaration under the 1976 Act has also been made in the case of IAC, AHs.

127. The promotional avenues so far as the AHs are concerned are: AH, Dy. Chief AH, and Chief AH. It is also alleged by the Management and not disputed by the petitioners, that FSs and AHs have got separate seniority and their promotion is made according to the separate seniority of each. Further, while the AHs have to do a minimum period of three years, FSs are required to serve for five years. Gratuity is payable to AHs after completion of 5 years' service whereas in the case of FSs it is payable after completion of 15 years of service. Similarly, retiral concessional passage is given to AHs after completion of four years of service whereas to FSs it is given after completion of seven years of service. It may be specially noticed that while long service memento is given to an AH after completion of ten years of service, to a FS it is given after completion of 25 years of service. Retirement benefit is given to an AH on completion of 15 years of service whereas to an F.S. it is given after 30 years of service. Finally, retiral benefits are given to an AH after completion of 10 years of service but in the case of F.S. after twenty years of Service. These retiral benefits are really meant to compensate the AHs because they have to retire at the age of 35, extendable up to 40, though the F.Ss retire at the age of 58 years.

128. We might stress at the risk of repetition that in State of Mysore v. M.N. Krishna Murthy and Ors. MANU/SC/0600/1972 : (1973)ILLJ42SC this Court clearly held that where classes of service are different, inequality of promotional avenues was legally permissible. In this connection, Beg, J. speaking for the Court observed as follows:

> "If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable.

129. Thus, there can be no doubt that the case of I.A.C. AHs is exactly similar to the case of A.I. AHs and hence the complaint of discrimination made by the petitioners has no substance.

130. The next argument is almost the same as in the case of A.I. AHs, namely, retirement on first pregnancy and on marriage within four years and retirement at 35 years extendable to 40 years.

131. So far as the age of retirement and termination of service on first pregnancy is concerned a short history of the Rules made by the I.A.C. may be given. Regulation 12 as it stood may be extracted thus:

> Flying Crew shall be retained in the service of the Corporation only for so long as they remain medically fit for flying duties....Further, an Air hostess shall retire from the service of Corporation on her attaining the age of 30 years or when she gets married whichever is earlier. An unmarried Air Hostess may, however, in the interest of the Corporation be retained in the service of the Corporation upto the age of 35 years with the approval of the General Manager.

132. It is obvious that under this Rule an AH had to retire at the age of 30 years or when she got married and an unmarried AH could continue upto 35 years. The rule was obviously unjust and discriminatory and was therefore amended by a Notification published in the Gazette of India dated 13.7.1968. The amended rule ran thus:

> An Air hostess shall retire from the service of the Corporation on her attaining the age of 30 years or when she gets married, whichever is earlier. The General Manager, may however, retain in the service an unmarried Air Hostess upto the age of 35 years.

133. This amendment continued the bar of marriage but gave discretion to the General Manager to retain an unmarried AH upto 35 years. In order, however, to bring the provision in line with the A.I. Regulation, the I.A.C. Regulation was further amended by a Notification dated 12.4.80 published in Part III, Section 4, Gazette of India by which para 3 of Regulation 12 was substituted thus:

> An Air Hostess shall retire from the service of the Corporation upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.

134. It appears that by a Settlement dated 10-1-1972, which was accepted and relied upon by the Mahesh Tribunal the following clause was incorporated in the Rule:

> An Air Hostess shall retire from the service of the Corporation on her attaining the age of 30 years or when she gets married, whichever is earlier. The General Manager may, however, retain in service an unmarried air hostess upto the age of 40 years.

135. The first part of this Regulation has become redundant in view of the Notification dated 12.4.80, referred to above, but the latter part which gives the General Manager a blanket power to retain an AH till the age of 40 years, still remains. As, however, the bar of marriage is gone, the Rules of 1972 which empower the General Manager to retain an AH in service will have to be read as a power to retain an AH upto the age of 40 years. Thus, the Notification as also the Rules suffer from two serious constitutional infirmities which are present in the case of Regulation 46 framed by the A.I. The clauses regarding retirement and pregnancy will have to be held as unconstitutional and therefore struck down. Secondly, for the reasons that we have given in the case of A.I. AHs that Regulation 46 contains an unguided and uncontrolled power and therefore suffers from the vice of excessive delegation of powers, on a parity of reasoning the power conferred on the General Manager to retain an AH upto the age of 40 years will have to be struck down as invalid because it does not lay down any guidelines or principles. Furthermore, as the cases of A.I. AHs and I.A.C. AHs are identical, an extension upto the age 45 in the case of one and 40 in the case of other, amounts to discrimination inter se in the same class of AHs and must be struck down on that ground also.

136. The result of our striking down these provisions is that like A.I. AHs, I.A.C. AHs also would be entitled to their period of retirement being extended upto 45 years until a suitable amendment is made by the Management in the light of the observations made by us.

137. For the reasons given above, therefore, the writ petitions are allowed in part as indicated in the judgment and the Transfer case is disposed of accordingly. So long as the Rule of I.A.C. is not amended the General Manager will continue to extend the age

of retirement of I.A.C. AHs upto 45 years subject to their being found medically fit. In the circumstances of the case, there will be no order as to costs.