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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 19th April, 2012*

+ **W.P.(C) No.7636/2010**

ROHTAS SINGH SAINI

..... Petitioner

Through: Mr. R. K. Bali, Adv.

versus

SECRETARY GENERAL TNAI

..... Respondent

Through: Mr. Romy Chacko & Mr. Varun
Mudgal, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the petitioner has sought to direct the respondent to implement the recommendations of the Sixth Pay Commission with effect from 01.01.2006 and to pay arrears to the petitioner accordingly.

2. The petitioner worked with the respondent for 34 years and retired from the service as Officer Supervisor on 31.07.2010. On 09.09.2009, the petitioner gave a representation to respondent requesting for implementation of the recommendations of Sixth Pay Commission and he was drawing the salary in the pay scale of ₹ 4500-125-7000. Through representation, he requested for implementation of the revised pay scale of ₹ 9300-34800 with grade pay of ₹ 4200.

3. Subsequently, the respondent implemented the recommendations of the Pay Commission from September, 2009 and implemented the revised pay scale of ₹ 9300-34800 with grade pay of ₹ 4200.
4. On 15.02.2010, the petitioner made representation to the respondent, for granting of the extension, after retirement on 31.07.2010. In his representation, petitioner expressed his gratitude for the implementation of the revised pay scale of ₹ 9300-34800 with grade pay of ₹ 4200 from September, 2009.
5. On 29.04.2010, the petitioner again made representation to the respondent and requested for payment of the arrears with effect from 01.01.2006. The respondent in the meeting dated 09.10.2009 decided that the present financial status of the TNAI headquarters was satisfactory for the implementation of the Sixth Pay Commission recommendations. In the report dated 10.06.2009, recorded that the Sixth Pay Commission recommendations was to be accepted. Regarding the arrears, it was decided that it can be given with effect from 01.01.2006 and will be given in 5-6 installments.
6. Mr.R.K.Bali, learned counsel appearing on behalf of the petitioner submits that the petitioner retired from the service of respondent on 31.07.2010, but till date, neither any extension nor salary arrears were granted to the petitioner as per the recommendations of Sixth Pay Commission with effect from 01.01.2006.
7. Respondent filed response and preliminary objection taken is that

respondent is a private body of Trained Nurses, therefore it is neither a State nor any other authority within the meaning of Article 12 or 226 of the Constitution.

8. Mr.Romi Chacko, learned counsel for respondent submits that the respondent is a society registered under the Societies Registration Act. The members of the respondent society are trained nurses working in various hospitals in the country and that the respondent society was constituted for the welfare of the members. The respondent society is not financially, functionally or administratively controlled by the State or Central Government. It is a purely private society. It is neither an agency nor an instrumentality of the Government.

9. The respondent being a private person is not amenable to writ jurisdiction under Article 226 of the Constitution. Therefore, instant petition deserves to be dismissed. The respondent has conceded to the extent that the Sixth Pay Commission Recommendations, though does not apply to the respondent, however as a good gesture, on 09.09.2010, it was decided to grant pay scales as per Sixth Pay Commission recommendations with effect from September, 2009. It was specifically decided that no arrears will be paid due to financial constraints.

10. To strengthen his contention, learned counsel for respondent relied upon **Federal Bank Ltd v. Sagar Thomas & Ors : 2003(10) SCC 733** wherein the Apex Court has observed as under:-

“18. From the decisions referred to above, the position that emerges is that a writ petition under

Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part

of the Bank. That being the position, the appeal deserves to be allowed.”

11. The law has been settled in **Ajay Hasia v. Shalid Mujib Sehravardi: 1981 (1) SCC 722** that the instrumentality of agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society. On consideration of the relevant factors whether the company or society is an instrumentality or agency of the Government, so as to come within the meaning of the expression ‘authority’ in Article 12 of the Indian Constitution. It is then observed that in **Ramana Dayaram Shetty v. International Airport Authority of India: 1979(3) SCC 489** that was noted with approval in ***Ajay Hasia (supra)*** and quoted the tests laid down as under:-

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor .. whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

12. While considering to be a 'State Authority' within the meaning of Article 12 of the Indian Constitution, whether in the light of the cumulative facts as established, the body is financially, functionally, & administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12 of the Constitution. On the other hand, when control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

13. In the case in hand, respondent is a private society registered under the Societies Act and meant for the welfare of its members. It is neither financially nor functionally or administratively dominated by or under control of the Government. None of the principle as mentioned above is applicable as the respondent is concerned. Therefore, with no stretch of imagination the respondent can be said an 'Authority' under Article 12 of the Constitution.

14. The Constitution Bench in **Zee Telefilms Ltd & Anr v. Union of**

India (UOI) & Ors: AIR 2005 SC 2677 again reiterated and affirmed the tests laid down in *Ajay Hasia (sura)*.

15. In view of above discussion and settled legal position, I have no hesitation to hold that respondent is not a ‘State or Authority’ under Article 12 of the Constitution. Therefore, instant petition is not maintainable as the relief sought therein cannot be granted.

16. Accordingly, W.P. (C) No. 7636/2010 is dismissed.

17. No order as to costs.

SURESH KAIT, J

APRIL 19, 2012

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