

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

1. CWP-19790-2019

Deepak Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

2. CWP-19994-2019

Parveen Kumar and another

... Petitioners

Versus

State of Haryana and another

... Respondents

Reserved on : 22.07.2019

Date of decision : 29.07.2019

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Sunil Kumar Nehra, Advocate
for the petitioners in CWP-19790-2019.

Mr.Suresh Kumar Kaushik, Advocate with
Mr. Lochan Gupta, Advocate
for the petitioners in CWP-19994-2019.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid two writ petitions, therefore, these are taken up together and disposed of by a common judgment. However, in order to maintain clarity the facts of CWP-19994-2019 have been taken into consideration.

Scale Stenographers and Clerk respectively in Haryana Shehri Vikas Pradhikaran (HSVP)/ HUDA. The petitioners in CWP-19790-2019 are working as Assistant Secretary in Haryana State Agriculture Marketing Board, Panchkula.

3. The State of Haryana has framed Rules called Haryana Civil Services (Executive Branch) Rules, 2008 (hereinafter referred to as 'Rules' for brevity sake) for recruitment to the cadre of Haryana Civil Services (Executive Branch). It reads as under:-

“10. Selection of Candidates for Register A-II. -(1) The Commission shall invite applications from amongst the eligible members of Group-C Service, which shall be submitted to the Commission by the Heads of Departments of Haryana through their Administrative Secretaries in the prescribed Form-I, alongwith summary of Annual Confidential Reports grading and integrity certificates duly signed by the recommending authorities.

(2) The name of only such a member of Group-C Service shall be submitted under the provisions of sub-rule (1) who-

- (a) (i) has completed eight years continuous Government Service;*
- (ii) has not attained the age of fifty years on the first day of November immediately preceding the date of submission of names by the concerned authorities;*
- (iii) is not facing disciplinary proceedings and against whom action is not being contemplated;*
- and*
- (iv) is clear from vigilance angle;*
- (b) is a Graduate from a recognized University.”*

4. The Chief Secretary has sent a communication to the Secretary, Haryana Public Service Commission, Panchkula, on 30.05.2019 informing him that the State Government had decided to fill up 18 vacancies of HCS (Executive Branch) from Register A-II of members of Group 'C' Service of the year 2019 as per Rule 10 of Haryana Civil Service (Executive Branch), Rules, 2008. The petitioners also wanted to participate in the selection process. They submitted their applications. The Chief Administrator, HSVP, Panchkula, forwarded the applications of the petitioners in CWP-19994-2019, on 27.06.2019. The Additional Chief Secretary to Government of Haryana, Irrigation and Farmer Welfare Department had sent communication dated 03.07.2019 to the Chief Administrator, Haryana State Agriculture Marketing Board informing him that the proposal sent by him was not covered as per the instructions issued by the Chief Secretary to Government of Haryana on 24.06.2019, in CWP-19790-2019. It is in these circumstances the present writ petitions have been filed.

5. The petitioners have challenged Rule 10 of the Haryana Civil Services (Executive Branch) Rules, 2008 amended on 04.01.2019 to the extent that the service rendered in Board / Corporation by the employees is not being counted as 8 years continuous government service and also for quashing the order dated 03.07.2019.

6. The recruitment to the Haryana Civil Services (Executive Branch) is governed under the Haryana Civil Services (Executive Branch) Rules, 2008. The amendment was carried out in the Rules on 04.01.2019 as quoted hereinabove. It is evident from the language employed in Rule 10 that the Commission is required to invite applications from amongst the eligible members of Group-C Service, which are to be submitted to the

Commission by the Heads of Departments of Haryana through their Administrative Secretaries in the prescribed Form-I, along with summary of Annual Confidential Reports, grading and integrity certificates. The names of only such members of Group 'C' services are required to be submitted under the provision of sub rule (i) who have completed eight years continuous Government Service and (ii) have not attained the age of fifty years on the first date of November immediately preceding the date of submission of names by the concerned authorities.

7. The petitioners are serving in Haryana Shehri Vikas Pradhikaran (HSVP)/HUDA and in Haryana State Agriculture Marketing Board, Panchkula. These institutions cannot be termed as Government Departments. These institutions have been created by separate statutes. The employees serving in Haryana Shehri Vikas Pradhikaran (HSVP)/HUDA and Haryana State Agriculture Marketing Board, Panchkula, cannot be termed as government servants. The Government servants constitute a distinct class. The employees working in Corporations, Co-operative Societies, even owned or controlled by the State cannot be termed as employees of the Government.

8. It is for the employer to decide the sources of recruitment. In the instant case, the State has restricted the recruitment to the government servant alone, which is within its competence.

9. The Recruitment and Promotion Rules, i.e. Haryana Civil Services (Executive Branch) Rules, 2008 have been framed under the Article 309 of the Constitution of India, restricting the mode of recruitment to the employees who had completed eight years continuous government service. Article 309 only applies to the government servants and not

employees serving in the Corporations, Board and Co-operative Societies etc. Article 309 provides for the recruitment and conditions of service of persons serving in the Union or in the State. Article 309 provides to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State. The petitioners are not discharging their duties in the affairs of the State. They are not holding any civil post under the State. The conditions of service are governed by their respective rules applicable to them. The Haryana State Agriculture Marketing Board, Panchkula and Haryana Shehri Vikas Pradhikaran have different personalities, entities and independent existence.

10. Their Lordships of the Hon'ble Supreme Court in ***Valjibhai Muljibhai Soneji and another vs. The State of Bombay (now Gujarat) and others, AIR 1963 Supreme Court 1890*** have held that the funds of a State Transport Corporation consist only of the moneys which have been provided by the State Govt., they cannot be regarded as part of the public revenue. No doubt, the source of the funds would be public revenue but the funds themselves belong to the Corporation and are held by it as its own property. The Corporation is not a department of Government but is a separate legal entity and, therefore, money coming out of public revenue whether invested, loaned or granted to it would change their original character and become the funds or assets of the Corporation when they are invested in or transferred or loaned to it. Their Lordships have held as under:-

“10. The expression 'company' has been defined thus in Section 3(e) of the Land Acquisition Act :

“the expression 'Company' means a Company registered under the [Indian Companies Act](#), 1882 or under the (British) Companies Acts, 1882 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes a society registered under the [Societies Registration Act](#) 1860, and a registered society within the meaning of the [Co-operative Societies Act](#), 1912.”

The State Transport Corporation is not registered under any [Companies Act](#) nor has it been incorporated under Royal Charter or Letters Patent. Nor again, is it a society registered under the [Societies Registration Act](#), 1860. It is not incorporated by an Act of the Parliament of the United Kingdom; but it is incorporated by an "Indian Law". In this connection it is necessary to refer to certain legislation. The Central legislature enacted the [Road Transport Corporation Act](#), 1948, which received the assent of the Governor-General on April 16, 1948, and came into force in the erstwhile province of Bombay by virtue of a notification made shortly thereafter. [Section 2](#) of the Act defines "Corporation" to mean a Road Transport Corporation appointed by the Provincial Government in pursuance of this Act. [Section 4](#) of the Act provides for the appointment of a Road Transport Corporation by the Provincial Government. In exercise of those powers the State of Bombay appointed the State Road Transport Corporation. [Section 4](#) of the Act further provides that a Corporation appointed by a Provincial Government in pursuance of this Act shall be a body corporate having perpetual succession and common seal and may sue and be sued by or under relevant provincial law. On May 26, 1950, the State legislature of Bombay enacted the Bombay State Road Transport Act, 1950 (25 of 1950). But it is not clear as to

when it came into force. However, nothing turns on the date on which it came into force. The fact, however, is not disputed that this Act was actually put into force. By Act 64 of 1950 Parliament repealed the Road Transport Corporation Act, 1948, and replaced it by an entirely new law. The earlier Act consisted only of 7 sections but the new law is an elaborate piece of legislature dealing with the establishment of Road Transport Corporations in the States, their incorporation, constitution, powers and duties, finance, accounts, audit etc. Section 3 of that Act deals with the establishment of Road Transport Corporations in the States and Section 4 provides that every corporation shall be a body corporate by the name notified under Section 3, having perpetual succession and a common seal and shall sue and be sued by the said name. Section 47 of the Act contains special provisions relating to Bombay and reads thus :

"(1) The body known as the Bombay State Road Transport Corporation and the Board thereof, referred to in the notification of the Government of Bombay, No. 1780/5, dated the 16th November, 1949 (hereinafter referred to as 'the existing Corporation' and 'Board' respectively) shall, notwithstanding any defect in, or invalidity of, the enactment or order under which they were constituted, be deemed for all purposes to have been validly constituted as if all the provisions of the said notification had been included and enacted in this section and this section had been in force continuously on and from the said date, and accordingly -

(a) all action by, and all transactions with, the existing Corporation or Board, including any action or transaction by which any property, asset or right was

acquired or any liability or obligation whether by contract or otherwise, was incurred, shall be deemed to have been validly and lawfully taken or done; and

(b) no suit, prosecution or other legal proceeding shall lie against the Government of Bombay or any member of the Board or any officer or servant of the existing Corporation in respect of any action taken by, or in relation to the setting up of, the existing Corporation or Board merely on the ground of any defect in, or invalidity of, the enactment or order under which the existing Corporation or Board was constituted.

(2) On the establishment of a Corporation under [section 3](#) in the State of Bombay (hereinafter referred to as 'the New Corporation')

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(a) the existing Corporation and Board shall be deemed to be dissolved and shall cease to function;

(b) all property and assets vesting in the existing Corporation shall vest in the new Corporation;

(c) all rights, liabilities and obligations of the existing Corporation, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations, respectively, of the new Corporation; and

(d) all licences and permits granted to all contracts made with, and all instruments executed on behalf of the existing Corporation or Board shall be deemed to have been granted to, made with, or

executed on behalf of, the new Corporation and shall have effect accordingly."

It will be clear from these provisions that the old Corporation was recognised as having always had valid legal (sic) deemed to have been properly incorporated. On the establishment of a Corporation under [Section 3](#) of the Act of 1950 the old Corporation was dissolved. But all action by and transaction with the old Corporation including any action or transaction by which any property or asset etc., was acquired by or for the old Corporation was deemed to have been validly or lawfully taken or done. It is common ground that in consequence of the passing of the Act of 1950 the Bombay Act of 1950 stood impliedly repealed and was in fact expressly repealed by the Bombay Act 29 of 1955. The provisions which we have set out above clearly show that the State Transport Corporation having been incorporated by an Indian law is a Company. Since, however, the compensation to be awarded for the acquisition is to be paid only by the Corporation and no portion of it was paid by the Government, could it be said that the terms of the proviso to sub-section (1) of [section 6](#) have been satisfied ? It is contended by the learned Attorney-General on behalf of the respondent that the funds of the Corporation have themselves come out of public revenue inasmuch as they consist of moneys provided by the State of Bombay. Even assuming the funds of the Corporation consist only of the moneys which have been provided by the State of Bombay it is difficult to appreciate how they could be regarded as part of the public revenue. No doubt, the source of the funds would be public revenue but the funds themselves belong to the Corporation and are held by it as its own property. They cannot, therefore, be regarded as 'public revenue' in any sense. It was then said by reference to

several provisions of the Act that the Government is entitled to exercise control over the Corporation, that the profits earned by the Corporation would go to the Government, that if the Corporation was wound up all its assets would also go to the Government and that, therefore, the Corporation could be regarded as nothing more than a limb of the Government. Even though that may be so the Corporation is certainly not a department of Government but is a separate legal entity and, therefore, moneys coming out of public revenues whether invested, loaned or granted to it would change their original character and become the funds or assets of the Corporation when they are invested in or transferred or loaned to it. While, therefore, the terms of the proviso could be said to have been satisfied because compensation is to be paid by the Corporation, the acquisition will be bad because the provisions of Part VII of the Land Acquisition Act have not been complied with. In order to get out of his difficulty the learned Attorney-General argued that the State Transport Corporation is a local authority”.

11. Their Lordships in ***The Andhra Pradesh State Road Transport Corporation vs. The Income tax Officer, AIR 1964 Supreme Court, 1486*** have held that the Andhra Pradesh State Road Transport Corporation has a personality of its own and this personality is distinct from that of the State or other shareholders. The trading activity carried on by a corporation is not a trading activity carried on by the State departmentally nor is it a trading activity carried on by State through its agents appointed in that behalf. Their Lordships have held as under:-

“17. Reading the three clauses together, one consideration emerges beyond all doubt and that is that the property as well as the income in respect of which

exemption is claimed under cl. (1), must be the property and income of the State, and so, the same question faces us again: is the income derived by the appellant from its transport activities the income of the State? If a trade or business is carried on by the State departmentally and income is derived from it, there would be no difficulty in holding that the said income is the income of the State. If a trade or business is carried on by a State through its agents appointed exclusively for that purpose, and the agents carry it on entirely on behalf of the State and not on their own account, there would be no difficulty in holding that the income made from such trade or business is the income of the State. But difficulties arise when we are dealing with trade or business carried on by a corporation established by a State by issuing a notification under the relevant provisions of the Act. The corporation, though statutory, has a personality of its own and this personality is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the corporation or carries on the business with which the corporation is concerned. The doctrine that a corporation has a separate legal entity of its own is so firmly rooted in our notions derived from common law that it is hardly necessary to deal with it elaborately; and so, prima facie, the income derived by the appellant from its trading activity cannot be claimed by the State which is one of the shareholders of the corporation.

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19. *In this connection, we may usefully refer to the observations made by Lord Denning in Tamlin v. Hannaford, (1950)1 KB 18: "In the eye of the law," said Lord Denning, "the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or*

privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government." These observations tend to show that a trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf."

12. Their Lordships of the Hon'ble Supreme Court in ***Dr.S.L.Agarwal vs. The General Manager, Hindustan Steel Ltd., 1970(1) Supreme Court Cases 177*** have held that Article 311 would not apply to the employees of Hindustan Steel Ltd. They were employees of a Corporation. They were not holders of civil post under the union. It was held that Hindustan Steel Ltd. was not a department of the Government nor were the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. Their Lordships have held as under:-

"10. On the other hand, in [State of Bihar v. Union of India](#) and Another, 1970(1) SCC 67, Hindustan Steel Limited was not held to be a "State" for purposes of [Article 131](#). The question whether Hindustan Steel Limited was subject to the jurisdiction of the High Court under Articles 226 and 227 was left open. In dealing with the above -conclusion, reference was made to the incorporation of Hindustan Steel Limited as an independent company and thus a distinct entity. In [Praga Tools Corporation v. C. V. Imanuel and Others, 1996\(1\) SC 585](#), it was pointed out that a company in

which 88 % of -,the capital was subscribed by the Union and the State Governments could not be regarded as equivalent to Government because being registered under the [Companies Act](#) it had a separate legal existence and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. Similar views were also expressed in the High Courts. *In Lachmi and Others v. Military Secretary to the Government of Bihar*, AIR 1956 Pat 398 the expression "civil post under the Union or the-State" was held to mean that the civil post must be in the control of the State and that it must be open to the State to 'abolish the post or regulate the conditions of service. Although the case concerned a Mali employed in Raj Bhavan, it was held that it was not a post under the State even -though the funds of the State were made available for paying his salary. In a later case *Subodh Ranjan Ghosh v. Sindhri Fertilizers and Chemicals Ltd.*, AIR 1956 Pat 10, the employees of the Sindhri Fertilizers were held not entitled to the protection of [Article 311](#). Our brother Ramaswami (then Chief Justice) noticed that the corporation was completely owned by the Union Government; that the Directors were to be appointed by the President of India -who could also issue directions. He nevertheless held that in the eye of law the company was a separate entity and had a separate legal existence. In our judgment the decision in the Patna case is correct. It has also the support of a decision re-reported in *Ram Babu Rathaur v. Divisional Manager*, AIR 1961 All 502, *Life Insurance Corporation of India* and another in *Damodar Valley Corporation v. Provat Roy*, LX CWN 1023. Our brother Ramaswami relied in particular upon an English case *Tamlin v. Hennafor*d, (1950) 1 KBD 18. In that case it was held in relation to a business that although the

minister was really incharge, the corporation was different from the Crown and the services of the corporation were not civil services. Justice P. B. Mukherjee of the Calcutta High Court, to whose judgment we referred earlier distinguished the English case by pointing out certain differences between the Corporation in that case and Hindustan Steel Limited. He pointed out that (a) in the English Corporation no shareholders were required to, subscribe the capital or to have a voice in the affair, (b) the capital was raised by borrowing and not by issuance of shares, (c) the loss fell upon the consolidated fund and (d) the corporation was non-profit making. In our judgment these differences rather accentuate than diminish the applicability of the principle laid down in the English case to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the corporation in the English case. We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of "a civil post under the Union" as stated in the article. The appellant was not entitled to the protection of [Article 311](#). The High Court was therefore right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs."

post nor are they discharging duties in the affairs of the State. The recruitment has been restricted only to specified class of employees serving as government employees. There is an intelligible differentia to distinguish the employees of the State Government *vis-a-vis* the Public Corporations.

14. Their Lordships of the Hon'ble Supreme Court in ***Dr.Gurjeewan Garewal (Mrs.) vs. Dr.Sumitra Dash (Mrs.) and others, (2004) 5 Supreme Court Cases 263***, have explained the term 'Civil Post'. Their Lordships have held Civil Post comprehends persons employed in civil capacities under Union of India or a State. Mere payment of salary from the State fund or certain control by the State over the post is not determinative. Post Graduate Institute of Medical Education & Research, Chandigarh was held to be a separate entity. No master and servant relationship exists between the State and employees of PGIMER. Thus, employees of PGIMER were not holders of civil post under the State so as to be entitled to protection of Article 311. Their Lordships have held as under:-

“14. Reverting back to the case in hand, [Section 4](#) of The Post Graduate Institute of Medical Education & Research, [Chandigarh Act](#), 1966 [PGIMER Act] says that PGIMER is a 'body corporate which is having a perpetual succession and a common seal with power. This clearly provides that PGIMER is a separate entity in itself. Admittedly, the employees of any authority which is a legal entity separate from the State, cannot claim to be holders of civil posts under the State in order to attract the protection of [Article 311](#). There is also no master and servant relationship between the State and an employee of PGIMER, which is a separate legal entity in itself. It is a settled position that a person cannot be said to have the status of holding a 'civil post'

under the State merely because his salary is paid from the State fund or that the State exercises a certain amount of control over the post. The PGIMER Act might have provided for some control over the institution but this doesn't mean that the same is a State for the purpose of [Article 311](#). Therefore the employees of PGIMER cannot avail the protection of [Article 311](#) since the same can be claimed only by the members of a civil service of the Union or of All India Service or of a civil service of a State or by persons who hold a civil post under the Union or a State. PGIMER cannot be treated as a 'State' for the purpose of [Article 311](#) and the employees therein are not holding any 'civil post'. In result, the 1st Respondent is not holding a 'civil post' and she cannot claim the guard of [Article 311](#).”

15. In the case in hand, there is no master and servant relationship between the petitioners and the State Government. They are employees of separate entities governed by the different set of rules.

16. Their Lordships of the Hon'ble Supreme Court in ***Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Ltd. Haldia and others, (2005) 7 Supreme Court Cases 764*** have held that employees of Government corporations are not entitled to protection of Article 311. Their Lordships have held as under:-

*“12. As far as the status of the appellant is concerned, it must be stated that Mr Rao, Senior Advocate fairly conceded at the hearing of the appeal and the writ petition that the appellant is not governed by **Article 311 of the Constitution** since he cannot be said to be “civil servant”. In this connection, it will be profitable to refer to a decision of the Constitution Bench of this Court in ***S.L Agarwal (Dr.) v. G.M, Hindustan Steel Ltd. (Hindustan Steel Ltd. I) (1970) 1 SCC 177***. In that case,*

*A was appointed as Assistant Surgeon by the Board of Directors of the Corporation for one year. After completion of the probation period, he was employed on contract basis and his services were terminated in accordance with the terms of the contract. He filed a writ petition in the High Court contending that his services were wrongly terminated which was violative of **Article 311 of the Constitution**. The Corporation contended that Article 311 was not applicable to him as he was employed by the Corporation and he neither belonged to civil service of the Union nor held a civil post under the Union.*

13. Upholding the objection and considering the ambit and scope of Article 311, this Court held that an employee of a Corporation cannot be said to have held a “civil post” and, therefore, not entitled to protection of Article 311. According to the Court, the Corporation could not be said to be a “department of the Government” and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the appellant was not entitled to invoke Article 311. Hindustan Steel Ltd. (I) has been followed by this Court in several cases. (See [Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi](#) 1975 1 SCC 421, [Som Prakash Rekhi v. Union of India](#) 1981 1 SCC 449, [A.L Kalra v. Project & Equipment Corpn. of India Ltd.](#) 1984 3 SCC 316, [Tekraj Vasandi v. Union of India](#) 1988 1 SCC 236, [Pyare Lal Sharma v. Managing Director](#) 1989 3 SCC 448, [State Bank Of India v. S. Vijaya Kumar.](#) 1990 4 SCC 481 and [Satinder Singh Arora v. State Bank of Patiala](#) 1992 Supp 2 SCC 224.)

17. Their Lordships of the Hon'ble Supreme Court in ***Union Public Service Commission vs. Girish Jayanti Lal Vaghela and others, (2006) 2***

Supreme Court Cases 482 have held that in the case of a regular

government servant there is undoubtedly a relationship of master and servant but on account of constitutional provisions like Articles 16, 309 and 311 his position is quite different from a private employee. Thus, employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules framed by the Government in exercise of power conferred by Article 309 of the Constitution. Their Lordships have held as under:-

“14. A private employer in India enjoys almost a complete freedom to select and appoint anyone he likes and there is no statutory provision mandating advertisement of the post or selection being made strictly on merit, even where some kind of competitive examination is held. A private employer has absolute liberty to appoint a less meritorious person. Except those who are covered by the definition of "workman" and are governed by the provisions of [Industrial Disputes Act](#) or any such allied enactment, an employee working in a private establishment normally does not enjoy any statutory protection regarding his tenure of service.

15. Though in [State of Assam v. Kanak Chandra Dutta](#) 1967 (1) SCR 679 and in the Constitution Bench decision in [State of Gujarat v. Raman Lal Keshav Lal](#) 1963(2) SCC 33 the decision of House of Lords in [Short vs. J. W. Henderson](#) 1946 174LT417 and other English cases were not referred to but it appears that this Court adopted almost the same test for ascertaining whether a person holds a civil post under the Union or a State. But in England these tests were adopted in order to find out whether there was a relationship of master and servant

and particularly in the context of private employment. In our country there is a substantial difference between an employee working in a private establishment and a Government servant on account of the aforesaid constitutional provisions. Therefore, the indicia laid down in [State of Assam v. Kanak Chandra Dutta](#) (supra) and [State of Gujarat v. Raman Lal Keshav Lal](#) (supra) cannot be the only tests for determining whether a person is holder of a civil post under the Union or the State. In the case of a regular Government servant there is undoubtedly a relationship of master and servant but on account of constitutional provisions like Articles 16, 309 and 311 his position is quite different from a private employee.

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19. It, therefore, follows that employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by [Article 309](#) of the Constitution and the service rules can be unilaterally altered by the rule making authority, namely, the Government.”

18. Their Lordships of the Hon'ble Supreme Court in ***Indu Shekhar Singh and others vs. State of U.P. and others, (2006) 8 Supreme Court Cases 129*** have held that the statutory authorities, it is trite, are not and cannot be treated to be the departments of the Government. Their employees are governed by the rules applicable to them. Their services are not protected under Article 311 of the Constitution. Their Lordships have

held as under:-

“39. A difference between transfer and deputation would be immaterial where an appointment by transfer is permissible, particularly in an organization like CBI where personnel are drawn from different sources by way of deputation. It is one thing to say that a deputationist may be regarded as having been appointed on transfer when the deputation is from one department of the Government to another department, but it would be another thing to say that employees are recruited by different Statutory Authorities in terms of different statutory rules. In a given case, the source of recruitment, the qualification, etc., may be different in different organizations. The Statutory Authorities, it is trite, are not and cannot be treated to be the departments of the Government. Their employees are governed by the rules applicable to them. Their services are not protected under [Article 311](#) of the Constitution.”

19. Their Lordships of the Hon'ble Supreme Court in **Kendriya Vidyalaya Sangathan vs. Arunkumar Madhavrao Sinddhaye, (2007) 1 Supreme Court Cases 283**, have held that Article 311 was not applicable to employees of Kendriya Vidyalaya Sangathan.

20. Accordingly, Rule 10 of Haryana Civil Service (Executive Branch) Rules, 2008 is valid. Thus there is no merit in these petitions and the same are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 29, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No