



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

% **Date of order :24th August, 2023**

+ **W.P.(C) 8804/2021, CM APPL. 27409/2021 & CM APPL.
11307/2023 (on behalf of respondent)**

DINESH SATIJA Petitioner

Through: In-person

versus

SECRETARY AIR FORCE GROUP INSURANCE SOCIETY

..... Respondent

Through: Mr.J.Rajesh, Advocate alongwith
Mr.Lokesh Dutta, AR

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner praying for the following:-

" A. Quash or set aside the impugned order dated 11.08.2021 & 22.07.2021 in respect of Promotion Exam for the Post of Manager.

B. Direct the respondent to announce promotion exam for all the vacant posts of Manager and allow the Petitioner a fair chance to compete only along with other employees who were eligible to compete for such posts when these posts fell vacant.

C. Issue a Writ of Mandamus, or Certiorari or any other Writ/Directions/Order as may be deemed just and proper in the facts and circumstances of the case.

D. Award Cost."



2. A bare perusal of the record reveals that the petitioner joined the respondent (hereinafter 'respondent society') as an assistant programmer on 1st August, 2000 at a pay grade of Rs. 5500-175-9000.

2. Upon his appointment, petitioner was given assured career progression (herein after "ACP"), despite which he was not granted promotional opportunities, however, the same opportunities were provided to individuals junior to the petitioner.

3. In the year 2017, due to change in terms and conditions of Service of respondent society's employees, the petitioner was granted his first promotion to the post of assistant manager.

4. Further, there stood four vacancies for the position of Manager between the period of April 2020 and September 2021, with two positions solely for internal recruitment. However, candidates applying internally could only apply for one out of the two vacancies.

5. The petitioner made several representations, however, due to non-response; the petitioner approached the appropriate authority and was apprised that he is not allowed to appear in the exam of Manager of any of the sections than the EDP due to a difference of Cadre.

6. Aggrieved by the same, the petitioner has preferred this instant petition.

7. Consequently, the coordinate bench of this Court *vide* order dated 23rd August 2021, directed the respondent society to allow the petitioner to appear only in the examination to be conducted for the post of Manager (EDP) however the respondent society was directed to not declare the result



of the said examination till the next hearing.

8. In the subsequent hearing, *vide* order dated 25th November, 2021 the Court analysed the examination result, which disclosed that the petitioner had failed the examination held for the post of Manager (EDP). In the said order, the respondent was directed to keep one post of Manager (General) vacant till the present petition is decided.

9. At the outset, learned counsel appearing on behalf of the respondent society argued that the present petition is not maintainable on the ground that respondent society is a private body, not falling within the ambit of Article 12 of the Constitution of India by placing reliance on case titled ***Balwan Singh Madad v. Union of India, 2006 SCC OnLine P&H 599*** decided by the Punjab and Haryana High Court. The same principle has been followed by a Division Bench of this Court in ***Chet Ram v. Army Group Insurance Fund, W.P. (C) 2139/2010***.

10. It is additionally submitted that a Division Bench of this Court, settled the issue pertaining to whether or not the respondent society is a State in their decision of ***Ravi Khokhar v. Union of India and Ors., 2023 SCC OnLine Del 540***.

11. It is further submitted that the petitioner only participated in the examination held for the post of Manager (EDP) consequently the petitioner cannot be granted permission to participate in the examination for the post of Manager (EDP) and Manager (General).

12. The petitioner appearing in person addressed the issue of maintainability by placing reliance on judgments such as ***Air Force Group***



Insurance Society Vs Ex Sgt Gajender Sing (Appeal No. A-07/244) which avers that Air Force Group Insurance Society cannot be treated as a private body. Petitioner also submitted case titled *Sagarika Singh Vs. UOI & Ors* (WP(C) No. 3850/2010) wherein armed forces security funds are discussed in detail in order to analyse their function as a public body.

13. It was further submitted that he was denied promotional opportunities despite completing 21 years of service, which has resulted in a violation of his right to equality.

14. It is therefore submitted that the impugned order dated 11th August, 2021 is in violation of Article 14 of the Constitution of India and hence is liable to be set aside.

15. Therefore it is submitted that the present petition is maintainable.

16. Heard the learned counsel appearing on behalf of the parties and perused the record.

17. Before delving into the case on merits, this Court is of the opinion that the issue surrounding the maintainability of the petition needs to be addressed.

18. As per the material on record it is evident that the petitioner had made several representations to the respondent society however due to non-response, the petitioner was constrained to approach this Court. The respondent society submitted that the instant petition is not maintainable as the respondent society is a private body, not possessing any public character, therefore not falling under the ambit of Article 12 of the Constitution of India. Therefore, at this juncture it becomes imperative to analyse the settled



legal principles governing the scope of Article 12 of the Constitution of India. The said Article has been reproduced and reads as follows:

“12. In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

19. Article 12 defines what constitutes 'State', usually encompassing Public authorities, Parliament of India and the Law making body of every of all the States. The activity of any of these organs can be tested under the steady gaze of the Courts in the event that the major privileges are abused. The definition of "Other Authorities" under the said Article has been interpreted by various judicial forums often causing a lot of problems, due to change in judicial opinions from time to time. A few capabilities are likewise released through independent bodies existing external the departmental capabilities. Consequently, what is the personality of these bodies made under the various rules, and whether they fall inside the domain importance of Article 12 was an issue of discussion for a long while. For this situation, the inquiry in regard to the situation with the non-legal body was at last chosen.

20. At this juncture, it becomes imperative to analyse the settled legal principles governing the scope of Article 12 of the Constitution of India with regards to the nature of bodies that may fall under it.

21. The Hon'ble Supreme Court, in the case titled ***Chander Mohan Khanna v. National Council of Educational Research and Training***,



(1991) 4 SCC 578 has determined the nature of parties that may fall within the ambit of Article 12 of the Constitution of India. It was held as follows:

“3. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression “State”. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as “State” under Article 12. The State control, however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is “State”. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as “State” within the meaning of Article 12 of the Constitution.”

22. The Hon’ble Supreme Court in the case of **Chander Mohan Khanna v. National Council of Educational Research and Training (Supra)** held that the scope of Article 12 shouldn’t be expanded to such an extent that every autonomous body falls under its ambit. A mere connection to the government does not comprise ‘State’ as under Article 12 of the Constitution of India. Financial contribution as well as State control is not determinative of whether the said body would fall under Article 12 of the Constitution of India.

23. Similarly, the Hon’ble Supreme Court while taking bearing in mind



the above stated principle in, extensively discussed if an authority or society would fall under the purview Article 12 in case titled ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111***. It was held that in order to determine if an authority or society would fall under the purview Article 12, it would be pertinent to examine the power of the government over the body and even then, analyse if the said power is inescapable.

24. On perusal of the aforementioned judgments and submissions, it now becomes pertinent to examine whether the present petition is maintainable in view of the claim that the duty discharged by the respondent society is private in its nature.

25. Learned counsel appearing on behalf of the respondent relied on case titled ***Ravi Khokhar v. Union of India and Ors (Supra)*** in order to establish that the respondent society does not discharge any public function hence making it a private body. Relevant paragraphs of the said judgment are reproduced as under:

“36. In the aforesaid view of the matter, we draw the conclusion that the Societies under which petitioners are employed are self-funded societies, which are formed and running for the benefit of those employees of Air Force who are its members. The petitioners have not placed any document on record to establish that these Societies are financially run by the Central Government. Even though petitioners have claimed that deduction of amount of their contribution to the Society is permitted by the Ministry of Finance and also that the land to run the Society is allocated by the Government, we find that purpose to provide aid in the form of sanction and land to the



Society is to enable it to function smoothly to the benefit of its members. However, this does not establish that these functionaries are being run by Air Force or the Central Government. These societies are running only to the benefit of its members and their functioning does not in any way affect the Air Force. These Societies are not financially, functionally and administratively dominated by or under the control of Central Government. Such control must be particular to the body in question and must be pervasive in order to establish it to fall within the ambit of 'State' as mentioned in Article 12 of the Constitution of India.

37. We accordingly conclude and hold that the petitioners have not been able to establish before this Court that the competent authority, against which relief is sought, fall within the ambit of 'State' as stipulated in Article 12 of the Constitution of India."

26. It now becomes pertinent to examine whether the duties discharged by the respondent society are public or private in nature. As mentioned in the aforesaid paragraphs, it becomes evident that the respondent society has been established in the year 1975 by the members of the IAF itself. The primary objective of the respondent society is to mobilise the savings of Air Force personnel past, present and their dependants and suitably invest the same and distribute the income so earned among its depositors.

27. Bearing in mind the aforesaid, it becomes crystal clear that the respondent society is discharging a private duty, as the benefits of the same are being availed by the past/present members of the IAF and not the community at large. Using the interests of the community can be a useful to determine whether an organisation/institution/body is discharging public or private functions.



28. Consequently, involvement of the ‘State’ in any organisation/institution/body is also an important determinant of the public or private functions discharged by them. In the event that the body is under state regulations, it goes beyond the narrow barriers of private duty.

29. The maintainability of a writ petition against a body discharging private functions has been analysed at length by different Courts. It is a settled legal principle that a writ petition against a body constituting private character would not be maintainable however, a writ can lie against a “person” provided it discharges a public function or performs a “public statutory duty”. Even though defining the term public function can be rather intricate, it would be equitable to equate the functions with that of the State in a sovereign capacity. An application under Article 226 of the Constitution of India is maintainable against a body discharging duties or functions which are public in nature. The public duty may be statutory or otherwise, and if it is otherwise, it must be demonstrated that the entity or person is obligated to the public in accordance with public law. Similar to this, it must be proven that the organization or individual sought to accomplish the same goal for the benefit of the whole public or a specific segment of it, and the public must recognise their right to do so in order to determine the discharge of a public role.

27. In view of the aforesaid discussions, this Court is of the view that the functions discharged by the respondent society, do not constitute public functions and hence, do not fall under the ambit of Article 12 of the Constitution of India. The contention that the society has been constituted in



lieu of the armed forces is not sufficient to establish a direct nexus with the government or the fact that the duties discharged by it are similar to that of the State in a sovereign capacity.

28. The Division Bench of this Court in case titled ***Ravi Khokhar v. Union of India and Ors (Supra)*** observed that the respondent society has been established by employees of the Air Force and the benefits are availed by the members of the Air Force itself. The respondent society is not funded or controlled by the Central Government in any manner. Since the respondent society stands to be a self-funded society, it does not fall within the ambit of Article 12 of the Constitution of India.

29. In the view of the above, the instant petition is not maintainable as the respondent society does not fall under Article 12 of the Constitution of India since the functions performed by it do not constitute public functions and there is established independence from the government in terms of financial control and public benefit.

30. Based on the aforementioned discussions, this writ petition is accordingly dismissed. Pending applications, if any, also stand dismissed.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 24, 2023

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Click here to check corrigendum, if any