



2023:DHC:8973



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

% **Pronounced on: 15th December, 2023**

+ **W.P.(C) 6042/2018 & CM APPL. 23439/2018**

ANIL KUMAR ANAND

..... Petitioner

Through: In-person

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocates for R-
1/UOI
Mr.Sanjay K.Yadav, Advocate for
Bank of Baroda
Mr.Pallav Shishodia, Sr. Advocate
with Mr.Sanjeev Kumar, Advocate
for UTI
Mr.Rajiv Kapur and Mr.Akshit
Kapur, Advocates for R-4/SBI

+ **W.P.(C) 7114/2015, CM APPL. 5893/2018 & CM APPL.
41211/2019**

ANIL KUMAR ANAND

..... Petitioner

Through: In-person

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Rakesh Kumar, CGSC with
Mr.Sunil, Advocate for R-1/UOI

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By: GAURAV SHARMA
Signing Date: 21.12.2023
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W.P.(C) 6042/2018 and 5 other connected matters

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Mr.Sanjeev Kumar, Mr.H.K.Naik and
Mr.Ajay Amrit Raj, Advocates for R-
2, 3 and 5
Mr.Rajiv Kapur and Mr.Akshit
Kapur, Advocates for R-4/SBI

+ W.P.(C) 5283/2016, CM APPL. 43992/2017 & CM APPL.
45909/2018

ANIL KUMAR ANAND Petitioner

Through: In-person

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocates for R-
1/UIO
Mr.Sanjay K.Yadav, Advocate for
Bank of Baroda
Mr.Pallav Shishodia, Sr. Advocate
with Mr.Sanjeev Kumar, Advocate
for UTI
Mr.Rajiv Kapur and Mr.Akshit
Kapur, Advocates for R-4/SBI

+ W.P.(C) 950/2020

ANIL KUMAR ANAND Petitioner

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UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocates for R-
1/IOI
Mr.Sanjay K.Yadav, Advocate for
Bank of Baroda
Mr.Rajesh K.Gautam, Mr.Anant
Gautam, Mr.Sumit Sharma,
Ms.Anani Achumi, Mr.Dinesh
Sharma and Ms.Shivani Sagar,
Advocates for PNB
Mr.Sanjeev Kumar, Mr.H.K.Naik and
Mr.Ajay Amrit Raj, Advocates for
UTI
Mr.Rajiv Kapur and Mr.Akshit
Kapur, Advocates for R-4/SBI

+ W.P.(C) 2564/2020

ANIL KUMAR ANAND

..... Petitioner

Through: In-person

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocates for R-
1/IOI
Mr.Sanjay K.Yadav, Advocate for
Bank of Baroda
Mr.Sanjiv Kumar, Mr.H.K.Naik and
Mr.Ajay Amrit Raj, Advocates for
UTI
Mr.Rajiv Kapur and Mr.Akshit



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Kapur, Advocates for R-4/SBI

+ W.P.(C) 965/2020, CM APPL. 3075/2020, CM APPL. 43896/2021 &
CM APPL. 7903/2022

ANIL KUMAR ANAND

..... Petitioner

Through: In-person

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Vijay Joshi, CGSC for R-1/UOI
Mr.Sanjiv Kumar, Mr.H.K.Naik and
Mr.Ajay Amrit Raj, Advocates for
UTI
Mr.Rajnish K.Jha, Advocate for Bank
of Baroda
Mr.Rajesh K.Gautam, Mr.Anant
Gautam, Mr.Sumit Sharma,
Ms.Anani Achumi, Mr.Dinesh
Sharma and Ms.Shivani Sagar,
Advocates for PNB
Mr.Rajiv Kapur and Mr.Akshit
Kapur, Advocates for R-4/SBI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant batch of writ petitions, details of which have been tabulated below have been filed on behalf of the petitioner seeking the reliefs as follows:

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W.P.(C) 6042/2018 and 5 other connected matters

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S. NO.	CASE NO.	RELIEF SOUGHT
1	W.P. (C) 7114/2015	a. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to quash the report of the review DPC dated January 09, 2008. b. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondent to promote the petitioner to Grade 'C' in Scale-III, with retrospective effect from January 2, 1995 for the panel year 1994-95 and to consider the petitioner for further promotions to higher Grades, with retrospective effect, as per the Promotion Policy and instructions issued by the Government of India and to give all the consequential benefits with due seniority. c. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondent to treat the petitioner as deemed to have been promoted to Grade 'C' in Scale-III, with retrospective effect from January 2, 1995 and to consider the petitioner for further promotions to higher Grades with retrospective effect up to the 'Executive Director' level in Scale-VII, as per the Promotion Policy and the instructions issued by the Central Government of India, through its O.M. No. 38012/6/83-East(SCT) dated 01-11-1990 and the O.M. No. 36012/18/95-Esst(Res.) Pt:II, dated the 13th August, 1997 and to give all the consequential benefits to the petitioner with due Seniority. d. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondent to consider and promote the petitioner and include petitioner's name in appropriate select lists (as assailed in this writ petition), for his promotion to Grade 'D' in Scale-IV, Grade 'E' in Scale-V, Grade 'F' in scale-VI and to the 'Executive Director' (ED) Grade in Scale-VII, with retrospective effect, from the date, the other officers junior to the petitioner, have been promoted to such higher Grades, as per the instructions



	issued by the Central Government of India, through its O.M. No. 38012/6/83-East(SCT) dated 01-11-1990 and the O.M. No. 36012/18/95- Esst(Res.) Pt:II, dated the 13th August, 1997 and the judgment dated January 9, 2015 pronounced by the Hon'ble Supreme Court of India in the Civil Appeal no. 209 of 2015, in the matter of Chairman & Managing Director of Central Bank of India & Ors. Versus Central Bank of India SC/ST Employees Welfare Association and Ors. and to give all the consequential benefits since January 2, 1995 with due seniority to the petitioner. e. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to issue appropriate Office Order/s to restore and fix the Seniority of the petitioner equivalent to Grades 'F' at 'President' / 'Group President' level and to consider the petitioner for promotion and elevation to the 'Executive Director' Grade in Scale-VII. f. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the 160 respondents for granting parity of pay to the petitioner with retrospective effect and to fix the emoluments of the petitioner as are being paid to Mr. Amandeep S Chopra, Mr. Imtaiyazur Rahman, Mr. Priya Ranjan, Mr Sanjay Dongre, Ms. Swati Kulkarni, Mr. Debashish Mohanty, Mr Linga Pandlan S., Mr. Surajit Saha, Mr. Vivek Maheshwari and to other officers, who were junior to the petitioner. g. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents for payment of arrears of pay to the petitioner, being the difference of the total emoluments, as have been paid after January 2, 1995 to Mr. Amandeep S Chopra, Mr. Imtaiyazur Rahman, Mr. Anoop Bhasker, Mr. Jaideep Bhattacharya, Mr. Mr. Priya Ranjan, Mr Sanjay Dongre, Ms. Swati Kulkarni, Mr. Debashish Mohanty, Mr Linga Pandian S., Mr. Surajit Saha, Mr. Vivek Maheshwari and to other officers, who were
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	junior to the petitioner, including those, who had wrongly superseded the petitioner in promotion to Grade 'C', in gross violation of the Promotion policy, flouting the rule of seniority cum merit, in the panel year 1994-95, 1995-96 and 1996-97. h. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to set aside and quash the entire allotment of ESOPs being arbitrary and hence illegal and directions may be issued to the respondent to re-allot the ESOPs, on a fair and transparent criterion, as is normally done in Public Sector Undertakings and as per the norms as may be approved by the Government of India. i. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to allot equal number of ESOPs to the 'petitioner, as have been allotted to Mr. Amandeep S Chopra, Mr. Imtaiyazur Rahman, Mr. Anoop Bhasker, Mr. Jaideep Bhattacharya, Mr. Sanjay Dongre, Ms. Swati Kulkarni, Mr. Debashish Mohanty, Mr. Linga Pandian S., Mr. Surajit Saha, Mr. Vivek Maheshwari and to other officers, who were junior to the petitioner. j. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the State Bank of India, the Punjab National Bank, the Bank of Baroda and the Life Insurance Corporation of India to cause 'Trustee Company' and 'UTI AMC' to comply with the judgment delivered on August 18, 2006 in CWP 1067/1999 and to promote the petitioner to higher Grades up to the 'Executive Director' Grade in Scale-VII, with retrospective effect as prayed in this writ petition and to pay the arrears of pay to the petitioner, being the difference of total emoluments and other monetary benefits, as have been paid to Mr. Amandeep S Chopra, Mr. Imtaiyazur Rahman, Mr. Anoop Bhasker, Mr. Jaideep Bhattacharya, Mr. Gaurav Suri, Mr. Suraj Kaeley, Mr. Mr. Priya Ranjan, Mr. Sanjay Dongre, Ms. Swati Kulkarni, Mr. Debashish Mohanty, Mr. Linga Pandian S., Mr. Surajit Saha, Mr. Vivek Maheshwari and to other officers, who were junior
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	to the petitioner, including those, who had wrongly superseded the petitioner in promotion to Grade 'C, in gross violation of the Promotion policy, flouting the rule of seniority cum merit, in the panel year 1994-95, 1995-96 and 1996-97. k. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the 'Trustee Company' to comply with the judgment which was delivered on August 18, 2006 in CWP 1067/1999 and to promote the petitioner to higher Grades up to the 'Executive Director' Grade in Scale-VII, with retrospective effect as prayed in this writ petition and to pay the arrears of pay to the petitioner, being the difference of total emoluments and other monetary benefits, as have been paid to other officers. l. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to consider the entire period of extraordinary leave / absence of the petitioner from 17/04/2002 to 07/07/2006, as counting for increment, pension, retirement and other benefits. m. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to set aside and quash the Administrative Circular no. 12/2014-15 dated November 15, 2014, being arbitrary and illegal. n. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to restore the terms and conditions of petitioner's service with his Seniority, Grade and Grade based pay, with all other benefits and privileges, as were available to the petitioner, while he was working with the erstwhile UTI, in line with the UTI (Staff) Rules, as mandated under the provisions of the UTI (Transfer of Undertaking and Repeal) Act, 2002. o. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to set aside and quash the Administration Circular no 6/ 2013-14 dated July 29, 2013 being arbitrary and illegal. p. issue a writ of mandamus or cerciorary or any other
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	<i>appropriate writ, order or direction to set aside and quash the warning letter no. UT/0- DHRD-2784/IR-5(4)/2015-16 dated 22/6/2015 and to expunge the aforesaid warning from the service record of the petitioner.</i> <i>q. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the 'Trustee Company' the Specified Company of the Unit Trust of India, in this matter, as may be deemed fit in the facts and circumstances of this case.</i> <i>r. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to restore the facility of accrual of 18 days sick leave from April 01, 2004 onwards in terms of Section 6 of the Repeal Act and declare the Administration Circular no. 52 dated 31/3/2004 in respect of withdrawal of the facility of accrual of sick leave, as illegal.</i> <i>s. issue a writ of nnandamus or cerciorary or any other appropriate writ, order or direction to the respondents for extending medical benefits for all the diseases for treatment, hospitalization and surgery with 100% reimbursement, for the petitioner, his wife and his mother and all such facilities ought to continue, as it is, under the medical benefit scheme of the respondents and the Medical Assistant Fund, while the petitioner is in employment and even after his retirement, till all the beneficiaries i.e. the petitioner, his wife and petitioner's mother, are alive.</i> <i>t. issue a writ of mandamus or cerciorary or any Other appropriate writ, order or direction to the respondents to allow the petitioner to undergo the Bariatric Laparoscopic Sleeve Gastrectomy (Sleeve) surgery, under the medical benefit scheme of the respondents and the Medical Assistance Fund.</i> <i>u. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to constitute a managing committee for the contributory Medical</i>
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	<i>Assistance Fund (MAF), which shall manage the fund and provide financial help to the contributors, in a transparent and fair manner.</i> <i>v. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the Government of India to cause the four Sponsors, the Trustee Company and the UTI AMC Ltd. to restore all the privileges and benefits etc. of the petitioner, as were available to the petitioner as on February 1, 2003, as mandated under the provisions of the UTI (Transfer of Undertaking and Repeal) Act, 2002.</i> <i>w. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to terminate the Transfer Agreement dated January 15, 2003 for non-consummation of the transactions contemplated and provided for in the II UTI (Transfer of Undertaking & Repeal) Act, 2002.</i> <i>x. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the Government of India and four subscribers, State Bank of India, Punjab National Bank, Bank of Baroda and the Life Insurance Corporation of India, to take control of the internal affairs and operations of the respondent UTI AMC Ltd. and to restore order and transparency in the organisation.</i> <i>y. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to set aside and quash the sale of 26% stake to M/s T Rowe Price Group, in both the 'Specified Companies' established under the provisions of UTI (Transfer of Undertaking and Repeal) Act, 2002, as illegal and void-ab-initio.</i> <i>z. issue a writ of mandamus or cerciorary or any other appropriate writ, order or direction to the respondents to remove the two directors appointed by M/s T Rowe Price Group, from the Board of the Directors of the UTI Asset Management Company Limited.</i> <i>aa. issue a writ of cerciorary or any other appropriate writ, order or direction to set aside and quash the appointment of</i>
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		<i>Head HR Mr. Priya Ranjan being arbitrary and hence illegal.</i> <i>bb. Issue a writ of certiorari or any other appropriate writ, order or direction to the respondents to replace the Ombudsman under the Whistle Blower Policy of the UTI AMC.</i> <i>cc. Award cost and incidentals in favour of the petitioner and against the respondents.</i> <i>dd. Pass any other appropriate orders, striking down of the rules and policies of the respondents as mentioned in the ground and body of the writ petition and any other circulars /s, which fall foul of constitutional and legal requirements, directions as may be deemed fit and proper in the facts and circumstances of this case.</i>
2	W.P. (C) 5283/ 2016	<i>a. set aside and quash the alterations carried out in Rule 26 vide Administration Circular No. 1 / 2013-14 dated May 24, 2013;</i> <i>b. set aside and quash the Office Order no. 7/ 2016-17 dated May 10, 2016, in respect of the petitioner and set aside and quash the relieving order (email) dated May 20, 2016;</i> <i>c. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to the respondent to post the petitioner at the Delhi Regional Office or at the Northern Zonal Office at Delhi, in his own substantive cadre in ,Grade 'D' in the Senior Management Cadre.</i> <i>d. Award cost and incidentals in favour of the petitioner and against the respondents.</i> <i>e. Pass any other appropriate orders (s) and direction (s) as may be deemed fit and proper in the facts and circumstances of this case.</i>
3	W.P. (C) 6042/ 2018	<i>a. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the order of penalty of 'dismissal with immediate effect' dated 26.2.2018, the consequent Office Order no. 90/2017-2018 dated 26.2.2018 and the order of Managing Director dated 02.5.2018,</i>



	b. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the charge sheet no. UT/0- DHRD-3414/IR-5(4)/2016-17 dated June 27, 2016, the entire disciplinary enquiry proceedings instituted against the petitioner, the appointment of Mr. Siddhartha Dash as the Enquiry Officer, the report of enquiry officer dated August 18, 2016 and the order of proposed penalty of dismissal dated 30.10.2017, as unlawful, infructuous and NON EST in the eye of law, c. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the Administration Circular nos. 13 of 2002-2003 dated January 14, 2003, the Administration Circular nos. 14 of 2003-2004 dated May 22, 2003, the Administration Circular nos. 05 of 2010-11 dated May 14, 2010 and the Administration Circular nos. 09 of 2013-14 dated August 14, 2013, which have been issued for amending the UTI Staff Rules, after 29th October, 2002, i.e. after the promulgation of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, for amending Rule 3 (h), Rule 55 and Rule 57 of the Unit Trust of India (Staff) Rules, 1978 (UTI AMC Staff Rules, 2003), in respect of the Petitioner, d. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to the respondents to pay the emoluments and all the other monetary and other benefits with all the consequential benefits to the petitioner, for the entire interregnum and regularize the period of entire interregnum as spent on duty. e. Pass any other order or direction for striking down the Rule/s, Order/s and Circular/s, which fall foul on the Constitutional and legal requirements and directions as deemed fit and proper in the facts and circumstances of this case, may please also be issued, f. Pass any other Order (s) / directions (s) as may be required to be passed in favour of the petitioner, which this
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		<i>Hon'ble Court may deem fit and proper in the facts and circumstances of the case,</i> <i>g. Award cost and incidentals in favour of the petitioner and against the respondents.</i>
4	W.P. (C) 950/2 020	<i>a. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to the Respondents directing the Respondents to grant pension to the Petitioner and pay the amount of commuted pension and monthly pension with dearness allowance, the Petitioner is entitled to, under the notified 'Unit Trust of India Pension Regulations 1994', subject to the outcome of the Writ Petition (Civil) No. 7114/2015, Writ Petition (Civil) No. 5283/2016 and Writ Petition (Civil) No. 6042/2018, which are pending for adjudication before this Hon'ble Delhi High Court, and to deduct the amount of employers Provident Fund, which was forcibly credited in the salary account of the Petitioner, from the amount of commuted pension/monthly pension of the Petitioner, and to pay interest for the entire period of delay</i> <i>b. pass any other order or direction for striking down Order/s and Circular/s, if any, which fall foul on the Constitutional and legal requirements and directions as deemed fit and proper in the facts and circumstances of this case, may please also be issued.</i> <i>c. Pass any other Order (s) / directions (s) as may be required to be passed in favour of the petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.</i> <i>d. Award cost and incidentals in favour of the petitioner and against the respondents.</i>
5	W.P. (C) 965/2 020	<i>a. to issue appropriate writs, order or directions to the Respondents, directing the Respondents to provide all the medical facilities, benefits and reimbursement of medical expenses for domiciliary and hospitalization etc. to the Petitioner and his spouse, for their entire lifetime and till they are alive, as were promised in line with IDBI, by the erstwhile</i>



		<i>Unit Trust of India, for the retired officers and their family, under the provisions of the 'UTI Employees Voluntary Health Scheme-1991', in terms of the Administration Circular no. 43/90-91 dated 12.3.1991, issued by the Trust, the erstwhile Unit Trust of India,</i> <i>b. to issue appropriate writs, order or directions to the Respondents, directing the Respondents to provide all the medical facilities, benefits, reimbursement of medical expenses and the cashless mediclaim benefits/facilities for hospitalization etc., for any serious or major operation or ailment, to the Petitioner and his spouse for their entire lifetime and till they are alive, under the provisions of the 'Scheme for Medical Assistance for Serving and Retired Employees & Constitution of Medical Assistance Fund' as were promised in line with RBI by the Trust, for the retired/ex-employees and their spouse, in terms of the Administration Circular no. 17/97-98 dated 08.01.1998, issued by the Trust, the erstwhile Unit Trust of India, in line with the medical benefits as are being provided to the retired officers of RBI under the 'Medical Assistance Fund Scheme' of RBI,</i> <i>c. pass any other order or direction for striking down Provisions, Rule/s, Order/s and Circular/s, which fall foul on the Constitutional and legal requirements and directions as deemed fit and proper in the facts and circumstances of this case, may please also be issued,</i> <i>d. Pass any other Order (s) / directions ,(s) as may be required to be passed in favour of the petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,</i> <i>e. Award cost and incidentals in favour of the petitioner and against the respondents.</i>
6	W.P. (C) 2564/ 2020	<i>a. issue a writ of mandamus or certiorari or any other appropriate writs, order or directions to the Respondents, directing the Respondents to re-compute the amount of gratuity in case of the Petitioner, on the revised basic pay</i>



	<i>scales as are applicable to the Grade 'D' Officers in the UTI Asset Management Company Limited and exactly, on the lines of Rule 6 of the Reserve Bank of India (Payment of Gratuity to employees) Rules, 1947, as are amended up to date and to pay the balance amount of Gratuity to the Petitioner, with interest for the delay, subject to the outcome of Writ Petition (Civil) Nos. 7114/2015, 5283/2016 & 6042/2018, which are pending for adjudication before this Hon'ble Court,</i> <i>b. Pass any other Order (s) / directions (s) as may be required to be passed in favour of the petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,</i> <i>c. Award cost and incidentals in favour of the petitioner and against the respondents.</i>
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FACTUAL MATRIX

1. The petitioner was appointed as a direct recruit in Grade A on 5th September 1986, as Staff Officer in Junior Management Cadre of Class – I officers, with the Unit Trust of India (hereinafter “UTI”), a body established under Section 3 (1) of Unit Trust of India Act, 1963.
2. The petitioner, by way of the present batch of writ petitions has raised the following grievances:

- a. In *W.P. (C)-7114/2015*, the grievance of the petitioner *inter alia* relate to the alleged wrongful and illegal denial of promotion and seniority to the petitioner in Grade C with retrospective effect from 2nd January 1995, for the panel year 1994, and for the panel year 1995, and 1996.



- b. In *W.P. (C)-5283/2016*, the petitioner has challenged *inter alia* his transfer/demotion from his substantive rank of ‘Deputy General Manager’ in Grade D, the scale – IV post in Senior Management Cadre, the Class – I officers; to the post of ‘Office Executive Cadre’ of Regional Operations Coordinator, at Lucknow.
- c. In *W.P. (C)-6042/2018*, the petitioner is *inter alia* challenging the legality of the penalty of ‘dismissal with immediate effect’, which has been imposed upon him vide office order dated 26th February 2018, for the charge of not reporting to the duty on transfer, as per the charge sheet dated 27th June 2016.
- d. In *W.P. (C)-950/2020*, the petitioner is *inter alia* alleging that the respondent is arbitrarily denying and withholding the pension of the petitioner even though he had applied for the pension on 8th September 2015, in advance and before the date of cessation of his service.
- e. In *W.P. (C)-965/2020*, the petitioner is seeking directions from this Court against the respondents, to provide him and his spouse, all the medical facilities, benefits, reimbursement of medical expenses for domiciliary and hospitalization etc., for their entire lifetime, under the provisions of the ‘UTI Employees Voluntary Health Scheme-1991’, in terms of the



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Administration Circular no. 43/90-91 dated 12th March 1991, issued by the erstwhile UTI.

- f. In *W.P (C)-2564/2020*, the petitioner is seeking directions against the respondents to re-compute the amount of Gratuity payable to the petitioner, on the basis of revised basic pay scales, as are applicable to the Grade D officers in the UTI Asset Management Company Ltd, and on the lines of Rule 6 of the Reserve Bank of India (Payment of Gratuity to employees) Rules, 1947, as are amended up to date and pay the balance amount of Gratuity to the petitioner, with interest for the delay.

3. UTI was created as per the provisions of Unit Trust of India Act, 1963. It was a statutory corporation and was involved in the business of accepting the investment from the public in mutual funds. During its operational tenure, it had floated various schemes pursuant to the role and functions assigned to it. The Government of India decided to bifurcate the business, assets and liabilities of UTI into two separate entities called as ‘specified company’ and ‘specified undertaking’.

4. The Parliament of India, enacted Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (hereinafter “Repeal Act”). UTI Asset Management Company Ltd. (hereinafter “UTI AMC”), was notified as a ‘specified company’ under the Repeal Act, and as per Section 2 (h) of the Repeal Act, the term “specified company” refer to a company formed and registered as per the Companies Act, 1956, and whose entire capital is



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subscribed by financial institutions specified by the Central Government. Financial institutions like; State Bank of India, Punjab National Bank, Bank of Baroda and Life Insurance Corporation of India, were notified as subscribers to the share capital of UTI AMC.

5. On 15th January 2003, the Central Government issued the Gazette Notification SO 40 (E) and the 'UTI Trustee Company Private Limited' was notified as the 'Specified Company' under Section 2 (h) of the Repeal Act. The employees of erstwhile UTI were placed with the UTI Asset Management Company Pvt. Ltd., which, in its capacity of the asset manager of the UTI Mutual Fund, was notified as the 'Specified Company' for the purpose of Section 6 of the Repeal Act.

6. The provisions of Section 6 states that, all employees and officers of the Unit Trust who were serving under the employment before such transfer was made, should be treated as the employees and officers of the Specified Company, i.e., the UTI AMC, after such transfer. Hence, the petitioner remained an employee with the UTI AMC.

7. The petitioner has filed his written submissions dated 11th August 2023, in W.P. (C)-7114/2015, W.P. (C)-5283/2016, W.P. (C)-6042/2018, W.P. (C)-950/2020, W.P. (C)-965/2020, and W.P. (C)-2564/2020, respectively, wherein, he has summarily addressed his arguments against the respondents with respect to his various claims, as mentioned hereinabove, and the same are on record.

8. The answering respondent UTI Asset Management Company Ltd. has also filed its written submissions dated 11th August 2023, wherein, it has



raised the preliminary objections with regard to the maintainability of the writ petitions filed by the petitioner before this Court, and the same is on record.

9. For the sake of convenience and for the purposes of adjudication of the issues involved, the petitioner, appearing in person, has first addressed and argued *W.P. (C)-6042/2018*, before this Court. Therefore, only the contentions of the concerned writ are being taken up.

SUBMISSIONS

(On behalf of the petitioner)

10. The petitioner in person submitted that the instant petitions along with the other connected matters are maintainable under the writ jurisdiction of this Court. The Unit Trust of India was established under the provisions of the Unit Trust of India Act, 1963, The petitioner was appointed by the UTI as Staff Officer Grade 'A', in the cadre of the officers in Class-I, which is duly prescribed under Rule 7 of the Unit Trust of India (Staff) Rules, 1978, which alone governs the service conditions of the officers and other employees of the UTI.

11. It is submitted that after the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002) (Repeal Act), came into force on 29th October, 2002, the Government of India transferred the entire initial capital of the erstwhile Unit Trust of India, onto itself, under Section 3(1), which shall be refunded by the Central Government, under Section 3(2), to the Development Bank, Life Insurance Corporation, State Bank and



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the subsidiary banks and other institutions, to such extent as may be determined by the Central Government, having regard to the book value, the assets and liabilities of the UTI.

12. It is submitted that post the repeal of the Unit Trust of India Act, 1963, the entire undertaking of the erstwhile Unit Trust of India, became the wholly owned undertaking of the Central Government and the Government of India became the 'Principal Employer' of the petitioner, who actually worked for and under the direct control of the Central Government between the period from 29th October 2002, to 31st January 2003.

13. It is submitted that post the repeal, the Central Government provided the required capital to its instrumentalities, i.e., the State Bank of India, Punjab National Bank, Bank of Baroda and the Life Insurance Corporation of India, to constitute and establish the UTI Mutual Fund which has been constituted and established as a trust registered under the Indian Trust Act, 1882, as UTI Trustee Company Pvt. Ltd., in its capacity as the first and the sole 'Trustee' or 'Trustee Company' of the UTI Mutual Fund, which has been notified under Section 2(h) of Repeal Act.

14. It is submitted that as per the mandate under Section 4, 5 and 6 of the Repeal Act, once a company is notified under Section 2(h) of the Repeal Act, both the assets of the erstwhile UTI under Schedule-II and the employees of the erstwhile UTI, under Section 4 and 6, respectively, go to the same company, i.e. UTI Trustee Company Pvt. Ltd., and the UTI Mutual Fund. The Repeal Act provides for just one "specified company" and further specifically also provides for a 'Statutory Transfer' of all the



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employees of the erstwhile UTI, only to the 'UTI Trustee Company Pvt. Ltd.', which alone has been notified under Section 2 (h) of the Repeal Act, in Gazette Notification no. S.O.(E) dated 15th January 2003.

15. It is submitted that in accordance with the above submissions, and as per the mandate of the Parliament, the petitioner was statutorily transferred to the UTI Mutual Fund and hence, the employer became a statutory employer of the petitioner. Hence, taking into consideration the same, it is apparent that the petitioner is an employee of the State, thereby, making the grievances of the petitioner amenable to be adjudicated under the writ jurisdiction of this Court.

16. It is submitted that UTI AMC, being only a deemed employer of the petitioner, has no *locus standi* to seek dismissal of this writ petition. It is purely an afterthought and a desperate attempt to mislead this Court away from the actual state of affairs in their efforts to delay administration of justice.

17. The petitioner in person, with regard to the merits of the instant petition, submitted that the *W.P. (C)-6042/2018*, deserves to be allowed since the penalty of termination, imposed upon the petitioner vide order dated 26th February 2018, lacks procedural fairness.

18. It is submitted that the petitioner was terminated without receiving the charge sheet, show cause notice, or even an opportunity to respond to charges and the same is in contravention of the principles of natural of justice and fundamental rights under Articles 14, 15, 16, and 21, of the Constitution of India.



19. It is submitted that the respondents have imposed the punishment of 'immediate removal' upon the petitioner because he was absent for a period of 35 days. The said penalty is unjustified and has been imposed without any evidence of gross misconduct, thereby, inflicting arbitrary decisions.

20. It is submitted that the initiation of departmental proceedings against the petitioner was flawed and *ex-parte*. The complete departmental proceedings are contrary to the settled legal principles of service jurisprudence.

21. It is submitted that the petitioner was transferred from a Class-I cadre to a Non-Class-I post in the 'Officer Executive Cadre', which does not even form a part of the permanent staff per Rule 7 of the Unit Trust of India (Staff) Rules, 1978. This cadre, governed by Rule 55 (1)(c), arbitrarily imposed an unspoken major penalty of 'Demotion to lower post' without due process and show cause notice, thereby violating principles of natural justice and other fundamental rights of the petitioner. This also constituted a loss of the service conditions available to an officer of belonging to the "Officer Executive Cadre", under Section 6(1) of the UTI Repeal Act.

22. It is submitted that the inquiry against the petitioner was initiated by the UTI AMC on 27th June 2016, without notice and subsequent proceedings were rushed, with the first sitting being held on 5th July 2016, when the charge sheet was still in transit.

23. It is submitted that the next meeting of enquiry was also on 12th July 2016, i.e., within a week, and the inquiry was closed immediately after hearing the management's presentation, leading to an *ex-parte* conclusion on



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4th August 2016, despite the petitioner's requests for postponement and a change in the enquiry officer. Correspondence to this effect was duly received by the enquiry officer and the respondent UTI AMC, as evidenced in the records of the inquiry proceedings held on 4th August 2016.

24. It is submitted that the petitioner was on ordinary leave when the charge sheet against him was issued, i.e., on 27th June 2016, which ultimately lead to his dismissal, and therefore, considering the grounds of violation of principles of natural justice on behalf of the respondent UTI AMC, the dismissal order ought to be set aside being illegal.

25. It is submitted that the official documents necessary for defense in the inquiry were not provided, denying a reasonable opportunity to present a case thereby, violating principles of natural justice. Further, the UTI AMC had stopped salary payments after May 2016, refusing subsistence allowance despite specific requests. This action was highly prejudicial to the petitioner's interests, leaving him without means.

26. It is submitted that pursuant to Rule 55 of the UTI Staff Rules, charges must be formally framed in writing and presented to the employee, affording them an opportunity to respond in writing, and Email communications are not stipulated as the prescribed mode under the said Rules.

27. It is submitted that the UTI AMC, acting as a deemed employer of the petitioner, lacks the lawful authority and jurisdiction to independently dismiss the petitioner without the approval of the Government of India and/or UTI Mutual Fund, i.e., the statutory employer of the petitioner.



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28. It is submitted that the dismissal order was not issued by the chairman, rendering the proceedings against the petitioner to be illegal and therefore, liable to be set aside.

29. In view of the foregoing submissions, it is submitted that the instant petition along with other connected matters are maintainable, and accordingly, the same may be allowed and the impugned order be set aside.

(On behalf of the respondent)

30. *Per Contra* learned senior counsel appearing on behalf of the respondent UTI AMC vehemently opposed the instant petition and submitted that the instant petition is liable to be dismissed at the threshold since the same is non maintainable under the writ jurisdiction of this Court.

31. It is submitted that the present batch of writ petitions against the respondent UTI AMC is not maintainable in as much as the UTI AMC is neither the 'State' nor the 'other authority' under Article 12 of the Constitution of India.

32. It is submitted that through the enactment of the Repeal Act, the legislature repealed the Unit Trust of India Act, 1963, resulting in the cessation of Unit Trust of India as an entity.

33. It is also submitted that all the businesses, assets, and liabilities were transferred to two entities: 'Specified Company' and 'Specified Undertaking.' Market-related schemes from Schedule II were transferred to the 'Specified Company,' while assured schemes from Schedule I was vested in the 'Specified Undertaking'.



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34. It is further submitted that under Section 6 (1) of the Repeal Act, officers and employees of the erstwhile UTI became part of the 'Specified Company', i.e., the respondent UTI AMC.

35. It is submitted that initially, UTI AMC's share capital was equally held by Bank of Baroda, Punjab National Bank, State Bank of India, and Life Insurance Company. Further, in the year, 2010, these entities collectively sold 26% of their share capital to 'M/s T. Rowe Price International Ltd.', a USA-based global asset manager.

36. It is further submitted that following the sale, 'M/s T. Rowe Price International Ltd.', became the largest shareholder, and the original entities' shareholding in UTI AMC reduced to 18% each, and the sale to 'M/s T. Rowe Price International Ltd.' was affirmed by the Hon'ble Supreme Court of India in *S.L.P. (Civil) No. 7837/2021*.

37. It is submitted that for the purposes of complying with the Regulation 7 (B) of the SEBI (Mutual Fund) Regulations (Amendment), 2018, which requires the sponsors to hold no more than 10% of shareholding or voting rights in the asset management company, the original sponsors of UTI AMC needed to reduce their holdings in UTI AMC.

38. It is further submitted that, consequently, in October 2020, a public issue arose, and post-IPO, 22.96% of UTI AMC's shareholding belongs to 'M/s T. Rowe Price International Ltd.', while 31.21% is held by the public and IPO subscribers. As of now, UTI AMC's shareholding is distributed as; Public: 31.20%, T. Rowe Price International: 22.96%, Punjab National Bank: 15.22%, State Bank of India: 9.98%, Bank of Baroda: 9.98%, Life



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Insurance Corporation: 9.98%, and Employees/Others: 0.70%; hence, total: 100.00%.

39. It is submitted that in view of the preceding submissions, the Government of India does not hold more than 51% shares in UTI AMC, which takes it out of the ambit of Article 12 of the Constitution, wherein the answering respondent is neither a State, nor other authority.

40. It is submitted that the petitioner has included various irrelevant entities as respondents, such as State Bank of India, Punjab National Bank, Bank of Baroda, Life Insurance Corporation Ltd., and M/s T. Rowe Price International Ltd. The petitioner has acknowledged in *Writ Petition No.7114/2015* that UTI AMC was his actual employer, as also evidenced in the transfer order dated 10th May 2016, and the dismissal order dated 26th February 2018, both issued by the UTI AMC.

41. It is submitted that the petitioner joined the erstwhile Unit Trust of India in 1986, which ceased to exist with the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. Section 6(1) of the Repeal Act, stipulates that officers and employees of the Trust would become employees of the specified company, UTI Asset Management Co. Ltd., as declared by the Central Government in its notification dated 15th January 2003. The petitioner, along with other employees, became an employee of the respondent UTI AMC, from the appointed day, i.e., 1st February 2003, in accordance with Section 6 of the Repeal Act.

42. It is submitted that the petitioner, in a letter dated 4th August 2016, acknowledged that Mr. Kamlesh Dangi of UTI AMC, is the competent



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authority, the applicability of UTI Asset Management (Staff Rules), 2003, and UTI AMC as the 'Specified Company' of the erstwhile Unit Trust of India. Consequently, the present writ petition under Article 226 of the Constitution of India is deemed not maintainable.

43. The learned senior counsel, in support of his arguments, relied upon the judgment dated 20th June 2022, passed by the Division Bench of the High Court of Bombay, in **Writ Petition (C) no. 6512/2021**, titled as *Mukesh Kappor v. Union of India & Anr.*, and submitted that the concerned bench while dismissing the writ petition filed by the officers of the UTI AMC, has held that that the writ petition against UTI AMC, is not maintainable, as it does not fall within the meaning of 'other authority', under Article 12 of the Constitution of India.

44. The learned senior counsel placed further reliance on the judgment dated 16th December 2022, passed by the Division bench of this Court, in the matter of *Indian Airlines officers Association v. Union of India & Anr.*, bearing **W.P (C) no. 6090/2016**, and submitted that this Court ruled that the writ petition filed by the Officers Association of Air India Limited is not maintainable post-disinvestment. This Court noted that Air India's 100% shareholding was acquired by M/s Talace Pvt. Ltd. on 27th October 2022, making it a non-government company and, thereby, outside the Court's writ jurisdiction. The Court further emphasized that while the writ petition was initially maintainable in the year 2016, the change in circumstances as on date, precludes the Court from entertaining a writ petition against the entity which does not fall within the domain of "State".



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45. It is further submitted that in view of the law laid down by the aforesaid judgment UTI AMC does not fall within State since it does not fall within domain of State or other authority pursuant its disinvestment, hence, no writ can be entertained against the respondent/UTI AMC.

46. In view of the foregoing submissions, it is prayed that the present batch of writ petitions be dismissed on the grounds of maintainability.

ANALYSIS AND FINDINGS

47. The matter was heard at length and this Court has perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented.

48. During the course of the arguments, the learned senior counsel appearing on behalf of the respondent UTI Asset Management Company Ltd., has raised the preliminary objection with respect to the maintainability of the above mentioned writ petitions.

49. The learned senior counsel had raised the said objection on the ground that the answering respondent does not fall within the ambit of Article 12 of the Constitution of India, and therefore, the present batch of petitions are liable to be dismissed at the threshold.

50. Since, a preliminary objection has been raised with regard to the maintainability of the writ petitions filed by the petitioner herein, therefore, at this stage; this Court deems it imperative to decide the issue of



maintainability of the petitions first, in view of the submissions advanced and material available on the record.

51. It is a settled law that under Article 226 of the Constitution of India a writ can be issued “to any person or authority” and “for enforcement of rights conferred by Part III of the Constitution, and for any other purposes”. The scope of Article 226 of the Constitution of India, though unfettered is subject to the restraint that a writ cannot be issued against any private entity or for the purpose of settling private disputes. Therefore, the scope of invocation of Article 226 of the Constitution of India against a private body is limited to such private body essentially performing a public duty or performing functions akin to functions of the State as per Article 12 of the Constitution of India. A private body doing commercial activities is not amenable to writ jurisdiction except a writ of Habeas Corpus.

52. Accordingly, a Government-owned entity which has been subsequently privatized and has been performing commercial functions is no longer considered "State" under Article 12. Therefore, a writ is not maintainable against them. This position of law has been enunciated in a catena of judgments which have been discussed herein below.

53. At this juncture, it is imperative to note that the category applicable upon UTI AMC under Article 12 of the Constitution of India shall be ‘other Authorities’.

54. Before delving further into the analysis of the issue of maintainability, Article 12 of the Constitution of India has been reproduced below:



“12. Definition 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.”

55. The Hon’ble Supreme Court in the matter of ***Pradeep Kumar Biswas vs Indian Institute Of Chemical Biology and Ors., (2002) 5 SCC 111***, while enunciating the principles of maintainability of the writ petitions against a non-government entity, reaffirmed one of its earlier decision passed in the matter of ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722***, held as under:

“40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question is each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and 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. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

56. In regard to the above mentioned judgment, the question in each case would be whether in the light of the cumulative facts as established, the employer, i.e., the UTI AMC herein, can be culled into the ambit of Article 12 or not.



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57. Considering, the peculiar submissions raised herein, it would now be this Court's endeavor to decide the contentious issue of maintainability based on the *dicta* of the Hon'ble Supreme Court and High courts, in respect of matters where service disputes raised by officers/employees in proceedings before the Courts required, in view of the status of the employers, as of necessity, determination of the primary question as to whether such employers were amenable to the writ jurisdiction under Article 226 of the Constitution.

58. The issue before this Court has been already dealt with by a Division Bench of the High Court of Bombay in the matter of ***All India IDBI Officers Assn. v. Union of India***, 2022 SCC OnLine Bom 269, wherein, the bench held that a Government entity which no longer falls within the ambit of a "state" under Article 12 of the Constitution of India, is not amenable to the writ jurisdiction under Article 226 of the Constitution. Relevant extracts of the same are reproduced as under:

"89. Here, we are concerned with a dispute arising out of a service matter. It would now be our endeavor to decide the contentious issue of maintainability based on the dicta of the Supreme Court in respect of matters where service disputes raised by officers/employees in proceedings before the Courts required, in view of the status of the employers, as of necessity, determination of the primary question as to whether such employers were amenable to the writ jurisdiction under Article 226 of the Constitution. We would have been inclined, in the process, to attempt at leaving aside decisions where the employer is other than a company or a Government company but the demands of the case may require us to navigate through



other decisions as well, not dealing with service disputes, but which deal with the aspect of maintainability.

x

x

x

92. There are 5 (five) other decisions which, though not cited by the parties, are either referred to in the decisions in Balmer Lawrie & Co. Limited (supra) and in Jatya Pal Singh (supra). While the former decision has been referred to by both the parties, the latter has been cited by Mr. Talsania.

93. Close on the heels of Pradeep Kumar Biswas (supra) followed the decision in G. Bassi Reddy v. International Crops Research Institute⁹⁷, authored by Justice Ruma Pal (as Her Ladyship then was). Incidentally, the majority opinion in Pradeep Kumar Biswas (supra) too was authored by Her Ladyship. The appellants in G. Bassi Reddy (supra) were terminated employees of the respondent institute (referred to in the relevant judgment as ICRISAT). The Court traced the origin of ICRISAT and found that ICRISAT was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government's financial contribution to ICRISAT was minimal. Its participation in ICRISAT's administration was limited to 3 (three) out of 15 (fifteen) members. Since ICRISAT did not fulfil any of the tests laid down in Pradeep Kumar Biswas (supra), ICRISAT was held not to be a State or other authority as defined in Article 12 of the Constitution.

94. We may, at this stage, take notice of certain important observations made by the Court after considering the decisions in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.⁹⁸, Praga Tools Corpn. v. C.A. Imanual⁹⁹, Andi Mukta Sadguru S.M.V.S.S.J.M.S. Trust v. V.R. Rudani¹⁰⁰, VST Industries Ltd. v. Workers'



Union101 and Sohan Lal v. Union of India102. The observations read thus:

*“25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. (Proprietary) Ltd.]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a ‘State’ or authority within the meaning of Article 12. ****

*26. ****

27. It is true that a writ under Article 226 also lies against a ‘person’ for ‘any other purpose’. The power of the High Court to issue such a writ to ‘any person’ can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words ‘and for any other purpose’ must mean ‘for any other purpose for which any of the writs mentioned would, according to well-established principles issue’.

28. A writ under Article 226 can lie against a ‘person’ if it is a statutory body or performs a public function or discharges a public or statutory duty. ... ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial



boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corpn. this Court construed Article 226 to hold that the High Court could issue a writ of mandamus 'to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest'. The Court also held that:

"[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal).

29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT."

95. Having noted G. Bassi Reddy (supra), we move on to consider Federal Bank v. Sagar Thomas¹⁰³ which followed within a few months of the former decision. In Federal Bank (supra), the question arising for decision was whether the appellant bank was a private body or falls within the definition of "State" or local or other authorities under the control of the Government within the meaning of Article 12. Incidentally, the civil appeal before the Supreme Court arose out of a writ petition instituted by a dismissed employee of the appellant bank. The relevant High Court held the writ petition to be maintainable. Considering various precedents, the Court proceeded to hold that:



“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 (Government); (ii) an 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; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

104. Next in the series is the decision in Jatya Pal Singh (supra). As noted above, it arose out of an order dated 8th September 2009 of a Division Bench of this Court dismissing a writ petition filed by the appellant. No separate reason was assigned by the Division Bench except observing that the reasons assigned by it while dismissing an earlier writ petition involving common questions of fact and law by its order dated 7th September 2009 would apply to the writ petition of the appellant (Jatya Pal Singh) before the Supreme Court. From the report, we have found that the other petitioner too was before the Supreme Court with an independent appeal, titled M.P. Singh v. Union of India. The decision also appears to have dealt with civil appeals arising from orders of dismissal of writ petitions passed by the Delhi High Court.

105. The appellants were employees of VSNL. Their services were terminated by VSNL. The writ petitions were dismissed on the ground that VSNL was not amenable to the writ jurisdiction. For the reasons assigned in the common judgment, the appeals stood dismissed.



106. It was contended on behalf of the appellants that VSNL cannot be said to be not amenable to the writ jurisdiction in view of the shareholding pattern which revealed that Union of India, holding 26.97% shares, was the single largest shareholder in VSNL and other Government companies held 17.35% shares. Furthermore, VSNL was under the complete control of the Telecom Regulatory Authority of India (TRAI) Act, 1997 and the Telegraph Act, 1948. Therefore, writ petitions would lie in cases where the services of the employees were terminated in breach of the rules governing the service conditions of the employees. It was further the case of the appellants that Panatone Finvest Ltd. having stepped into the shoes of the erstwhile shareholder is bound by the commitments and obligations, rights and liabilities arising from the sale/purchase of shares.

107. The Court noted that after disinvestment of VSNL in 2002, the name of VSNL being a TATA group company was changed to Tata Communications Ltd. (TCL). However, the orders of termination impugned in the writ petitions were issued before such change took place. After noting Pradeep Kumar Biswas (*supra*), the Court examined whether TCL was performing public functions and answered the question in the negative. Having considered Binny Ltd. (*supra*), the Court held that:

“52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.

53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance



is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.

*54. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by private institution in imparting education to children. It has been repeatedly held by this Court that private education service is in the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children up to the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in *Andi Mukta* would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non-payment of salary to the teachers by *Andi Mukta Trust*. In those circumstances, it was held that the Trust is duty-bound to make the payment and, therefore, a writ in the nature of mandamus was issued.”*

108. The Court, therefore, held that a writ petition would not be maintainable against VSNL, a fortiori, TCL.”

59. In the aforementioned judgment, the issue similar to that of the present petition arose before the Division bench for adjudication. In the instant writ petition, Section 6 of the Repeal Act enunciates the provisions in



respect of officers and other employees of the UTI Trust are being discussed. Similarly, in the matter of All **India IDBI Officers Assn. (Supra)**, Section 5 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003, was discussed, and the said clause also discusses about the provisions in respect of officers and other employees of the Development Bank therein, therefore, both the provisions are *para materia*.

60. With regard to the status of employees after a body which was previously amenable to the writ jurisdiction, but due to disinvestment, such body is no longer falling within the meaning of State, was discussed in the matter of **Balco Employees' Union v. Union of India, (2002) 2 SCC 333**), wherein, the Hon'ble Supreme Court observed as under:

“47. ... Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. ...



48. ... If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana v. Des Raj Sangar [(1976) 2 SCC 844 : 1976 SCC (L&S) 336] on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.”

61. The Division Bench of the High Court of Bombay, in the matter of ***R.S. Madireddy and Another Vs Union of India and Others***, 2022 SCC OnLineBom 6638, discussed the affect of privatization of a government undertaking upon the employee’s right to approach a writ Court, and observed that Air India Ltd., now being a private body, wholly owned by a private organization, has ceased to be a public body and therefore, no writ can lie against AIL in the circumstances that exist today. Relevant paragraphs of the same are reproduced herein:

“68. With its privatization, AIL has ceased to be an Article 12 authority. There is and can be no doubt that no writ or order or direction can be issued on these writ petitions against AIL for an alleged breach of a Fundamental Right. Conscious of the change in the factual as well as legal position arising out of privatization of AIL, Mr. Singhvi with the experience behind him changed the line of argument and introduced the concept of ‘public employment’ of the petitioners and contended that since



the petitioners were employees of AIL, which at the material time was discharging public functions, the writ petitions ought to be heard particularly when the petitioners are not at fault for the time lapse.

69. We are afraid, the contention that the petitioners were in 'public employment' earlier and that it should weigh in our minds for the purpose of grant of relief, as claimed originally, or moulding of relief because of the changed circumstances, is unacceptable for the reasons discussed above. By way of reiteration, we say that whether or not AIL was discharging public functions or the petitioners were in public employment need not be examined in these proceedings because, as the matter presently stands, no writ can be issued by us to AIL. In the circumstances, all the decisions cited by Mr. Singhvi laying down the law that a body discharging public functions would be amenable to the writ jurisdiction have no materiality for deciding the question at hand.

70. Further, we see no reason to accept the contention of Mr. Singhvi that there has been a collusion between UoI and AIL, which should make the writ petition maintainable. After all, whether or not there has been collusion is a question of fact. There needs to be a factual foundation therefor, meaning thereby that collusion has to be pleaded. Once pleaded, the Court may, upon looking at the reply-affidavit, decide whether collusion is proved or not. In the absence of any foundation having been laid to prove collusion, we are of the view that the contention is not well taken."

62. With regard to the present respondent i.e., UTI AMC, the Hon'ble Supreme Court in its judgment dated 1st November 2013, in the matter of ***Arun Kumar Agrawal v. Union of India, W.P (C) no. 374/2012***, observed that UTI AMC is not a government company. It further observed that in a



company like UTI AMC, it is the shareholder on the Board who decides the questions of appointment/recruitment. The relevant portion is extracted as under:

“43. We may also notice here that even the petitioner has not pleaded that UTI AMC is a Government owned Company under Section 617 of the Companies Act. Mr. Bhushan tried to establish that it is a Government controlled company as the shares are all held by instrumentalities of the State. In our view, UTI AMC can not be said to be a Government company. It was for this very reason that respondent No.4 had to make a request for VRS to seek re-employment in a Commercial Organization. We are also not much impressed by the 55 Page 56 objection of the petitioner that the deputation of respondent No.4 was contrary to the recommendation of JPC. Subsequent to the recommendation of JPC, the Parliament had passed UTI (Transfer of Undertaking and Repeal) Act, 2002 which was gazetted on 17th December, 2002 and came into force w.e.f. 29th October, 2002. Under the Act, UTI was bifurcated into SUUTI and UTI Mutual Fund, managed by UTI AMC. The Central Government transferred its entire share holding in UTI AMC to Life Insurance Corporation, Punjab National Bank, Bank of Baroda and SBI. The entire consideration for the aforesaid transfer was received by the Central Government. Therefore, it becomes quite evident that UTI AMC is not a “Government Company” under Section 617 of the Companies Act. In the affidavit filed, this has been the consistent stand taken by the Central Government and the CAG in various writ petitions filed by the petitioner. In a company like the UTI AMC, it is for the shareholder on the Board to decide what process to follow and whom to appoint.”

63. The Division Bench of the High Court of Bombay, while adjudicating upon a writ petition against the UTI AMC, held that the UTI AMC, is a



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private entity, not falling under Article 12 of the Constitution and thus, would not be amenable to the writ jurisdiction. The relevant paragraphs of ***Zee Learn Ltd. v. UTI Asset Management Co. Ltd., 2020 SCC OnLineBom 806***, are as follows:

“18. Insofar as the issue of maintainability of this Petition is concerned, it is not in dispute that the Government does not have 100% shareholding of respondent No. 1A. Insofar as respondent No. 1 is concerned, it is a limited company and is an agent of respondent No. 1A. It is not even the case of the petitioner that respondent No. 1A is also amenable to the writ jurisdiction under Article 226 of the Constitution of India.

19. In our view even if respondent No. 1A falls within the definition prescribed under Section 2(72) of the Companies Act, merely on that ground the respondent No. 1A cannot be subjected to the writ jurisdiction of this Court under Article 226 of the Constitution of India. In our view, Writ Petition itself is not maintainable on that ground.”

64. Furthermore, the Division bench of the Bombay High Court, discussed the aspect of maintainability of a petition under Article 226 of the Constitution against UTI Asset Management Company Ltd., and rejected the contention that UTI AMC is State or other authority, under Article 12 of the Constitution of India. Relevant extracts of the judgment dated 20th June 2022, in the matter of ***Mukesh Kapoor & Ors. v. Union of India & Anr., W.P (C) no. 6512/2021***, have been reproduced below:

“30. “When the Repeal Act 2002 has laid down the meaning of the entity specified company, the legislators have considered specified company as a company formed and registered under the provisions of Companies Act 1956. It will be material to see



the provisions of 1956 Act. The reason is there is an argument advanced on behalf of the petitioner that the respondent No.2 can be treated as a government company. Section 2(10) of 1956 act lays down meaning of company. Company means a company as defined in section 3. Whereas Section 2(18) lays down meaning of government company. Government company means a government company within the meaning of the provisions of Section 617 of the said Act. The criteria for deciding whether a company is a government company or not is holding of paid up share capital. If the paid up share capital of a company is not less than 51% percent and it is held either by (a) Central government (b) By State government (c) By Governments (d) Partly by the central government or partly by any one or more state governments (e) and includes a company which is subsidiary of government company. So the meaning is very clear. The test laid down is who holds the paid share capital of the company. If at least 51% of the paid-up share capital is held by above said agency or any of them, the company is to be treated as government company.

*x**x**x*

33. From above categories, category applicable is 'other authorities'. We will verify the pleadings and documents on the background of various tests laid down in above referred judgments.

34. No doubt the respondent no.2 is created as per the Repeal Act 2002. It is also true that four subscribers have contributed equally to the share capital of the Company. However this much factor is not conclusive. We have also to look into subsequent developments.

*x**x**x*

37. As said above initial share capital is subscribed by four subscribers. It will also be important to note that in due course



of time stakes of these four subscribers in the share capital is reduced and it is sold to private entities.

38.As on 30th September, 2021 the share held by these sponsors are as follows:-

Bank of Baroda 9.99%.

Punjab National Bank 15.23%.

State Bank of India 9.99%.

LIC 9.99%.

T ROWE Price International Limited 22.99%.

x

x

x

39.Even in the master data of Companies filed by the respondent no.2, the respondent no.2 is shown as “Non-govt company.

40.At the same time there is copy of letter dated 8/2/2021 sent by the Office of Comptroller and Auditor General of India addressed to Respondent No.2. It is informed that appointment of statutory auditors and supplementary audit by CAG are not applicable to respondent no.2 and its three subsidiaries. It was informed that the Respondent No.2 does not come under regulatory jurisdiction of Chief Vigilance Commissioner. As per the said letter the internal mechanism of Respondent No.2 is sufficient to deal with grievances made.”

x

x

x

42. There is more emphasis on the provisions of Section 6 of the Repeal Act, 2002. Those provisions give protection to the employees of erstwhile UTI when they will be continued with respondent no.2. There are UTI Asset Management Company (Staff) Rules, 2003. The petitioners relied upon registration of officer’s association with the Office of Labour Commissioner, Mumbai. Article 12 falls under Part III relating to fundamental rights. Whereas Article 311 falls under Part XIV. It deals with protection from dismissal to persons serving with Central or State Government. This protection can be made applicable only



when the employees are the members of the services of Union or State. The present petitioners cannot be said to be employees working with Union or State.

x
x

x

45. For the above discussion we are unable to satisfy ourselves that the respondent no.2 falls within meaning of 'other authority' under Article 12 of the Constitution. Hence we reject all the contentions taken in that behalf by the petitioners and uphold the objection taken about maintainability of the petition by the respondent no.2."

65. In light of ***Balco Employees' Union (Supra)***, it is observed by this Court that the employees have no vested right in the employer company continuing to be a government company or 'other authority' for the purpose of Article 12 of the Constitution of India. The employees cannot claim any right to decide as to who should own the shares of the company. The State which invested of its own volition, can equally well disinvest. So long as the State holds the controlling interest or the whole of the shareholding, the employees may claim the status of employees of a Government company or "other authority" under Article 12 of the Constitution. The job prescribed to the employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment. Therefore, the question whether the employees have any vested right in their employer continuing to be a Government Company, is no longer *res integra*.



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66. Upon perusal of the above, this Court is of the considered view that all the employees of UTI were given an option to accept the employment with the UTI AMC, on the same terms and conditions and with the same rights and obligations, as they would have had in respect of the employment with the erstwhile UTI, if the same had not been bifurcated into UTI AMC. The assurance held out to them is with regard to the terms and conditions of their service and not as to the nature of the employer, i.e., UTI AMC. There was no assurance that can be read with Section 6 of the Repeal Act, to the effect that UTI AMC would continue to be a Government Company.

67. The scheme of the Repeal Act further discloses that UTI created under the Unit Trust of India Act, 1963, ceased to exist and in its place the Specified Company, i.e., UTI AMC and the Administrator of the Specified Undertaking of the Trust were created which took charge of all the properties, business assets, rights, etc. of the erstwhile Unit Trust of India. The initial capital of the UTI Trust stood transferred to and vested in the Central Government under Section 3(1) of the Act. Sub-section (2) of Section 3 of the Act, however, mandated that the initial capital contributed by the named contributors shall be refunded by the Central Government to such extent as may be determined by it. Section 21 of the Act provides for the repeal of the Unit Trust of India Act, 1963, and the dissolution of its Board of Trustees. Moreover, erstwhile UTI was a statutory corporation and its functions mentioned in the Schedule II deals with the schemes and plans now stands transferred to UTI AMC.



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68. This Court after consideration of all the factors, has come to the conclusion that earlier the Central Government was having control over the activities of erstwhile UTI. However, further development crystallizes that the Government has given autonomy to the management of the company. Over a period of time, the Government decided to disinvest the erstwhile UTI and accordingly it reduced its stake in the share capital of the erstwhile UTI.

69. At this stage, it is also material to note that as per Section 2 (45) of the Companies Act, 2013, a 'government company' which means that any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company. Therefore, upon contemplation of the material available on record and perusal of the judgments mentioned in the foregoing submissions, it is drawn that the original subscribers of UTI AMC, i.e., the Government, hold less than 51% of the total paid up share capital. It is further observed that the management of the company is operated by a Board of Directors, and there is nothing on record which would specify or even hint to the fact that the concerned management of UTI AMC is required to take approval from any of the government authorities while taking decision with regards to UTI AMC.

70. Rather, it can be understood that the Government through its instrumentalities have withdrawn from the ownership and management of



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UTI AMC and does not intend to have any financial or administrative control over the operation and management of UTI AMC.

71. Moreover, Article 12 falls under Part III of the Constitution of India which pertains to the fundamental rights, and any person employed with any of the instrumentality of State or other authority, is given a protection under the Constitution of India from arbitrary and illegal dismissal since that would amount to infringement of the fundamental or legal rights that the concerned employee is entitled to exercise.

72. It is noted that this Article 311 of the Constitution of India can be made applicable only when such employees are working with the State or other authority and the present petitioner cannot be said to be an employee of State or other authority due to the reasons specified in the preceding paragraphs that the respondent UTI AMC does not fall within the ambit of Article 12 of the Constitution of India.

73. There is no provision in the Repeal Act, which shows that the Central Government is empowered to issue any instructions or control the operations of UTI AMC. It is thus deliberated that the Government does not have 100% shareholding of UTI AMC and insofar as UTI AMC is concerned, it is a limited company.

74. Accordingly, this Court is of the view that when a new private entity has formulated its policies such as the answering respondent in the instant case, and its constitution has changed completely, thereby, changing the nature of functioning, UTI AMC cannot be treated as it was existing originally, i.e., an instrumentality of the State or other authority, and hence,



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the same cannot be said to be a 'State' or even 'other authority' under Article 12 of the Constitution.

75. It is an admitted position that due to the subsequent developments, this Court is precluded from issuing any writ, in the current situation. This Court is of the view that the transfer of ownership places the concerned company outside the writ jurisdiction of this Court.

76. This Court need not enter into any determinative findings on the submissions regarding the petitioner's claims w.r.t. quashing of termination order, etc. since that would clearly relate to the merits of the action which has been taken by UTI AMC. A challenge to the same, while being open to be addressed before a competent forum and on grounds which may otherwise be permissible in law, cannot be the subject matter of consideration in a writ petition under Article 226 of the Constitution of India.

77. Therefore, the grievance of the petitioner can be redressed only before the competent forum which can deal with the dispute between two private parties, and not under Article 226 of the Constitution of India.

CONCLUSION

78. In view of the above discussions, this Court is of the considered opinion that the instant batch of writ petitions under Article 226 of the Constitution of India, are not maintainable against the present respondent due to the aforesaid discussions of facts and law.

79. It is held that in the absence of the service conditions being controlled or governed by statutory provisions the matter would remain in the realm of



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an ordinary contract of service ultimately making the concerned employer not amenable to the writ jurisdiction under Article 226.

80. This Court, hereby, upholds the objections taken by the respondent on the aspect of the maintainability of present batch of petitions.

81. It is prudent to mention herein, that this Court has not gone into the merits of the matter and the present judgment, however, shall not deprive the petitioner of his right to take recourse in accordance with the law.

82. Therefore, the petitioner is granted liberty to take recourse to the remedies available before a competent forum. Further, the time period for which the writ petitions have been pending in this Court shall be excluded for the purpose of computation of limitation in case the petitioner may seek any remedy by instituting fresh proceedings before a competent forum.

83. Accordingly, the present batch of petitions stand dismissed on the ground of non-maintainability. Pending applications, if any, also stand dismissed.

84. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15 , 2023
gs/ryp/db