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

% ***Reserved on: December 06, 2022***

Pronounced on: February 01, 2023

(i) + **W.P.(C) 5024/2017**

RAVI KHOKHAR & ORS. .... Petitioners

Through: Mr. Shankar Raju, Mr. Nilansh Gaur & Mr. Rajesh Sachdeva, Advocates

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC Mr. Ankur Chhibber & Mr. Nikunj Arora, Advocates for respondent No.3/AFGIS

(ii)+ **W.P.(C) 16428/2022 & CM.APPL.51620/2022**

VINOD KUMAR ..... Petitioner

Through: Mr. R.K. Singh, Advocate

Versus

SECRETARY AIR FORCE GROUP INSURANCE SOCIETY & ORS. .... Respondents

Through: Mr. Ankur Chhibber & Mr. Nikunj Arora, Advocates for respondent No.1/AFGIS

(iii) + **W.P.(C) 6759/2017**

RAJESH KUMAR & ORS. ..... Petitioners

Through: Mr. A.K. Trivedi & Mr. Naveen Kumar, Advocates

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Ankur Chhibber & Mr. Nikunj Arora, Advocates for respondent No.3/AFGIS

(iv) + **W.P.(C) 13858/2018**

NIRMAL JAIN & ORS. .... Petitioners

Through: Mr. M.D. Jangra, Advocate

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Ankur Chhibber and Mr. Nikunj Arora, Advocates for respondent No.3/AFGIS

(v) + **W.P.(C) 863/2019**

NIRMAL MAHAHJAN & ANR. .... Petitioners

Through: Mr. M.D. Jangra, Advocate

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal R. Digpaul and Ms. Swati Kwatra, Advocates for UOI Mr. Ankur Chhibber and Mr. Nikunj Arora, Advocates for respondent No.3/AFGIS

(vi) + **W.P.(C) 15835/2022 & CM APPL. 49280/2022**

SH RAKESH CHANDER ..... Petitioner

Through: Mr. Ranjan Sharma & Mr. Pawan Silnana, Advocates

Versus

D.I.G.P (WELL) DTE. GENERAL C.R.P.F AND ORS. ....Respondents

Through: Mr. Virender Pratap Singh Charak, Ms. Shubhra Parashar and Mr. Deepesh Chaudhary, Advocates for respondent No.1/UOI & respondent No.4/CRPF
Mrs. Avnish Ahlawat, Standing Counsel GNCTD, Mr. N.K. Singh & Ms. Aliza Alam, Advocates for respondent No.2
Mr. Mohit Auluck & Mr. Deepak Singh Rawat, Advocates for respondent No.3 with Mr. Vivek Nagar, Government Pleader

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The above captioned first petition [W.P.(C) No. 5024/2017] has been filed by the petitioners who are aggrieved of oral order dated 17.05.2017 and notice dated 22.05.2017; whereby respondent - Air Force Group Insurance Society ('AFGIS') notified the Revised Terms and Conditions of Service of AFGIS, 2017 and has sought acceptance to it from all the employees within seven days of its issuance. A prayer is

made to declare the impugned Revised Terms and Conditions of Service of AFGIS, 2017 as unconstitutional, ultra vires and arbitrary. A direction is sought to respondent -AFGIS to withdraw the Rules of 2017 and apply Air HQ NPF employees-1993 Rules, as modified from time to time and to grant benefit of Sixth and Seventh Pay Commission w.e.f. 01.01.2006 with arrears. The background of these petitions is as under:-

W.P.(C) No. 5024/2017

(a) The petitioners claim to be working on different posts in Air Force Group Insurance Society, which according to them is governed by the Board of Trustees of Air HQ being Air Officer in Charge Administration as the Chairman; AOP, DCAS, DG (I&S) and AOM as the members and PD AFGIS as Member Secretary. Besides, the day to day running of the AFGIC is carried out by four officers deputed from Indian Air Force deputed in AFGIC as Principal Director, Secretary, Joint Director (Finance) and Joint Director (System) and civilian staff, who are paid salaries from Air Force Group Insurance Fund. According to petitioners, the Govt. of India granted sanction to AFGIC to run departmentally by Air Headquarters as self run scheme under the ageis of AOA's Branch w.e.f. 1976 and the expenditure of the salary and wages of the employees shall be paid from Group Insurance Funds with the concurrence of Ministry of Finance

(b) The petitioners, who are working on different posts, have claimed that their pay scales have from time to time been fixed as per recommendations of the Fifth and Sixth Pay commission by the Central Government, including grade pay and other allowances, like Dearness Allowance, House Rent Allowance, Children Education Allowance, Festival Advance, House Building Allowance and personal loan etc.

(c) The petitioner are aggrieved that though in the Special Meeting of Board of Trustees of AFGIC held on 27.12.2016 it was decided to implement the recommendations of Sixth pay commission and pay the arrears; however, vide special meeting vide Air HQ/27803/2/2016/2/GIS/Secy dated 13.02.2017 the Board of Trustees held that "*fixation of pay and allowanced of AFGIS employees in future be done in such a manner that there is no direct linkage with the Pay structure of the Central Govt employees and presumed parity must be done away with so that automatic demand of pay parity with CPC is obviated.*". Thereafter, a notice dated 22.05.2017 was issued to all the employees on 22.05.2017 to sign their acceptance to the said revised terms.

(d) The petitioners have pleaded that the revised terms and conditions of service of AFGIS employees pursuant to meeting dated 13.02.2017, does not only affect the pay scales, leave pattern, loss of MACP to the employees but also under Clause- 51 thereof, the employees can be terminated by giving one month's notice.

(e) The petitioners have pleaded that by revising the terms and conditions in 2017, the respondent No.3 is denying the benefit of recommendations of Seventh Pay Commission. It is pleaded that by arbitrarily and illegally changing the terms and conditions, respondent No.3 is trying to have unlimited powers to control the employees. Thus, quashing of impugned Revised Terms and Conditions of Service of the Staff, 2017 dated 13.02.2017 are sought to be set aside and recommendations of the Sixth and Seventh Pay commission of the Central Government, are sought to be implemented.

2. The above captioned second petition [W.P.(C) No. 16428/2022] has been preferred by petitioner-Vinod Kumar, who is working on the post of Assistant AFGIS and is aggrieved of impugned order dated 02.11.2022 vide which respondent No.2 has promulgated for conducting promotional exam for only one post of Manager on 02.12.2022; wherein petitioner and respondent No.3, who will complete 10 years of service on 30.11.2022, be eligible to appear and this has reduced petitioner's chance to become Manager. The relief sought in the present petition is as under:-

W.P.(C) No. 16428/2022

(a) The petitioner in this petition had joined the services of AFGIS on the post of Lower Division Clerk (LDC) in the year1999 and after promotion to the post of Upper Division Clerk (UDC), he got promoted to the post of Assistant in the year 2012. According to petitioner, as on 31.02.2022, there were three vacancies available for the post of Manager and so, petitioner vide letter dated 04.10.2022 requested the respondent conduct the examination. The grievance of petitioner is that on an earlier occasion as well as this time, the respondent notified the examination to favour those who are yet to finish 10 years of service, thereby increasing the competition for the petitioner.

(b) A direction is thereby sought to the respondents to remove name of respondent no.3 from impugned order dated 02.11.2022, being ineligible candidate for having not completed 10 years of service.

3. In the above captioned third petition [W.P.(C) No. 6759/2017], petitioners are petitioners are employed with Air HQs Non-public Fund Organization on different posts and are governed by Air HQs Non Public Fund Account (NPPFA). The relief prayed for is as under:-

W.P.(C) 6759/2017

(a) In this petition, petitioners claim that the terms and conditions of service, regarding Pay Scales and allowances, procedure for conducting enquiries, which are governed by the Central Government, are incorporated in Terms and Conditions of Service of Air HQ NPF employees-1993 Rules. Also claimed that the recommendations of the Fourth, Fifth and Sixth Pay commission have been made applicable to HQs, NPFA at par with the Civilian employees of Air Headquarters and certain anomalies have been redressed.

(b) The petitioners claim that pursuant to advertisements dated 20.08.2006 and 15.02.2008, the respondents had invited application for different posts, wherein it was mentioned that DA, HRA,LTC, CPF and Gratuity is at par Central Government employees. However, the terms and conditions of service of NPF employees called as Terms and conditions of service of Air HQ NPFs Employees-01 Jan 2017 (Revised) have been made applicable from 01.01.2017, wherein it has been mentioned that "*fixation of pay and allowanced of AFGIS employees in future be done in such a manner that there is no direct linkage with the Pay structure of the Central Govt employees and presumed parity must be done away with so that automatic demand of pay parity with CPC is obviated.*".

(c) The petitioner No.1 claims to have made a joint representation dated 27.04.2017 and 19.06.2017 to the respondents to remove the anomalies of the 6th Pay commission and grant them benefits of arrears of pay, however, the fate of their representation is still unknown to them.

(d) The petitioners have approached this Court praying that by revising the terms and conditions of service, the employees have been excluded from benefits of Leave Travel Compensation, Medical (CGHS) facilities and MACP etc., which is arbitrary and illegal. Hence, quashing of Terms and Conditions of Air HQ NPF Employess-2017 and benefit of recommendations of Seventh Pay Commission is sought.

4. The above captioned fourth petition [W.P.(C) No. 13858/2018] has

been preferred by the petitioner seeking quashing/ setting aside of order dated 25.04.2018 passed by the respondents whereby his request to grant grade pay of Rs.4600/- (Pay Band-2) has been rejected by the respondents. A direction is sought to the respondents to grant grade pay of Rs.4600/- (Pay Band-2) from 01.01.2006 with all consequential benefits to the petitioners. The background of the petition and the relief prayed is as under:-

W.P.(C) 13858/2019

(a) The petitioners, in this petition, employed in Air HQ Non Public Funds, claim to have received benefits of Fourth and Fifth Pay Commission, as have been granted to Central Government Civilian Employees at AFHQ, however, recommendations of Sixth Pay Commission have not been implemented. Petitioners claim to have made representation dated 23.06.2012 to the respondents seeking grant of grade pay as per their entitlement and despite respondents assuring the petitioners vide letters dated 31.08.2012; 08.01.2013 and 20.02.2018 that the recommendations of the pay commission and anomaly removal are under consideration, however, vide order dated 25.04.2018 rejected their representations by passing a non-speaking order.

(b) The petitioners have prayed for quashing of order dated 25.04.2018, vide which their prayer for fixation of pay has been rejected by the respondents.

5. In the above captioned fifth petition [W.P.(C) No. 863/2019], petitioners have prayed for quashing/ setting aside of orders dated 25.04.2018 and 31.08.2018, whereby respondents have rejected the claim of petitioners for grant of grade pay of Rs. Rs.4600/- (Pay Band-2) to Assistant; grade pay of Rs.4800/- to Superintendents and further MACPs from time to time. The background of the present petition is as under:-

W.P.(C) 863/2019

(a) The petitioners in this petition are also employees of Air HQs Non-public Fund Organization, wherein they have claimed that they are entitled to all benefits as have been granted to the Central Government employees. Petitioners are aggrieved that respondents, acting in an arbitrary manner, have deprived the petitioners of their legitimate financial benefits by not granting them pay scales recommended under the Sixth Pay Commission.

(b) The petitioners claim to have made representations dated 25.03.2018; 30.06.2017; 24.10.2017 to the respondent, which were rejected vide letters dated 25.04.2018 and 31.08.2018.

(c) Petitioners are accordingly seeking setting aside of letters dated 25.04.2018 and 31.08.2018, which according to them have been arbitrarily issued to them to deprive them benefits of Sixth and Seventh Pay Commission.

6. In the above captioned sixth petition [W.P.(C) 15835/2022], the petitioner is employed in CRPF Employees Educational Society ('CRPF

EES') and posted at CRPF ITC, Biharipur and is seeking extension in age of retirement from 58 to 60 years by amending F.R. 56. In addition, petitioner is also seeking implementation of recommendations of Fifth, Sixth and Seventh Pay Commission in case of petitioners. The background of this petition is as under:-

W.P.(C) 15835/20222

(a) The petitioner in this petition is regular employee of CRPF Employees' Educational Society and has submitted that as per recommendations of the Fifth pay commission, the age of retirement of Central Government employees was increased from 58 to 60 years. However, the respondents have not implemented the recommendations of Fifth and Sixth Pay Commission to the employees of CRPF Employees' Educational Society and consequential ACP and MACP.

(b) The petitioner claims to have made representation dated 20.10.2022 to the respondents, fate whereof has not been communicated to the petitioners.

(c) Thus, the petitioner has prayed that the retirement age be extended from 58 years to 60 years and benefits of Fifth, Sixth and Seventh pay commission, with ACP and MACP, be granted to the petitioner.

7. In these petitions, the common question for consideration arising before this Court is as to whether Air Force Group Insurance Society ('AFGIS'); Air HQs Non-public Fund Organization and CRPF

Employees' Educational Society, ought to be treated as 'other authority', as contemplated in the definition of 'State' under Article 12 of the Constitution of India. Therefore, with the consent of learned counsel for the parties, these writ petitions were heard together and are being decided by this judgment.

8. By virtue of order dated 01.09.2022, with the consent of learned counsel for the parties, this Court had directed that W.P.(C) 5024/2017 shall be treated as the lead matter.

9. Learned counsel appearing on behalf of petitioners submitted that the AFGIS was registered under the Societies Act, XXI of 1860 in the year 1976 and was sanctioned by the President on 06.10.1976 and also by the Ministry of Finance and Expenditure, Government of India. The employees of AFGIS were given benefits at par with the Central Government employees and the alteration of unilateral service terms and conditions is contrary to law and pay scale.

10. Similarly, petitioners employed in Air HQs Non-Public Fund Organization have also claimed that their organization was formed in Lahore in 1940 but was re-registered in the year 1981. It is averred that Indian Air Force Benevolent Association (IAFBA) is a part of Air HQ Non-Public fund Organisation which has been treated as a Government notified Institution vide notification No. 1591 dated 17.12.1976 under Section 10 of I.T. Act, 1961. The Air HQs NPF is under the direct control and supervision of top officials of Indian Air Force and the affairs of the organization are being manned and managed by the Indian Air Force and so, Air HQs Non Public Fund organization falls within the purview of

State under Article 12 of the constitution of India.

11. Learned counsel submitted that the preliminary objection raised by the respondents that AFGIS is not a 'State' deserves to be rejected in the light of decision of Supreme Court dated 14.02.2019 in CA9166/2013, titled as *"**Marwari Balika Vidyalya Vs. Asha Srivastava**"* wherein it is held that under Article 12, "authority" does not mandamus a public duty but such a duty if imposed by common law or contract, the writ petition is maintainable. Reliance was also placed upon a decision dated 29.08.2011 passed by this Court in W.P.(C) 3850/2010, titled as ***Sagrika Singh Vs. UOI & Ors.***, wherein a Society, namely, Army Group Insurance Fund (AGIF), formed by the Armed Forces on 01.01.1976 was held to be a State. Learned counsel for petitioners also placed reliance upon decision dated 09.09.2008 passed by the Delhi State Commission in Appeal No.A07/244, wherein it was held that AFGIS was under the overall control of Air Force and the funds of AFGIS were also under the supervision of Air Force and hence, funds of AFGIS cannot be treated as non-public funds.

12. To the contrary, learned counsel appearing on behalf of respondents submitted that these petitions are not maintainable as the AFGIS, CR.P.F. I.T.C, and Air HQs Non-public Fund Organization, fall under the category of "Other Society" and not State under Article 12 of the Constitution. It was submitted that these Societies are not funded by the Government nor performs any public, statutory or sovereign function. Learned respondents' counsel drew attention of this Court to a decision of Constitution Bench of the Supreme Court in ***Ajay Hasia & Ors. Vs.***

Khalid Mujib Sehravardi & Ors. (1981) 1 SCC 722, wherein six tests were culled out to qualify the ambit of Article 12 and submitted that the Societies in question function as per the stipulated rules and regulations of the societies and not as per administrative control of the Government and as such Indian Air Force.

13. Learned counsel for respondents also placed reliance upon Supreme Court's decision in ***Pradeep Kumar Biswas & Ors. Vs. Indian Institute of Chemical Biology & Ors.*** (2002) 5 SCC 111 to submit that if there is some element of control of the government but not a deep and pervasive control; if Government's presence or participation is felt in the society, such presence cannot be called a brooding presence or the over lordship of government and a mere governmental patronage, encouragement, push or recognition would not make an entity "the State". Reliance was next placed upon Constitution Bench's decision in ***M/S Zee Telefilms Ltd. & Anr. Vs. Union of India &Ors.*** (2005) 4 SCC 649 and decisions of this Court dated 02.06.2010 in W.P.(C) No. 16699/2006, titled as ***Lt. Col. Ashok M. Chacko Retd. Vs. Union of India & Ors.*** and ***Air Vice Marshal J.S. Kumar Vs. Governing Council Of Air Force Sports Complex*** 126 (2006) DLT 330 in support of above submissions.

14. Learned counsel for respondents submitted that these Societies have been incorporated in order to provide insurance, investment and education related services to a section of people belonging to the Air Force and, therefore, no public function is being carried out by these Societies in order to fall even close to ambit of Article 12 of the Constitution of India.

15. About changes in service terms and conditions, it was submitted

that Board of Trustees of the Society reserve the right to do so from time to time, which fact was also mentioned in the appointment letters of the petitioners and such like personnel. Reliance was further placed upon decision in ***Chander Mohan Khanna Vs. NCERT*** (1991) 4 SCC 578 and ***Lt. Governor Delhi Vs. V.K Sodhi*** 2007(15) SCC 136 wherein it is held by the Supreme Court that NCERT and SCERT though have some relations with the Government but still do not fall within the four walls of Article 12. Reliance was also placed upon decision in ***St. Mary's Education Society and Anr. Vs. Rajendra Prasad Bhargava and Ors***. 2022 SCC Online SC 1091 whereby in Para 69 (c) it has been held that in the absence of service conditions being controlled by the Government by statutory provisions, the matter would remain in the realm of ordinary contract of service; therefore, will not amenable to Writ Jurisdiction.

16. In rebuttal, learned counsel for petitioners submitted that reduction in basic pay and change of conditions of service is bad in law. Learned counsel submitted that there has been a historical parity of the petitioners with Central Government employees, which has been abruptly done away with by introducing Rules of 2017. Lastly, it was submitted that the funds of AFGIS is compulsory deposit by officers including Airmen, NCE and Flight Cadets and is *para materia* with the Army Fund and is covered under Article 12, as has been held in the case of ***Sagarika Singh Vs. UOI & Ors.*** 2011 SCC OnLine Del 3612.

17. Whether or not the petitioners are entitled to get the relief claimed in their respective petitions would be governed only after it is determined that AFGIS, Air HQs Non-public Fund Organization and CRPF EES fall

in the category of 'other authorities' or the 'State', as contemplated under Article 12 of the Constitution of India so that it could further be determined whether the relief sought in these petitions can be granted by this Court. Thus, the arguments were advanced by learned counsel for the parties on this limited aspect.

18. For the aforesaid purpose, we have gone through the provisions of Article 12 of the Constitution of India as well as decisions relied upon by learned counsel for the parties. Article 12 of the Indian Constitution reads as under:-

> *"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."*

19. The Hon'ble Supreme Court as well as High Courts in various decisions have laid down factors which determine whether a body falls within the purview of 'local authorities' or 'other authorities' and would be considered as 'State' or not.

20. Learned counsel for petitioners have relied upon decision of this Court in ***Sagarika Singh (Supra),*** pertinent observations relied upon are as under:-

> *"12. The expression 'State', is defined in Article 12 of the Constitution of India, to include inter-alia the Government of India, the Government of each of the capital states and all local or other authorities within the territory of India or under the control of the Government of India. Obviously AGIF is not the*

Government of India nor is it the Government of any State nor is it a local authority. Would it be 'other authority'?

13. That immediately leads us to a consideration of the question as to who would be 'other authority' contemplated in the definition of 'State' in Article 12 of the Constitution of India.

14. Decisions on the issue are legion and since we do not intend to make a catalogue, we highlight the fundamental decision of the Supreme Court reported as Ajay Hasia v. Khalid Mujib Sehravardi (1989) 1 SCC 722. Considering whether a society registered under the J&K Societies Act 1898, which was running a college, was 'an authority' as contemplated by Article 12 of the Constitution of India, reviewing past precedents, the anvil on which the test had to be predicated, was stated in the following words...

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21. This Court in ***Ex. Sub. Rajender Singh Vs. Union of India and Ors.*** 2013 SCC OnLine Del 1598, observed and held as under:-

"10. With respect, this Court has difficulty accepting the logic and assumption premised in Sagrika Singh (supra). The normal tenure or term of service of any public servant, including an armed force or military personnel is a matter of status, and defined under rules or regulations. In petitioner's case, the term of office, by virtue of Regulation 163, is 28 years of service, or attainment of a certain age, whichever is earlier. There is no difficulty in applying the ratio in Sagrika, if, during the subsistence of such tenure (or term) the personnel suffers from a medical condition resulting in

invalidity. In such eventuality, his eligibility to the insurance benefit under AIG cannot be in doubt. Equally, during subsistence of the extended tenure (be it within a month, the remainder being 1 year 11 months) if the person incurs a medically debilitating condition resulting in downgrading of medical category to unacceptable limits, he or she would undoubtedly be entitled to the AIG benefit. However, during subsistence of the regular or assured tenure (in the present case 28 years) and before the commencement of the extended tenure (for which he is yet to be considered and sanction yet to be granted), if the individual suffers such medical condition, which results in his disqualification for the tenure itself, there can, in our opinion, be no cutting short of such tenure.

XXXXX

13. In view of the above discussion, this court is of the opinion that the reasoning and conclusions in Sagrika Singh are not sound. Besides, the Court, in that case, did not consider Regulation 163, and the law declared by the Supreme Court in the cases cited above that the right to continue in the post, for the entire term, prescribed under the rules, is of a different character from the right to be considered for extension, which is an entitlement of a weaker kind, dependent on eligibility conditions, including fulfilment of medical and physical standards. At the same time, this Bench is a co-ordinate one, and propriety dictates that a reference is made to a Full Bench for consideration of the following questions of law:

1) Can the right to extended service, of an Army personnel, on completion of the term of office, and attainment of the prescribed age of superannuation

> *be equated with the right to continue in service during the term of office prescribed under the relevant rules, in the context of Para 59 of the Army Group Insurance Scheme?*
>
> *2) Can it be said that the denial of extended service or extended tenure of service, upon attainment of the prescribed superannuation age, - without the concerned individual having served in such extended tenure at all-amounts to cutting short of such service, or terms of engagement, under Para 59 of the Scheme, in the given facts of the present case?"*

22. In the light of aforenoted view, this Court in ***Ex. Sub. Rajender Singh (Supra)*** referred the case to the larger Bench for consideration on afore-noted questions. The Larger Bench of this Court disagreed with the interpretation of Para-59 of Army Group Insurance Scheme penned in ***Sagarika (Supra)*** and overruled the opinion rendered therein.

23. Thereafter, another Bench of this Court in ***Shivali Dhillon Vs. Managing Director, Army Welfare Education Society (Awes) and Ors.*** 2015 SCC OnLine Del 10655, wherein the petitioner, who was working as Lecturer in Army Centre for Education (ACE), Panchmarhi, Madhya Pradesh, had sought benefits of Sixth Pay Commission along with arrears of DA etc.; and the issue of maintainability of petition being ACE not a 'State' and 'other category' under the meaning of Article 12, was raised; this Court dismissed the said petition holding that the *objective for which the Society was formed was to provide, augment Educational and Technical/Professional/Vocational training facilities to meet the needs of children of Army Personnel including widows and ex-service men, for*

which land has been given by the army to create infrastructure and it would not construe the function/duty of respondent No. 1 as having a public law element.

24. The Supreme Court in ***Rajasthan State Electricity Board Vs. Mohan Lal*** AIR 1967 SC 1857 has held as under:-

> *"5. The meaning of the word "authority" given in Webster's Third New International Dictionary, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."*

25. The Supreme Court in ***Ajay Hasia Vs. Khalid Mujib Sehravardi*** (1981) 1 SCC 722 has observed as under:-

> *"11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may*

be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12."

26. Further, the Supreme Court in ***Chander Mohan Khanna Vs. National Council of Educational Research and Training*****,** (1991) 4 SCC 578 has observed as under:-

"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. "

27. Thereafter, the Larger Bench of the Supreme Court in ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology*** (2002) 5 SCC 111, while taking note of the observations made in ***Ajay Hasia*** and ***Chander Mohan Khanna (Supra)***, extensively considered under what circumstances, an authority or Society will fall within the ambit of 'other authority' or the 'State'; and held as under:-

"40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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 in 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."

28. The afore-referred decisions of the Supreme Court clearly show that irrespective of the fact that an organization is founded by the Government or not, if an organization is financially, functionally and administratively controlled by the Government and it is rendering an important public service, it shall be considered as a 'State'.

29. Now, it is required to be seen as to whether the petitioners before this Court fulfil the criteria laid down by the Supreme Court and fall within the definition of 'State' to get the relief sought herein.

30. With regard to i.e. W.P.(C) No. 5024/2017 and W.P.(C) 16428/2022, we find that the petitioners have themselves averred that AFGIS was formed in the year 1976 under the Societies Registration Act and it operates Air Force Group Insurance Scheme for Air Force personnel. It is not disputed that it is a self-run scheme and is governed by the Board of Trustees of Air HQ being Air Officer in Charge Administration as the Chairman; AOP, DCAS, DG (I&S) and AOM as the members and PD AFGIS and its day to day functioning is carried out by four officers deputed from Air Force. These officers are governed by the terms and conditions of Ministry of Defence for being on deputation and they act under the terms and conditions issued by the Board of Trustees of the Society. Moreover, admitted case of the petitioners is that the expenditure on the staff and officers for running this Scheme is charged from the Group Insurance Funds with the concurrence of Ministry of Finance.

31. A perusal of copy of appointment letter issued to one of the petitioners, namely, Ravi Khokhar dated 06.03.1989, is placed on record,

which clearly mentions that the *"terms and conditions of service will be governed by the service rules for employees of Air Force Group Insurance Society as may be amended from time to time"*. With regard to HRA, DA and City Compensatory allowance etc. it states that the same shall be paid if approved by the Board of Trustees. Besides, it also clearly mentions the other terms and conditions of service. However, nowhere in the appointment letter it has been mentioned that the terms and conditions of service shall be applicable as per Central Government Rules. Rather, the respondent has in very clear words made it clear that the terms and conditions as postulated by the Society shall be applicable. Accordingly, in our considered opinion, though the AFGIS is a self developed Society by a few members of the Air Force, for benefit of a group of people who are its members and though its being run by a few officers of the Air Force, it cannot be said that its functioning relates to the Air Force. In addition, the rules and regulations governing AFGIS are not controlled by the Central Government but are in the hands of its Board of Trustees since its inception.

32. With regard to W.P.(C) 6759/2017 and W.P.(C) 863/2019, we find that the petitioners are employed with Air Headquarter Non-Public Fund Organization, which was originally formed in 1940 but was registered as a Society in 1981. It is not disputed that the Society solely runs on the fund contributions of the employees of the Air Force and on the interest amount incurred on loans advanced to its members and is not at all funded by the Central Government. Though some of the officers of the Air Force are posted in the Society on deputation basis for its running, but at the same time those officers are being paid by the Organisation/ Society for their

work, and not by Air Force. Merely because the monthly contribution towards the organisation is being deducted from the salary of the employees, and for this purpose sanction of the President was granted, would not bring the organisation within the ambit of the Central Government. A copy of appointment letter issued to one Ms. Rajni Kanta on 17.01.1975 clearly notes that she will be entitled to receive allowances as laid down by the Executive Committee from time to time. When the Society is neither funded nor run by the Central Government, it cannot be said to fall under the category of 'State' within the meaning of Article 12 of the Constitution of India.

33. The petitioner in W.P.(C) 15835/2022 is employed with CRPF ITI which is under the CRPF Employees Education Society. We have perused the copy of appointment letter issued to the petitioner which clearly mentions that he shall be entitled to the allowances and benefits as allowed by this Society from time to time. Meaning thereby, petitioner is not an employee of Central Government and his service shall run on the terms and conditions stipulated by the Society.

34. The petitioners in support of their case have relied upon Supreme Court's decision in ***Marwari Balika Vidyalya (Supra)***, wherein the Single Bench had dismissed the writ petition on the ground that the private school was not run by the State Government but was privately managed and hence, the writ petition was not maintainable; and the Division Bench had reversed the said order passed by the Single Bench; against which an appeal was preferred before the Supreme Court and it was held that since the appellant- therein, was performing a public function by imparting

education to the children throughout India, the writ petition was maintainable. In the present petitions, the respondents are performing duties only towards its members and not public at large.

35. In ***Sagarika Singh (Supra)*,** this Court had held that Army Group Insurance Fund performs a public duty by providing insurance cover to the Army Personnel and their families by way of premium being compulsorily deducted from the salary of Army Personnel and thus a writ of mandamus can certainly be issued to AGIF to compel it to perform its duty. For holding so, the Court had noted the fact that AGIF performs a public duty by providing insurance cover to the Army Personnel and their families by way of premium being compulsorily deducted from the salary of army personnel. However, the Larger Bench of this Court while answering the reference petition in ***Ex. Sub. Rajender Singh (Supra)***, has negated the observations made in ***Sagarika Singh (Supra)***. In the present case, the petitioners have not been able to establish that respondents are performing public duty or run by Air Force to fall within Article 12 of the Constitution of India. A copy of letter dated 15.03.2016 written by the AFGIC to the Assistant Commissioner of Service Tax, seeking exemption from paying service tax, shows that the respondent-AFGIS has stated that the AFGIS was established for the welfare of past and present members of Armed Forces (Air Force) and the sanction by the Ministry of Defence vide letter dated 06.10.1976 was accorded noting that it is a ‘self contained society’. The AFGIS is administered by the Board of Trustees and it is established for the financial security and welfare of the air warriors of Indian Air Force.

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.

38. This Court vide order dated 30.11.2022 in W.P.(C) 16428/2022, had granted interim relief to the petitioner to the extent that any promotion shall be subject to outcome of the petition. The said interim order is

accordingly vacated.

39. These petitions and pending applications are accordingly dismissed with liberty to the petitioners to avail the remedies before the appropriate Forum.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 01, 2023
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