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

% **Order reserved on: 27 October 2022**
Order pronounced on: 31 October 2022

\+ W.P.(C) 6701/2020

NARESH KUMAR BERI & ORS ..... Petitioners
Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA & ORS..... Respondents
Through: Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Ritika Khanagwal, Ms. Dipika Sharma, Advs. for UOI
Mr. Rajiv Nayar, Sr. Adv. with Ms. Manzira, Ms. Akansha Das, Mr. Amit Mishra, Mr. Sanjeet Ranjan, Mr. Azeem Samuel, Ms. Anandita Barman, Advs. for Air India.

\+ W.P.(C) 8809/2020

DAVESHWER SHARMA & ANR..... Petitioners
Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY CIVIL AVIATION & ORS ..... Respondents
Through: Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Ritika Khanagwal, Ms. Dipika Sharma, Advs. for UOI
Ms. Akansha Das, Adv. for Air India

\+ W.P.(C) 11970/2021 & CM APPL. 36990/2021(Direction)

CAPT. DEVI SHARAN & ORS ..... Petitioners
Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY CIVIL AVIATION & ORS ..... Respondents

Through: Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Ritika Khanagwal, Ms. Dipika Sharma, Advs. for UOI
Ms. Akansha Das, Adv. for Air India

\+ W.P.(C) 6725/2021

CAPT. S B KHADTALE & ORS ..... Petitioners

Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY CIVIL AVIATION & ORS ..... Respondents

Through: Ms. Anjana Gosain, Ms. Shalini Nair, Ms. Ritika Khanagwal, Ms. Dipika Sharma, Advs. for UOI
Ms. Akansha Das, Adv. for Air India

\+ W.P.(C) 13813/2021 & CM APPL. 43596/2021(Direction)

CAPT GAUTAM MEHTA ..... Petitioner

Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Ms. Akansha Das, Adv. for Air India

\+ W.P.(C) 1850/2022 & CM APPL. 5312/2022(Direction)

CAPT. SYED HAMID REZA ..... Petitioner

Through: Mr. Lalit Bhardwaj and Mr. Jatin Anand Dwivedi, Advs.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY CIVIL AVIATION & ORS. ..... Respondents

Through: Mr. Vijay Joshi, Adv. for UOI.
Ms. Akansha Das, Adv. for Air India

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

O R D E R

1. The petitioners before this Court were permanently employed and rendered service as commanders and co-pilots with the second respondent **Air India Limited**[1]. Post their superannuation, they were appointed on contractual terms. They have approached this Court assailing the validity of the orders dated 02 April 2020 and 07 August 2020. In terms of the first order, AIL considering the outbreak of COVID-19 and its impact on operations of airlines worldwide, had proceeded to place their engagement on contractual terms under temporary suspension. By the subsequent order of 07 August 2020, AIL apprised the petitioners that in view of the prevailing scenario in the civil aviation sector, a decision had been taken to discontinue their contractual engagement.

2. Mr. Nayar, learned Senior Counsel appearing for AIL, has taken a preliminary objection to the maintainability of the writ petition and submits that the writ petition would not lie since the terms of engagement of the petitioners was not governed by any statutory provisions. Learned Senior Counsel contended that since the engagement of the petitioners was governed by a mere contract of service, a writ petition either for its enforcement or alleged violation of its terms would not be maintainable. Mr. Nayar has in this regard placed reliance upon the following principles as laid down by the Allahabad High Court in **Ram Niwas Sharma vs.**

[1] AIL

Union of India and Others.[2]:-

> ‑15. Roychan Abraham clearly holds that it is only a ‑public law action‖ which confers a right upon an aggrieved person to invoke the jurisdiction under Article 226 of the Constitution. It also notes that wherever the Courts have in fact intervened and invoked their powers conferred by Article 226, it was only in situations where service conditions were regulated either by statutory provisions or where the employer had the status of State.
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> 16. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke this Courts powers conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a ‑public function‖ or ‑public duty‖ be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions the matter would remain in the realm of an ordinary contract of service.
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> 17. This distinction which must necessarily be borne in mind has been eloquently explained by the Supreme Court in a decision rendered just a few days after Roychan Abraham in *Ramkrishna Mission* v. *Kago Kunya* 5. After noticing the earlier decisions rendered on the subject, the Supreme Court held thus:
>
> > ‑35. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.
> > 36. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is

[2] 2020 SCC OnLine All 205

rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

38. It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226 Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In *Federal Bank* (supra), while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the court held thus:

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

> 39. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in *K K Saksena* (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.
> …
> 41. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article.‖

> 18. As has been lucidly explained, contracts of a purely private nature even though entered by bodies which may perform a public function would not be subject to judicial review. The only exception would be where such contracts are governed or regulated by statute. In the present case it is the undisputed position that the byelaws and the service conditions which apply are non statutory. They are deprived of any statutory ordainment. Such a contract, as noted above, would remain a pure private contract of service. In that view of the matter the writ petition challenging the termination of such a contract would not be maintainable.‖

3. Mr. Nayar further contended that undisputedly and as things stand presently, AIL as a result of the disinvestment process which was initiated by the Union Government, has clearly ceased to be a public body against which a writ petition would be maintainable. Learned Senior Counsel submitted that originally, AIL was a statutory body which came to be constituted as such under the provisions of the **Air Corporations Act, 1953.** Post its repeal and in terms of the provisions of the **Air Corporations (Transfer of Undertakings and Repeal) Act, 1994**, it became a wholly owned Government company. That position subsisted till it was ultimately privatised in light of the policy decision taken by the Union Government.

4. Mr. Nayar submits that presently the shares of AIL are held by an independent private entity and thus it can no longer be construed or recognised as being a public body or authority within the meaning of Article 12 of the Constitution. In view of the above, it was his submission that, while the writ petition could have been maintained against AIL prior to its disinvestment, in light of the changed circumstances the writ petition today must necessarily be dismissed in light of the fact that it has become a purely private entity. In support of the aforesaid submission, Mr. Nayar has firstly drawn the attention of the Court to the decision rendered by the Division Bench of the Bombay High Court in **R.S. Madireddy and Another vs. Union of India and Others**[3]**. R.S. Madireddy** was a case which dealt with an identical situation of a writ petition having been instituted against AIL while it was a wholly owned Government company. However by the time it was taken up for final disposal, the disinvestment process had intervened and in view thereof a question arose as to whether the writ petition could still be maintained. Dealing with the said issue, the Bombay High Court held as under: -

> -55. Having heard the parties and perusing the materials placed before us by them, we are of the opinion that the issue regarding maintainability of the writ petitions owing to the intervening event of privatization of AIL, the principal respondent, between institution of the writ petitions and its final hearing before us, is no longer *res integra*. The decisions of this Court in *Tarun Kumar Banerjee* (supra) [since upheld by the Supreme Court while dismissing SLP (C) No. 5185 of 2009], and *Mahant Pal Singh* (supra) [since upheld in *Jatya Pal Singh* (supra)], the decision of the Karnataka High Court in *Padmavathi Subramaniyan* (supra), and the several decisions of the Delhi and Gujarat High Courts, noted above, have taken a consistent view and these lead us to form the firm opinion that with the privatization of AIL, our jurisdiction to issue a writ to AIL, particularly in its role as an employer, does not subsist. We could have

[3] (2022) SCC OnLine Bom 2657

disposed of these writ petitions without much ado by following the judicial authorities in the field but having regard to the submissions advanced by Mr. Singhvi, noted in paragraph 47 above, we would like to proffer some reasons for reaching our own conclusions.

59. Our discussion should start with the alert that writ remedy is discretionary. It is elementary that a writ petition under Article 226 of the Constitution may be entertained by a high court if an entitlement in law, which is normally referred to as a legal right, is shown to exist and a breach thereof is alleged. The right to relief before a writ court, as claimed, necessarily casts a duty on the party aggrieved who approaches the court to satisfy it that the entitlement is capable of being judicially enforced against the party complained of and that the latter answers the identity of an _authority' or a _person' to whom the writ or order or direction can legitimately be issued. In other words, the party complained of must be amenable to the writ jurisdiction of the high court. Therefore, generally speaking, as on date of admission hearing of a writ petition, the writ court is required to form a *prima facie* satisfaction on both the above counts. If either a legal right has not been infringed or the party complained of is not amenable to the court's writ jurisdiction, obviously the writ petition cannot be entertained. If, however, the court is *prima facie* satisfied, the court may in the exercise of its discretion admit the writ petition and post it for final hearing. After the pleadings are exchanged, and once the court arrives at a conclusion that a legal entitlement exists and such entitlement has been breached, together with the satisfaction that a writ would lie against the party complained of, an appropriate writ or order or direction can be issued. Thus, satisfaction as regards the breach of a legal entitlement apart, what is important in this context is that such breach must have been at the instance of the party complained of to whom a writ or order or direction can legitimately be issued. Not only, therefore, the party complained of should be amenable to the writ jurisdiction of the high court on the date of institution of the writ petition, it must also be so when the writ petition is finally heard and decided. It is thus axiomatic that only upon a double check (first at the time of admission of the writ petition, and then again at the time of final hearing thereof that the respondent against whom the complaint of commission of breach of a legal right of the petitioner is made is amenable to the writ jurisdiction) would the court proceed to decide the contentious issues. If not so amenable, the question of deciding the issues on merits may not arise. What follows from the aforesaid discussion is that the writ court when approached must not only have jurisdiction to issue a writ or order or direction to the party against whom the complaint of breach of a legal right has been made at the inception of receiving the writ petition but such jurisdiction it must retain, without impairment, till the jurisdiction to issue the writ to such party is actually discharged.

> 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.
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> 74. The writ petitions, although maintainable on the dates they were instituted, have ceased to be maintainable by reason of privatization of AIL which takes it beyond our jurisdiction to issue a writ or order or direction to it. For the reasons discussed above, the writ petitions and the connected applications and chamber summons stand disposed of without granting any relief as claimed therein but with liberty to the petitioners to explore their remedy in accordance with law. No costs.‖

5. Mr. Nayar has also referred for the consideration of the Court the judgment handed down by the Karnataka High Court in **M. S. Padmavathi Subramaniyan V. The Ministry of Civil Aviation**[4] in which while dealing with an identical question, the Court had held as follows: -

> -4. From the above, it is clear that the Air India Limited is now a private Company owned by M/s. Talace Pvt. Ltd. The earlier position of Air India Limited which was a fully owned Government of India Company, has changed and it is now a Private Limited Company. Therefore, the grievance of the petitioner in the matter of seniority can be redressed only before the competent authority which can deal with the question and not under Article 226 of the Constitution of India.‖

6. Reliance was then placed on the judgment rendered by the Bombay High Court in **Tarun Kumar Banerjee vs. Bharat Aluminum Co. Ltd**[5] where again the Court taking note of the subsequent privatization of a government enterprise held that the writ petition could not be continued.

[4] W.P.(C) 21446/2021

[5] W.P.(C) 1461/2003

The judgment in **Tarun Kumar Banerjee** is reproduced hereinbelow:-

> -1. Both the petitions Aluminum Co. Ltd. was the were filed against Bharat When the petitions were filed, it a Government of India enterprise. We are told by Respondent that they had filed an affidavit on 22-3-1996 thereby pointing out that Bharat Aluminum co. Ltd. has been privatised and share of more than 50% have been transferred to Sterlit Industries India Ltd. and as a consequence Bharat Aluminium Company Ltd is not a state and is not amenable to writ jurisdiction of this Court.
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> 2. In view of this submission we dispose of both the petitions while granting the Petitioner liberty to approach any other forum for redressal of their grievance if so advised. The time spent by the Petitioners in prosecuting these proceeding shall be taken into consideration for the purpose of limitation in case the Petitioner choose any such remedy where the question of limitation would be relevant.‖

7. It becomes relevant to note that the Special Leave Petitions which were taken against the aforesaid decision came to be disposed of with the findings returned by the Bombay High Court with respect to the maintainability of the writ petition being left untouched.

8. Turning then to the decisions rendered by our Court on the issue of maintainability of a writ petition post privatization of a government enterprise, learned senior counsel commended for the consideration of the Court the judgment in **Asulal Loya v. Union of India**[6], where it was observed: -

> -6. A Division Bench of Bombay High Court was also to examine the same preliminary issue in Writ Petition No. 1461/2003 titled *Tarun Kumar Banerjee* v. *Bharat Aluminium Company Limited* and the said writ petition was dismissed holding as under:—
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> > -1. Both the petitions were filed against Bharat Aluminium Co. Ltd. when the petitions were filed, it was a Government of India enterprise. We are told by the Respondent that they had filed an affidavit on 22-3-1996 thereby pointing out that Bharat Aluminium Co. Ltd, has been privatized and share of more than

[6] 2008 SCC OnLine Del 838

50% have been transferred to Sterlit Industries India Ltd. and as a consequence Bharat Aluminium Company Ltd is not a state and is not amenable to writ jurisdiction of this Court.

2. In view of this submission we dispose of both the petitions while granting the petitioner liberty to approach any other forum for redressal of their grievance if so advised. The time spent by the petitioners in prosecuting these proceeding shall be taken into consideration for the purpose of limitation in case the petitioner choose any such remedy where the question of limitation would be relevant.

(BILAL NAZKI, J)
(A.P. BHANGALE, J)‖

7. Privatization of the respondent company was challenged by BALCO Employees' Union (Regd.) before the Supreme Court. One of the grounds for challenge was that pursuant to disinvestment, the respondent company will become a private company and will not, therefore, be amenable to writ jurisdiction. The said challenge was considered and rejected by the Supreme Court in the following words:—

–47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to –trial and error‖ as long as both trial and error are *bona fide* and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. 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. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. 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* 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.‖

8. A somewhat similar plea was also taken in *All India ITDC Workers' Union* v. *ITDC*, (2006) 10 SCC 66 but following the decision in *BALCO's Employees Union (Regd.) case* (supra), the contention was rejected by observing as under:—

‑23. We have given our thoughtful consideration to the rival submissions made by the respective counsel appearing for the respective parties. In our opinion, the present writ petitions filed by the employees merit to be dismissed since disinvestment was a policy decision of the Government of India. This Court also has held that the said policy decision should be least interfered

> with in judicial review and that the government employees have no absolute right under Articles 14, 21 and 311 of the Constitution of India and that the Government can abolish the post itself. In the present case, the petitioners are not government servants and are merely employees of a public sector undertaking. This apart, the service conditions of the petitioners are being protected under the new management on the disinvestment of the Hotel and the fact that other hotels are also in an advanced stage of disinvestment in pursuance of the policy decision taken by the Government of India for disinvestment of the hotel units. We see no reason to interfere with the aforesaid decision. In case ultimately the petitioners are aggrieved by any aspect of terms of reference and formalisation of agreement and completion of disinvestment it is always open to the petitioners to approach the courts for redressal of their grievances.
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> 24. x x x x
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> 25. x x x x
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> 26. x x x x
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> 27. It is also pertinent to notice that ITDC has not participated in the disinvestment process as the same was carried out by the Ministry of Disinvestment, Government of India. The safeguards regarding the service conditions of the employees have been duly provided in the transfer document i.e. demerger scheme and share purchase agreement. This Court also in *BALCO Employees' Union (Regd.)*v. *Union of India* 3 held that the employees of the company registered under the Indian Companies Act do not have any vested right to continue to enjoy the status of the employee of an instrumentality of the State.‖

> 10. In these circumstances, the present writ petition is dismissed without going into the merits of the matter upholding the preliminary objection raised by the respondent company that it is not a State and, therefore, not amenable to writ jurisdiction. It is, however, observed that the petitioner is at liberty to approach any forum for redressal of his grievance, if so advised and the time spent by him in these proceedings shall be taken into consideration for the purpose of limitation. In the facts and circumstances of the case, there will be no order as to costs.‖

9. The question of maintainability of a writ petition post the privatization of a government corporation was again considered and

answered by a learned Judge of this Court in **Ladley Mohan vs. UOI & Ors.**[7] The Court deems it apposite to extract the following passages from that decision: -

> ―4. The petitioner has in the writ petitions inter alia pleaded that MFIL is an instrumentality of the respondent Union of India and on which ground Union of India has been impleaded as respondent no. 1 in each petition as a necessary and proper party. The counsel for the Union of India has been submitting that the Union of India is neither a necessary nor a proper party and it has been recorded in the orders in the writ petition that Union of India is merely a proforma party in the present proceedings.
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> 5. Both the petitions were listed before the court on 18th July, 2008 when the counsel for Hindustan Unilever Ltd. appeared before the court and informed that during the pendency of the writ petitions, on account of privatization, MFIL, which was an undertaking of Union of India, has been disinvested and the unit has been taken over by Hindustan Unilever Ltd. This court vide order of that date, allowed the counsel for Hindustan Unilever Ltd to file a short affidavit. Thereafter, the applications have been filed in both the writ petitions alongwith additional affidavit seeking dismissal of the petition. MFIL / Hindustan Unilever Ltd. now questions the continued maintainability of the writ petitions for the reason that MFIL is no longer a Public Sector Undertaking. In the additional affidavit supported by documents it is stated that MFIL, being a Public Sector Undertaking at the time of institution of the writ petition, was a ―State‖ within the meaning of Article 12 of the Constitution of India and hence amenable to the writ jurisdiction of this court; however the Government of India vide Notification dated 2nd March, 2000 disinvested its shareholding in MFIL to the extent of 74% in favour of the Hindustan Lever Ltd.; pursuant to the disinvestment MFIL became a joint venture company of Government of India and Hindustan Lever Ltd.; thereafter vide Notification dated 6th January, 2003, the remaining equity shares were also transferred in favour of the Hindustan Lever Ltd. and MFIL became a subsidiary of Hindustan Lever Ltd.; that no share capital of MFIL is now held by the Government and none of the Directors on the Board of MFIL now are the nominees of the Government of India; that post such disinvestment MFIL has ceased to be a ―State‖ under Article 12 of the Constitution of India; that after obtaining approvals of concerned courts, MFIL has amalgamated with Hindustan Lever Ltd. w.e.f. 30th March, 2007 and has ceased to exist as a legal entity. It is thus stated in the affidavit that that after such disinvestment, the contractual obligations

[7] 2010 SCC OnLine Del 1814

as claimed by the petitioner cannot be enforced against MFIL / Hindustan Lever Ltd under the writ jurisdiction of this court and hence the writ petition is not maintainable.

8. The counsel for the Hindustan Unilever Ltd. has on the contrary relied on **Asulal Loya v. Union of India** 154 (2008) DLT 314. Mr. Asulal Loya petitioner therein also had filed the writ petition challenging the order of termination of his services by Bharat Aluminium Company Limited, then a Government company. During the pendency of the writ petition the said Bharat Aluminium Company Ltd. was privatized and thereupon it was contended that the writ petition was no longer maintainable and no relief could be granted against Bharat Aluminium Company Ltd. since on that date it was not a State or other authority under Article 12 of the Constitution of India. The counsel for the Asulal Loya had however contended that the writ petition, when it was originally filed was maintainable and it would be unjust and unfair to non suit him after so many years; it was further contended that the ordinary rule of litigation is that rights of the parties stand crystalised on the date of commencement of litigation and right to relief should be decided with reference to the date on which the petitioner entered portals of the Court. This court however held —

i. that Section 6 of the General Clause Act 1897 does not apply to the Constitution of India;

ii. that a writ petition is not maintainable against a Private Limited Company or a Public Limited Company in which the State does not exercise all pervasive control;

iii. that a Government servant having a protection of not only Articles 14 and 16 of the Constitution of India but also of Article 311 has no absolute right to remain in service;

iv. that the petitioner in that case was not remediless and the apprehension expressed of limitation for taking appropriate proceedings before appropriate fora a can be taken care of.

This court thus in ***Asulal Loya*** (supra) dismissed the writ petition on the sole ground of the respondent company at the time of hearing of the writ petition ceasing to be State and amenable to the writ jurisdiction of the court.

9. The aforesaid dicta applies on all fours to the present situation also. The petitioner in person has contended that ***Asulal Loya*** was a workman to whom the remedy under the Industrial Disputes Act was available and which is not available to him and he would be rendered remediless. However, neither is that the position nor was that the consideration for

> the decision in ***Asulal Loya***. The petitioner, as aforesaid would have the remedy of the civil court available to him.‖

10. More recently and while dealing with a petition preferred against AIL itself, this Court in **Satya Sagar and Anr. Vs. Air India (AIESL)**[8] upheld the preliminary objection that the writ petition would not be maintainable post privatization of the respondents and observed as follows:-

> -3. Mr. Lalit Bhasin, counsel for Air India (AIESL) controverts the above raises an objection regarding maintainability of the instant petition in light of the fact that Air India Ltd. has been disinvested from the hands of Government of India and a Private Limited Company has taken over. He submits that the grievance of the Petitioners cannot, be redressed by way of a writ. In support he places reliance upon decision of the High Court of Karnataka in ***Ms. Padmavathi Subramaniyan and Ors. v. The Ministry of Civil Aviation & Ors.***
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> 5. In the opinion of the Court, since the above decision of the High Court of Karnataka takes notes the fact of privatisation of erstwhile state-run carrier – Air India, the factual situation cannot be controverted and thus, the Court is not inclined to grant an adjournment as prayed.
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> 6. In light of the fore-going, it is clear that the position which existed on the date of the filing of the present petition is no longer the same. Air India has been privatised and entire shareholding of Government of India in Air India has been given to M/s. Talace Pvt. Ltd. (a wholly-owned subsidiary of M/s. Tata Sons Pvt. Ltd.). The grievance of Petitioners, if any, cannot therefore be entertained by way of a writ petition under Article 226 of the Constitution of India.
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> 7. Accordingly, the present petition is dismissed with liberty in favour of the Petitioners to approach court of competent jurisdiction for seeking redressal of his grievance, if any, in accordance with law.‖

11. In view of the aforesaid decisions rendered on the subject and which have consistently taken the view that a writ petition cannot be maintained once a government company undergoes a process of privatization, Mr. Nayar would submit that without prejudice to the principal objection which

[8] W.P.(C) 7908/2015

is taken, the writ petition is liable to be dismissed on this score also.

12. Refuting the aforesaid contentions, Mr. Bhardwaj, learned counsel appearing for the petitioners, submits that bearing in mind the important public functions that AIL performs and discharges, it would be wholly incorrect to uphold the preliminary objection. Mr. Bhardwaj submitted that AIL performs essential functions and extends aid and assistance to the Union Government itself in times of humanitarian crises and in times of national or international emergencies. Mr. Bhardwaj contended that AIL thus performs a special function acting always in aid of the Union and in view thereof it would be incorrect in law to hold that a writ petition under Article 226 of the Constitution would not lie against it.

13. In support of the aforesaid submissions, Mr. Bhardwaj pressed into aid the following observations as appearing in the judgment rendered by two learned judges of the Supreme Court in **Janet Jeyapaul vs. SRM University**[9]:-

> -25. In *Andi Mukta case* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691], the question before this Court arose as to whether mandamus can be issued at the instance of an employee (teacher) against a Trust registered under the Bombay Public Trusts Act, 1950 which was running an educational institution (college). The main legal objection of the Trust while opposing the writ petition of their employee was that since the Trust is not a statutory body and hence it cannot be subjected to the writ jurisdiction of the High Court. The High Court accepted the writ petition and issued mandamus directing the Trust to make payments towards the employee's claims of salary, provident fund and other dues. The Trust (Management) appealed to this Court.
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> *26.* This Court examined the legal issue in detail. K. Jagannatha Shetty, J. speaking for the Bench agreed with the view taken by the High Court and held as under: (*Andi Mukta case* [*Andi Mukta Sadguru Shree Muktajee*

[9] (2015) 16 SCC 530

Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. *V.R. Rudani*, (1989) 2 SCC 691], SCC pp. 696-98 & 700, paras 11-12, 15 & 20)

> –*11*. Two questions, however, remain for consideration: (*i*) the liability of the appellants to pay compensation under Ordinance 120-E and (*ii*) the maintainability of the writ petition for mandamus as against the management of the college. …
>
> *12*. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the management of the college being a trust registered under the Bombay Public Trusts Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court: (*a*) *Vaish Degree College* v. *Lakshmi Narain*[*Vaish Degree College* v. *Lakshmi Narain*, (1976) 2 SCC 58 : 1976 SCC (L&S) 176] and (*b*) *Dipak Kumar Biswas*v. *Director of Public Instruction* [*Dipak Kumar Biswas* v. *Director of Public Instruction*, (1987) 2 SCC 252 : (1987) 3 ATC 505] . In the first of the two cases, the respondent institution was a Degree College managed by a registered cooperative society. A suit was filed against the college by the dismissed principal for reinstatement. It was contended that the Executive Committee of the college which was registered under the Cooperative Societies Act and affiliated to Agra University (and subsequently to Meerut University) was a statutory body. The importance of this contention lies in the fact that in such a case, reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body.
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> *15*. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty, mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a

major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See M.P. Jain, *The Evolving Indian Administrative Law* (1983) 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

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20. The term ‗authority' used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‗any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.‖

27. This issue was again examined in great detail by the Constitution Bench in *Zee Telefilms Ltd.* v. *Union of India* [*Zee Telefilms Ltd.* v. *Union of India*, (2005) 4 SCC 649] wherein the question which fell for consideration was whether the Board of Control for Cricket in India (in short ‗BCCI') falls within the definition of ‗*State*' under Article 12 of the Constitution. This Court approved the ratio laid down in *Andi Mukta case* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] but on facts of the case held, by majority, that BCCI does not fall within the purview of the term ‗State'. This Court, however, laid down the principle of law in paras 31 and 33 as under: (*Zee Telefilms Ltd.*

case [*Zee Telefilms Ltd.* v. *Union of India*, (2005) 4 SCC 649] , SCC p. 682)

> ―*31*. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.
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> *33*. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.‖

29. Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that Respondent 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that Respondent 1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.

30. This we say for the reasons that firstly, Respondent 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging ―*public function*‖ by way of imparting education. Thirdly, it is notified as a ―*Deemed University*‖ by the Central Government under Section 3 of the UGC Act. Fourthly, being a ―*Deemed University*‖, all the provisions of the UGC Act are made applicable to Respondent 1, which inter alia provides for effective discharge of the public function, namely, *education* for the benefit of the public. Fifthly, once Respondent 1 is declared as ―*Deemed University*‖ whose all functions and activities are governed by the UGC Act, alike other universities then it is an ―*authority*‖ within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an ―*authority*‖ as provided in Article 12 then as a

> necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.
>
> 31. In the light of the foregoing discussion, we cannot concur with the finding rendered by the Division Bench and accordingly while reversing the finding we hold that the appellant's writ petition under Article 226 of the Constitution against Respondent 1 is maintainable.‖

14. Mr. Bhardwaj further argued that a Division Bench of this Court while dealing with a dispute which had arisen between permanent pilots and **Fixed Term Contract**[10] pilots of AIL had made certain pertinent observations which would lend credence to his submission that the writ petition would in fact be maintainable. Mr. Bhardwaj has relied upon the judgement rendered in **Air India Limited vs. Kanwardeep Singh Bamrah**[11]. **Kanwardeep Singh Bamrah** was dealing with a batch of Letters Patent Appeals which had questioned the correctness of a judgment rendered by a learned Judge of the Court dealing with the action of AIL which had selectively permitted the withdrawal of resignations submitted by both permanent pilots as well as those engaged by AIL on FTC. The Division Bench in **Kanwardeep Singh Bamrah** had noted the contention addressed on behalf of the appellant that the **Civil Aviation Requirement**[12] issued by the Director General of Civil Aviation in exercise of powers conferred by Rule 133A of the **Aircraft Rules, 1937** had put in place a regulatory regime which would govern the service conditions of both permanent as well as FTC pilots and commanders employed in AIL. While dealing with the challenge, the Court made the following pertinent

[10] FTC

[11] (2021) SCC OnLine Del 5402

[12] CAR

observations:-

> -80. A close perusal of the framework of CAR would show that the emphasis is on ensuring that aircrafts owned by air transport undertakings are not grounded only, because the pilots take a sudden decision to exit- as it takes about eight to nine months to train a pilot to operate an aircraft, coupled with the fact that she/he has to pass technical and performance examinations, and also undertake simulator and flying training and various skill test, before she/he is issued a licence. It is because of this reason that CAR provides that, during the notice period, the pilot shall not refuse to undertake the flight duties assigned to her/him.
>
> 81. Furthermore, it is in recognition of the fact that this public interest can be furthered only with the active assistance of the pilots, that countervailing obligations have been placed under the CAR on the employers i.e., the air transport undertaking. The countervailing obligations cast on the employers, *inter alia*, requires them to maintain the pilots' rights and privileges *qua* the duties assigned to them, and also ensure that there is no reduction in salaries/perks or alteration in terms and conditions of employment, to the disadvantage of the pilot serving the notice period. The consequences, of either side [i.e., the pilot or the air transport undertaking] not adhering to what is provided in CAR, are also set forth therein.
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> 103. That being said, it is a common case of parties, that FTCs are also governed by the provisions of CAR. The tenure of the contract in each of these cases in the first instance was five years commencing from the date they were released as first officers, pursuant to their training being completed.
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> ***
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> 110. In sum, insofar as the pilots who executed FTCs are concerned, their cases stand on a slightly different footing. Since they are not, admittedly, the permanent employees of AIL, their exit would largely be dependent on the terms and conditions provided in the FTC.
>
> 111. Having said that, the provisions of CAR would apply to even those pilots who had executed FTC, and therefore, to the extent the provisions of the FTC are inconsistent with CAR, the provisions of the former would have to give way to the latter. In other words, the minimum notice period obligation cast on the concerned pilot to exit, will bind them as well.‖

15. Mr. Bhardwaj then sought to draw sustenance from the judgment of

the Supreme Court rendered in **University of Delhi vs. Delhi University Contract Employees Union**[13] to contend that relief in the aforesaid decision had been extended to contractual employees also. Reliance was also placed on the judgement handed down by the Supreme Court in **Satwati Deswal vs. State of Haryana**[14] on the basis whereof it was contended that since the entire action of AIL was contrary to the contractual terms itself coupled with the fact that it was taken in complete violation of the principles of natural justice, the writ petition would be maintainable. In **Satwati Deswal**, the Supreme Court while dealing with the question of an order of termination having been made in violation of the principles of natural justice and the statutory rules which applied, had observed as follows:-

> **-7.** Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor was any opportunity of hearing given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the appellant. In that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law.
>
> 8. Apart from that, on a cursory look of the statutory provision of the constitution of the Parishad Working Committees, it would be clear that before imposing any major penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without

[13] 2021 SCC OnLine SC 256

[14] (2010) 1 SCC 126

> the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ petitioner.‖

16. Having noticed the rival submissions which have been addressed on the preliminary objection and before proceeding ahead, it would be apposite to briefly note the relevant clauses as contained in the respective contracts which were executed by AIL in favour of petitioners. Admittedly all the writ petitioners were engaged on contractual basis for a period of five years. This is evident from the following recitals as appearing in the contract:-

> -We are pleased to inform you that the Competent Authority has acceded to your request for post retirement contractual engagement *as* a **'Commander'** on **B-777** for a period of five years from the date you report for duty after your retirement and the contract is eA1endable upto your attaining the age of 65 years depending upon requirement of the Company your medical fitness and your licence/ rating, etc. being current and in accordance with the requirements of DGCA. The terms & conditions of this contractual appointment are as follows:
>
> During the period of contract, you will be governed by the specific terms & conditions of this contract…….‖

17. Clause VI of the Contract dealt with the subject of termination and is extracted hereinbelow:-

> **-VI. TERMINATION**
>
> The Management reserves the right to terminate your contract by giving one month notice or an amount equivalent to one month‘s monthly remuneration in lieu thereof for unsatisfactory discharge of duties, unsatisfactory conduct, dishonesty, fraud or any other act which in view of the Company is contrary to its interest and/or depending upon the requirement of the Company. However, in case you decide to terminate the contract, you would be required to give 6 months notice.
>
> Please sign the duplicate copy of this letter as a token of your acceptance of the terms & conditions of this _contract‘.
>
> You will be required to report to General Manager (Operations), Western Region, for assignment of duties after renewal of your Medical/Licence. The contract will commence from the date you report for assignment of duties. However, your flying allowances shall only be applicable from the date you commence flying on contract, after

undergoing requisite training for Recency for flying, medical currency, etc. if required.

You will be under the administrative control of General Manager (Operations), Western Region, for day to daywork.‖

18. Learned counsels for respective parties have also referred to Section 7 of CAR and which deals with Flight Crew Standards Training and Licensing. The relevant clauses of Section 7 are extracted hereinbelow:-

-2. APPLICABILITY

2.1 This Civil Aviation Requirement shall be applicable to the pilots in regular employment of any air transport undertaking as defined in clause (9A) of rule 3 of the Aircraft Rules, 1937.

……..

3. REQUIREMENTS

3.1 It takes about eight to nine months to train a pilot to operate an aircraft used for airline operations, as he has to pass technical and performance examinations of the aircraft, undergo simulator & flying training and has to undertake ‗Skill Test' to satisfy licence requirements before he is released to fly.

3.2 Pilots are highly skilled personnel and shoulder complete responsibility of the aircraft and the passengers. They are highly paid for the responsibility they share with the airlines towards the travelling public and are required to act with extreme responsibility.

3.3 In view of the above, it has been decided by the Government that any act on the part of pilots including resignation from the airlines without a minimum notice period of one year in respect of commanders and six months in respect of copilots, which may result into last minute cancellation of flights and harassment to passengers, would be treated as an act against the public interest.

3.4 It has, therefore, been decided that pilots working in an air transport undertaking shall give a ‗Notice Period' of at least one year in respect of commanders and six months in respect of co-pilots to the employer indicating his intention to leave the job. During the notice period, neither the pilot shall refuse to undertake the flight duties assigned to him nor shall the employer deprive the pilot of his legitimate rights and privileges with respect to the assignment of his duties. Failure to comply with the provisions of the CAR may lead to action against the pilot or the air transport undertaking, as the case may be, under the relevant provisions of Aircraft Rules, 1937.‖

19. Having set out the factual backdrop in which the controversy arises as well as the relevant provisions of the contract and CAR which would apply, the Court proceeds to deal with the issues raised on merits hereinafter. The first issue which arises is whether the writ petition would be maintainable bearing in mind the undisputed fact that the terms and conditions of employment of the petitioners here are governed by a contract simpliciter and which is not imbued with any statutory flavour.

20. Answering that question, the Allahabad High Court in **Ram Niwas Sharma** had observed that the maintainability of a writ petition under Article 226 of the Constitution would not be dependant purely on whether the body whose action is impugned discharges a public function or performs a public duty. The aforesaid observation came to be made in the context of whether a writ petition would be maintainable against a body which may while be discharging a public function proceeds to take action under an ordinary contract of service. It was observed and held that, while functions of a body which may fall within the sphere of public functions or public duties would be open to scrutiny under Article 226 of the Constitution, actions or decisions taken solely within the confines of an ordinary contract of service having no statutory force or backing would not be amenable to the writ jurisdiction of a High Court under Article 226 of the Constitution. In **Ram Niwas Sharma**, the Court had also noticed the pertinent observations made by the Supreme Court in **Ramkrishna Mission vs. Kago Kunya**[15] when it had observed that even if a body discharges a public function in a wider sense there is no public law element

[15] (2019)16 SCC 303

involved in the enforcement of a private contract of service. It was in the aforesaid light that the Supreme Court had proceeded to hold that contracts of a purely private nature even though entered by bodies which may perform a public function would not be subject to judicial review. It was further observed that the only exception to the aforesaid would be cases where contracts under which action is taken and stands impugned are regulated by statute. The Supreme Court in **Ramkrishna Mission** went on to pertinently observe that for redressal of claims which arise in the aforesaid backdrop while the aggrieved person may have remedies otherwise available in law, a writ petition under Article 226 of the Constitution would not be maintainable.

21. In the considered opinion of this Court, the legal position as summarised and elucidated in **Ram Niwas Sharma** clearly merits acceptance. This Court is of the considered view that **Ram Niwas Sharma** has correctly explained the legal position that a non-statutory contract of service is not enforceable under Article 226 of the Constitution. The Court reiterates the legal position by holding that merely because the contract of service has been entered into with a body which may be an instrumentality of the State or one which performs a public function would not be determinative of the question. Ultimately, the question of maintainability of a writ petition would have to be adjudged on the anvil of whether the contract is statutory or not. Decisions taken by such bodies within the confines of an ordinary contract of service and which has no statutory force or backing, would not be amenable to judicial review under Article 226 of the Constitution.

22. The Court also finds merit in the second objection which was

addressed on behalf of the respondents who had contended that since AIL had ceased to be a government company by virtue of the exercise of privatization noted above, the writ petition itself would cease to be maintainable. This Court notes that High Courts of the country appear to have consistently taken this position as would be manifest from a reading of the decision rendered in **R.S. Madireddy** by the Bombay High Court and **Tarun Kumar Banerjee** by the Karnataka High Court. The said position has also been duly reiterated in the judgments rendered by our Court in **Asulal Loya**, **Ladley Mohan** and **Satya Sagar.** The writ petition would thus warrant dismissal on this score also.

23. While Mr. Bhardwaj had placed extensive reliance on the judgment rendered in **Kanwardeep Singh Bamrah**, it would be pertinent to note that the aforesaid decision was not dealing with the question of maintainability of a writ petition against AIL at all. It would also be apposite to note that the said judgment itself came to be rendered prior to the privatization process undertaken in respect of AIL. The Court further observes that the Division Bench while dealing with the challenge which was addressed before it and noticing the provisions made in CAR had pertinently observed that the case of pilots engaged under FTC would stand on a footing different and distinct from the permanent employees of AIL. It had further held that their exit from service would be largely dependent on the terms and conditions provided in the FTC itself. The Court then observed that the provisions of CAR would apply to FTC pilots also and in cases where there be a conflict between the contract and CAR, the former would have to give way to the latter. However, this Court finds itself unable to appreciate how the aforesaid observations could be construed as supportive

of the submissions which were addressed on behalf of the petitioners here.

24. It would be pertinent to note that the only provisions of CAR which were referred to and which have been extracted hereinabove dealt with the notice period which must be mandatorily adhered to by commanders and co-pilots. The provisions of CAR, which were alluded to, do not control or regulate the termination of the contract which was affected by AIL based on its assessment that it would not be in a position to utilize the services of the petitioners in light of the prevailing economic constraints faced by the civil aviation sector.

25. **Janet Jeyapaul** was a decision which dealt with the action of a deemed university whose actions were governed by university statutes and the provisions of the UGC Act. Similarly in **Satwati Deswal**, the contract was governed by statutory rules which prescribed the procedure liable to be adhered to for the purposes of termination of service and the conduct of disciplinary proceedings. These two decisions clearly have no application to the facts of the present case. In **University of Delhi,** the Supreme Court was dealing with the question of framing of a scheme for regularisation. The said decision too has no bearing on the questions which arise for the consideration of the Court in the present batch.

26. The Court lastly notes that the impugned action is sought to be sustained by AIL with it being asserted that clause VI empowers it to terminate a contractual engagement of a pilot on an assessment of the requirement of AIL. However, this Court need not enter any determinative findings on this score since that would clearly relate to the merits of the action which has been taken by AIL. A challenge to the same while open to be addressed before a competent forum and on grounds which may

otherwise be permissible in law, cannot and in any case, form subject matter of consideration in a writ petition under Article 226 of the Constitution.

27. Accordingly and for all the aforesaid reasons, the preliminary objections are upheld. The writ petitions shall consequently stand dismissed. The present order, however, shall not deprive the petitioners of the right to assail the action of AIL in accordance with law, if so chosen and advised.

YASHWANT VARMA, J.

October 31, 2022
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