

*Before Surya Kant & Surinder Gupta, JJ.*

**SUBHAS C. SAINI AND OTHERS—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 2244 of 1999**

October 31, 2013

*A. Constitution of India, 1950 - Arts. 12, 226 - Whether Patiala Aviation Club/ Punjab Aircraft Maintenance Engineering College or other Aviation Clubs are State within ambit of Art. 12 of the Constitution of India, 1950 and amenable to writ jurisdiction of this Court - Patiala Aviation Club is a society registered under the Societies Act, 1860 - Subsidy agreement executed between State Government and Patiala Aviation Club in 2004 - Subsidy to be applied towards expenses of maintenance and operation of Aircraft - Plea of petitioners that Aviation Clubs are substantially funded by State Government and are totally under the pervasive control of State Government bringing them within ambit of instrumentality of the State - Held - If cumulative effect brought on record unveil that financial, functional and administrative dominance is under complete and pervasive control of Government, such body is State within meaning of Art. 12 of Constitution of India and amenable to writ jurisdiction - But where control is regulatory in nature, it may not be sufficient to held the body as organ of the State - Where*

*a body or institution is not a State under Article 12 of the Constitution of India but perform function or duties of paramount public importance, writ court can compel such body or institution to adhere to the tenets of the Constitution.*

However no writ can be issued where employees of private institution seek parity at par with employees of public sector as any such claim would amount to seeking specific performance of private contract of their services - Since clubs are creation of voluntary initiative and regulatory measures of district administration cannot be termed as pervasive control over affairs of the club, so they do not qualify as State under Art. 12 of the Constitution of India.

*Held*, that constituents of an 'instrumentality' of State within the meaning of Article 12 of the Constitution to make such entities amenable to the writ jurisdiction of Superior Courts under Articles 32 or 226 of the Constitution are by now well defined in a catena of decisions. From *Ajay Hasia versus Khalid Mujib*, 1981 (1) SCC 722, onwards, it stands crystalized that if the cumulative facts brought on record unveil that the financial, functional and administrative dominance is under the complete and pervasive control of the Government, such body is a 'State' within the meaning of Article 12 of the Constitution and would be amenable to the writ jurisdiction for the purpose of enforcement of constitutional and fundamental rights. But where the control whether under the statute or otherwise is regulatory in nature, it may not be sufficient to hold the body as an organ of the State.

(Para 41)

*Further held*, that the maintainability of writs against the 'instrumentalities' of State on the premise that when a body or an institute is not a 'State' under Article 12 of the Constitution but if it performs functions or duties of paramount public importance, a writ Court can compel such body or institute to adhere to the Constitutional philosophy while performing that public duty/function.

(Para 41)

*Further held*, that a private institution though may be amenable to writ jurisdiction in relation to the performance of its public duties, yet the employees of such body or institute cannot seek parity at par with employees

of public sector as any such claim by them would amount to seeking specific performance of the private contract of their service.

(Para 43)

*Further held*, that we are thus of the view that even on the plain application of these principles, the Aviation Clubs do not come within the first category of cases though they undoubtedly fall within the periphery of the second category. There is no Statute for setting up the Aviation Clubs under the exclusive control of State or the Central Governments nor such a provision has been brought to our notice. Voluntary initiative taken by a group of officers with the active support of the Aviation Wing Department of the State Government would not and cannot be the sole basis to recognize the clubs as an extended hand of the State.

(Para 45)

*Further held*, that including the functionaries of District Administration and their affairs are run in accordance with the Memorandum of Association or the Rules and Regulations framed by each Club, though exhibiting undue favour to some of the State Functionaries, we are of the considered view that such like regulatory measures cannot be termed as pervasive control over the administrative or financial affairs of the Clubs to enable them to qualify as 'State' under Article 12 of the Constitution.

(Para 48)

*Further held*, that there is no gain saying that the activities undertaken by Aviation Clubs are important public functions. Since the State Government has been vested with over-riding powers to ensure that grant-in-aid released by it under the 'Subsidy Agreement' is properly utilized by each Club, the performance of public duties by such clubs indeed falls within the scope of judicial scrutiny under Articles 32 and 226 of the Constitution.

(Para 49)

***B. Constitution of India, 1950 - Art. 226 - Subsidy agreement between Patiala Aviation Club and the State Government -whether there is a binding contract between the Club(s), their employees and the State of Punjab for the release of grant-in-aid by the latter in favour of the former(s) and if so, what is the nature of***

*such grant-in-aid - Held - there is no legislative enactment imposing obligation on the State to release grant-in-aid to meet the day to day expenses incurred by the Clubs on their activities or for payment of salary - Clause 'A' of subsidy agreement is sweet well of State Government to provide financial assistance - Thus, it is held that there is no pending contract between Clubs and State Government which obligates the State to provide financial aid to clubs to defray its expenses.*

*Held*, that there is no binding contract between the Clubs and the State Government which obligates the latter to provide financial aid to the former to defray its day to day expenses. It is further held that grant-in-aid released in the past was discretionary in nature guided by the principles contained in Rule 8.14 of the Punjab Financial Rules which do not cast any corresponding duty on the State to release such grant-in-aid continuously and forever and that too to the extent demanded by the Clubs.

(Para 56)

**C. Constitution of India, 1950 - Art. 226 - Relationship of employer-employee - Whether there exists relationship of 'employer' and 'employees' between the State of Punjab and the petitioners/appellants.**

*Held*, that the only answer to question No.(iv) would be to hold that there is no relationship of 'employer' and 'employee' between the State of Punjab and the petitioners.

(Para 65)

D.V.Sharma, Senior Advocate with Harit Sharma, Advocate, *for the petitioners* (in CWP Nos.2244 of 1999 and 16903 of 2013)

A.K.Chopra, Senior Advocate with N.D.Kalra, Advocate, *for the petitioners* (in CWP Nos.14404, 19810 of 2001 and 7875 of 1999)

Arvind Kashyap, Advocate, *for the petitioner* (in CWP Nos.21662 and 23410 of 2011)

J.S.Verka, Advocate, *for the petitioner* (in CWP No.19363 of 2006)

J.B.Sharma, Advocate, for Ashok Sharma Nabhwala, Advocate,  
*for the petitioner* in CWP No.1811 of 2011

Ashish Bansal, Advocate, for the appellants (in RSA Nos.2877 and  
2880 of 2010)

Vikas Singh, Advocate, for the petitioners (in CWP Nos.7875 of  
1999, 19059 of 2006 and CWP No.14404 of 2001).

Amit Sethi, Additional AG, Punjab.

Ashok Kumar Khubbar, Advocate, for respondent No.3 (in CWP  
No.1811 of 2011).

Sanjiv Gupta, Advocate, for respondent No.4. (in CWP Nos.21662  
of 2011 & 19363 of 2006).

Sourabh Goel, Advocate, for Govind Goel, Advocate, for respondent  
No.3 (in CWP No.19363 of 2006 and 19810 of 2001).

### **SURYA KANT, J. (ORAL)**

(1) This order shall dispose of Civil Writ Petition Nos.2244 & 7875  
of 1999, 14404 & 19810 of 2001, 19059 & 19363 of 2006, 1811, 21662  
& 23410 of 2011, 16903 of 2013 and RSA Nos.2877 & 2880 of 2010  
as common questions of law and facts are involved in these cases. However,  
for the better appreciation of points in issue, the facts of each case are being  
briefly noticed.

### **FACTS :**

(1) CWP No.2244 of 1999

(Subhas C.Saini and ors vs. State of Punjab & ors.)

(2) The petitioners in this case are in the service of Patiala Aviation  
Club/Punjab Aircraft Maintenance Engineering College at Patiala. They  
seek a mandamus to direct the State of Punjab and other respondents  
including the Principal of their College and the Patiala Aviation Club to pay  
their salary w.c.f.01.08.1998 as also the arrears of revised pay scales w.c.f.  
01.01.1996 to April, 1998 with a further direction to continue to pay their  
salary by 7th of each month and also to take a final decision with regard  
to running of the Aircraft Maintenance Engineering College.

(3) The case of the petitioners is that Civil Aviation Department, Government of Punjab, vide its memo dated 7th July, 1978 formulated a Scheme for the establishment of an Aircraft Maintenance Engineering Training College at Patiala Airfield for imparting Technical Training to Higher Secondary (Sciences) students for helping them in their preparation for admission to Aeronautical Engineering Science. The proposed training was also meant to prepare the candidates of D.G.C.A. examination for AME licence for Airframe, Engine and Compasses. The Advisor, Civil Aviation, Punjab, vide letter dated 20.09.1979 informed the State Government that initially the intake of the Trainees would be 20 for the first year and an additional 20 Trainees would be taken up every subsequent year, subject to a maximum of 60 students. The Advisor, Civil Aviation, Punjab, vide letter dated 12.03.1980 (Annexure P-3) further informed the State Government regarding salary, structure and recruitment of the staff for the proposed School and that a sum of Rs. 1.50 lacs will be spent for purchase of equipment for the AME School. Vide yet another letter dated 9.6.1980, the State Government was requested to sanction the necessary staff in the AME School. After some correspondences between the Advisor, Civil Aviation, Punjab and the State Government, the latter passed an order dated 7.1.1981 (Annexure P-7) according sanction "for the payment of Rs. 8.0 lacs as grant-in-aid to the Patiala Aviation Club, Patiala, for the establishment/running of Aircraft Maintenance Engineering School at Patiala".

(4) Since the grant-in-aid was sanctioned in favour of Patiala Aviation Club, it may be relevant to mention at the stage that the above stated Club is a 'Society' registered on 15.5.1962 under the Societies Registration Act, 1860 and its founding members included (i) the then Commissioner, Patiala Division; (ii) Deputy Inspector General of Police, Patiala Range, Patiala; (iii) Superintendent of Police, Patiala; (iv) Chief Engineer, PWD, Patiala; (v) Deputy Commissioner, Patiala and (vi) two private businessmen. The Club has its own Rules and Regulations which enables it to take Government officers as ex-officio members.

(5) The Advisor, Civil Aviation, Punjab, vide letter dated 15.05.1981 sent details of the staff required for running the AME School and requested the State Government to sanction the posts besides allocation of additional budget, as the earlier allocated amount of Rs. 8.00 lacs stood spent on the

purchase of essential material for the start of School. The State Government vide letter dated 29.01.1982 sanctioned a sum of Rs.5.00 lacs as 'grant-in-aid' to Patiala Aviation Club in the year 1981-82.

(6) The State Government, however, did not accord any sanction for the creation of posts, consequently, the Advisor, Civil Aviation, Punjab, vide letter dated 14.1.1982 again sent the following request:-

".....This department is committed to start the Aircraft Maintenance Engineering School at Patiala from the beginning of the next financial year, i.e., 1982-83 (this school is presently being run by the Patiala Aviation Club on behalf of this Department). It is accordingly requested that sanction to the creation of posts already indicated to Government may be accorded with the concurrence of Finance Department without any further delay so that this school is started according to schedule....."

(7) The State Government, after some years, issued memo dated 19.07.1994 (Annexure P-14) constituting a Committee of Officers in respect of the Aircraft Maintenance Engineering College at Patiala "to look after the structure of faculty of the College and recommend its qualifications, recruitment of staff etc..... and to look into the fee structure of the College..."

(8) The petitioners have placed on record voluminous correspondence between the Civil Aviation Wing and the State Government regarding the demand to sanction posts and allocate sufficient funds to run the College. There is, however, no formal order of the State Government sanctioning the posts or of any commitment to provide requisite financial assistance in running the College. Yet the State Government without any commitment sanctioned grant-in-aid from time to time.

(9) Due to non-availability of sufficient funds, the petitioners were not paid any salary since 01.07.1998 for which they represented to different authorities and then approached this Court.

(10) The petitioners, however, have not chosen to disclose the mode of their appointment, terms and conditions of their engagement, pay scale(s) or their respective qualifications. It is also not discernible from the writ petition as to when were they engaged and against which sanctioned posts?

(11) The then Director, Civil Aviation, Punjab has filed written statement taking a preliminary objection that the 'Civil Aviation Club' which runs the Aeronautical Maintenance Engineering College is a Society registered under the Societies Act, 1860 and is managed by its own governing body. No post in the AME College has been sanctioned by the Finance Department, Punjab, nor is there any sanction of the State Government for the expenditure incurred by the AME College. It is further averred that the State Government only releases grant-in-aid and a conscious decision has been taken to carefully scrutinize and reduce the subsidy element. The said decision was conveyed to the Club also so that it could increase its own source of income on the reduction of grant-in-aid. As regard to the appointment of petitioners, it is averred that the same were made by the Manager of the Club and the Government has no liability to pay their salaries. It is also explained that the State Government has released grant-in-aid from time to time as per the details given in para No. 16 of the written statement.

(12) The Patiala Aviation Club-respondent No. 4 has also filed its separate written statement explaining that the Club was set-up in the year 1962 and since then, it is being run on its own sources which are generated primarily from the admission fee of students who are interested in obtaining licenses for flying. It is maintained that the Punjab Government has been releasing grants from time to time as a goodwill gesture without any binding obligation as the Club is not a grant-in-aid institute of the State Government. It is also explained that the expenditure of the Club is not a liability on the State Government and at present the Club is short of funds due to low flying hours.

(13) There are several additional affidavits/counteraffidavits filed, especially by the petitioners, rendering no assistance except to make the record voluminous.

(14) The precise claim of the petitioners is that they being employees of the AME College, which has been set-up with the 'approval' of State Government, there exists for all intents and purposes a relationship of 'servant' and 'master' between them and the State Government and they are entitled to be paid salaries, revised pay scales including arrears by the State Government. The respondents, on the other hand, maintain that AME college is being run by the Patiala Aviation Club which is a Society registered



under the Societies Registration Act and there being no binding obligation on the State to provide financial assistance to the Club and also there is no approval of the State Government to set-up the AME College and the Club/College not being covered by any grant-in-aid-scheme, the claim of the petitioners is wholly misconceived.

(2) CWP No.7875 of 1999

(The Patiala Aviation Club Workers Union & anr. vs. The State of Punjab and others

(15) This writ petition is at the instance of Workers' Union and its President who are working in the Patiala Aviation Club. They also seek a mandamus to direct the State Government, Director, Civil Aviation, Punjab and the Patiala Aviation Club to pay wages to the workers of the Club alongwith arrears of salary etc. The grounds taken by the petitioners are similar to those taken by the writ-petitioners in CWP No.2244 of 1999. The defence plea taken by the respondents is also similar.

(3) CWP No.14404 of 2001

(The Aviation Workers Union, Ludhiana versus The State of Punjab and others)

(16) This writ petition is at the instance of Workers' Union of Aviation Club, Ludhiana who also seeks a direction to the State of Punjab, its Director, Civil Aviation and Ludhiana Aviation Club for the release of salary of employees which is not being paid since August, 1999. The case set up by the petitioner-Union is also on the analogy of Patiala Aviation Club, namely, that the Ludhiana Aviation Club too is an extended hand of the State Government for all intents and purposes and there being a relationship of 'master' and 'servant' between them, the State Government is obligated to release adequate funds for the payment of their salaries.

(17) The official respondents have controverted the claim, *inter-alia*, reiterating that the Club is a Society and the State Government agreed to release grant-in-aid only as per the agreement (Annexure A-1) which, *inter-alia*, stipulates that the Government may from time to time, pay any amount as may be determined by it, as grant, subject to the usual condition laid down under Rule 8.14 of the Punjab Finance Rules, Vol.-I read with

Government Instructions and Policy. It is further averred that the Club is not entitled to any grant-in-aid as it has failed to upkeep and maintain 70% of total number of Air-crafts and Gliders as serviceable. The other pleas taken are also similar to those as pleaded by respondents against Patiala Aviation Club.

(4) CWP No.19810 of 2001

(Shamsher Singh and ors vs. State of Punjab & ors.)

(18) The three petitioners in this case are Driver, Senior Mechanic and Accountant, respectively, of the Amritsar Aviation Club. They also seek a mandamus to direct the State of Punjab, its Director, Civil Aviation and the Amritsar Aviation Club, for the release of their salary as also of the other employees working in the Club who are allegedly not paid their salaries since December, 1996. Both the parties have taken their respective stands as are pleaded by them in the case of Ludhiana Aviation Club, i.e. CWP No.14404 of 2001.

(5) CWP No.19059 of 2006

(Darshan Singh versus State of Punjab and others)

(19) The lone petitioner in this case is an Ex-Senior Mechanic of Ludhiana Aviation Club who seeks quashing of the letter dated 01.09.2006 of the Director, Civil Aviation, Punjab, denying the State Government liability to pay any gratuity or retiral benefits to him on retirement as according to this letter the petitioner is not an employee of the Punjab Government nor was he recruited by the Punjab Government Department. Both the parties have taken identical pleas as contained in CWP No.14404 of 2001.

(6) CWP No.19363 of 2006

(Shamsher Singh vs. The State of Punjab and ors.)

(20) The petitioner in this case seeks quashing of the order dated 16.11.2006 passed by Director, Civil Aviation, Punjab, denying him the benefit of retiral benefits, gratuity, leave encashment and arrears of pay etc., on the plea that the petitioner was not an employee of Punjab Government. The petitioner has taken the plea identical to those taken in CWP No.19810

of 2001. The respondents have also reiterated their stand to controvert the petitioner's claim.

(7) CWP No.1811 of 2011

(S.K.Mittal vs. The State of Punjab and others)

(21) The petitioner joined the Patiala Aviation Club as a Clerk and finally he retired from the post of Secretary w.e.f. 30.09.2009. Since he has not been paid gratuity and other retiral benefits, he has approached this Court claiming himself to be an employee of the 'State' who is entitled to be paid his retiral benefits from the State Exchequer. The plea taken by the petitioner as well as the defence plea of the respondents are identical to those taken by the parties in CWP No.2244 of 1999

(8) CWP No.21662 of 2011

(Ram Bahadur & ors vs. State of Punjab and others)

(22) The petitioners were statedly employed as Mali/ Sewadars/ Casual Labours in the Patiala Aviation Club. They seek quashing of the retrenchment notice(s) dated 31.10.2011 whereby they were sought to be retrenched on the ground that due to scarcity of funds, their services stand terminated w.e.f. 1.12.2011. The petitioners in a way seek a direction to Punjab Government for the release of grant-in-aid and their consequential retention in service. The respondents have filed their written statement controverting the petitioners' claim on the grounds similar to those taken by them in CWP No.2244 of 1999.

(9) CWP No.23410 of 2011

(Jaswant Singh vs. State of Punjab and others).

(23) The petitioner was statedly employed as a Sewadar in the Patiala Aviation Club. He seeks quashing of the retrenchment notice dated 31.10.2011 whereby he was inventually retrenched due to scarcity of funds w.e.f. 1.12.2011. The petitioner in a way seeks direction to Punjab Government for the release of grant-in-aid and his consequential retention in service. The respondents have filed written statement controverting the petitioner's claim on the grounds similar to those taken by them in CWP No.2244 of 1999.

(10) CWP No.16903 of 2013

(Subhash Chand Saini vs. State of Punjab & ors).

(24) The petitioner in the instant case is also petitioner No.1 in CWP No.2244 of 1999. Since he retired from service on 31.1.2013 during the pendency of the 1999 writ petition and has not been paid any retiral benefits, gratuity and leave encashment, he has filed this writ petition for the release of those retiral benefits on identical grounds taken by him along with his co-petitioners in CWP No.2244 of 1999.

(11) RSA No.2877 of 2010

(Jagroop Singh vs. The Manager, Patiala Aviation Club).

(25) The appellant in this regular second appeal filed a declaratory suit against the State of Punjab, Secretary and Director, Civil Aviation Department, Punjab and the Manager, Patiala Aviation Club, seeking a declaration to the effect that the action of defendants in not paying him pension w.e.f. 1.11.1997 was null and void etc. His precise case was that he joined the Patiala Aviation Club as a Helper and retired as Junior Mechanic w.e.f. 31.10.1993 and for payment of his retiral benefits, the Punjab Government was under a legal obligation to release the requisite grant-in-aid. The suit was decreed vide judgment and decree dated 1.2.2007. However, on an appeal preferred by different defendants including the State of Punjab, the first Appellate Court reversed the decision and held that the Aviation Club, Patiala was not a part of the Punjab Government due to which the appellant-plaintiff was not entitled to pension, as prayed for. Consequently, his suit was dismissed giving rise to this regular second appeal.

(12) RSA No.2880 of 2010

(Jagroop Singh vs. State of Punjab and others)

(26) This regular second appeal is also by the same plaintiff-appellant who has preferred RSA No.2877 of 2010. He has directed this appeal against rejection of his Crossobjections by the first Appellate Court. The point in issue raised in this appeal is also identical to the one raised in RSA No.2877 of 1010.

**ORDERS DATED 07.09.2000 & 25.09.2010 PASSED BY  
THIS COURT AND THE REMANDING ORDER DATED  
25.01.2005 PASSED BY THE HON'BLE SUPREME  
COURT.**

(27) Before we advert to the contentious issues which arise for consideration, it may be mentioned here that in the main case, i.e., CWP No.2244 of 1999, this Court vide order dated 07.09.2000 directed the State of Punjab to release adequate funds to the Civil Aviation Club to meet the expenses on account of salaries of the staff. The matter was adjourned to 25.09.2000 on the request of Additional Advocate General, Punjab to enable him "to seek instructions so that necessary steps can be taken for the payment of salary to the staff of the Civil Aviation Club". The aforesaid direction was issued observing that the Civil Aviation Department of State of Punjab came into existence in the year 1962 on account of acute shortage of aircraft maintenance engineers in the country and it was on the proposal of the said department that Aircraft Maintenance Engineering School at Patiala was set-up with the 'approval' of the State Government and that "State Government has been sanctioning funds on yearly basis for meeting expenses of the salaries of the Staff and other contingencies". It was also noticed in the order that the Advisor, Civil Aviation, Punjab, earmarked the staff which was required to run the aforesaid school and the State Government was to release funds till the posts mentioned in the Advisor's letter to the Government were duly sanctioned.

(28) When the matter was taken up on 25.09.2000, the Additional Advocate General, Punjab informed the Court that a sum of Rs.1,18,750/- had been released as grant-in-aid to the Civil Aviation Club, Patiala and a similar amount was again released on 13.07.2000 as well. Thereafter, this Court noticed the contention on behalf of the petitioners that the amount of grant-in-aid released by the State Government was inadequate for payment of salary. The Court accordingly directed the State of Punjab "to release adequate funds to the Club so that the salaries to the Staff including the petitioners can be paid". The needful was to be done within a period of two months. There was a further direction to the State "to continue to release adequate funds in future so that the salary to the staff can be paid on time". The writ petition was disposed of with the above-stated directions, of course with hardly any supporting reason.

(29) State of Punjab challenged the above-stated order (s) in Civil Appeal No.8314 of 2001 which was subsequently allowed by the Hon'ble Supreme Court vide order dated 25.01.2005 and the case was remanded to this Court but till then the State of Punjab was directed to continue complying with the High Court directions for release of adequate funds in future for payment of salary. The necessity to remand the case arose for the reason that "the status of the College of Patiala Aviation Club was not gone into" by this Court. The Hon'ble Supreme Court further observed as follows:-

"..... In these appeals, it is sought to be contended that the State of Punjab is under no obligation to release funds to Patiala Aviation Club for disbursing salary to the staff of the Aircraft Maintenance Engineering College. Since the main points raised in the writ petition and the objections taken in the counter affidavit, in particular, the status of the employees of the institution have not been determined by the High Court, we deem it appropriate to remit Writ Petition Nos.2244 of 1999 and 7875 of 1999 for its fresh decision by the High Court. It would be open to the parties to urge such points, as may be available to them in law, in support of or in opposition to the writ petition. It would also be open to the High Court to grant to the parties further opportunities to file affidavits and/or documents....."

### **LEGAL ISSUES**

(30) It is in this backdrop and on hearing the counsel, the following issues emerge for determination:-

- (i) Whether the Patiala Aviation Club, the Punjab Aircraft Maintenance Engineering College or other Aviation Clubs are 'State' within the ambit of Article 12 of the Constitution and are thus amenable to the writ jurisdiction of this Court?
- (ii) If question No.(i) is answered in affirmative, whether the petitioners/appellant become employees of the Punjab Government?
- (iii) Whether there is a binding contract between the Club(s), their employees and the State of Punjab for the release of grant-in-aid by the latter in favour of the former(s) and if so, what is the nature of such grant-in-aid?

(iv) Whether there exists relationship of 'employer' and 'employees' between the State of Punjab and the petitioners/appellants?

(31) Q.No.(i) Whether the Patiala Aviation Club, the Punjab Aircraft Maintenance Engineering College or other Aviation Clubs are 'State' within the ambit of Article 12 of the Constitution and are thus amenable to the writ jurisdiction of this Court?

AND

(ii) If question No.(i) is answered in affirmative, whether the petitioners/appellant become employees of the Punjab Government?

The Patiala Aviation Club is admittedly a Society registered under the Societies Registration Act, 1860. Its Memorandum of Association (Annexure P-8) unveils that signatories to the said memorandum, most of whom were Government Officers but some of them were businessmen as well, who formed the Society with the following aims and objects (a) to promote the Art and Science of Aviation and Aeronautics; (b) to provide facilities for the housing, storage and safe custody of the equipment, instruments and machines etc.; (c) to provide repair, maintenance, hangars, sheds and slipways etc.; (d) to purchase, lease, secure by exchange or licence, hire movable and immovable properties; (e) to carry on the business of flying club, hotel-keeper, tavern-keeper etc. and host of other objects mentioned in the said memorandum. Clause-5 of the Memorandum of Association stipulates that no alteration shall be made to it unless approved by the Aviation Advisor to Government of Punjab and the Director General of Civil Aviation, Government of India.

(32) The Society also formed its "Rules and Regulations" (Annexure P-9) and as per Rule-3, the membership of the Club was of five categories, i.e., Ex-officio Members, Honorary Members, Members, Associate Members and Founder Members. While nominees of the Central or the State Governments are Ex-officio Members, the Managing Committee can unanimously resolve to nominate Honorary Members. Any person can be admitted as a Member by majority votes of the Managing Committee on payment of requisite fee. A somewhat similar provision is there for Associate

Members. The Founder Members were those who were signatories to the Memorandum of Association. As per the Rules, the Management of Club vests in its Managing Committee consisting of:-

(a) two members to be nominated by the Director General of Civil Aviation- Government of India;

(b) One member to be nominated by Ministry of Defence- Government of India;

(c) Two members to be nominated by the Aviation Adviser of the State Government;

(d) One member to be nominated by the Education Department of the State Government;

(e) Five members to be elected by the general body of the club, out of whom at least three will be flying members as determined by the Director General of Civil Aviation.

(33) The President and Vice President of the Club are to be elected by its members. The rules have also prescribed the procedure to be followed for convening of meetings.

34) Rule 20 of the Rules prescribes special powers of the State Government and it reads as follows:

“...20. Special powers of State Government – The State Government shall have the following special powers in relation to the affairs of the Club:-

(a) Power of Veto – No decision of the Committee shall be implemented if an objection to such decision being implemented is taken in writing immediately within three days of the passing such decision by any nominee of the Aviation Adviser of the State Government. The Committee shall then have an opportunity to make its submission on such matters, either in writing or in person to the State Government before a final decision is arrived at. The decision of the State Government shall be binding upon the Committee.



(b) The State Government, as and when it thinks fit, may, by notice in writing to the club, appoint any person to be Manager of the Club and determine the powers and duties of such manager.

(c) The State Government may, in addition, if it thinks it necessary, appoint an officer to audit the accounts of the Club or to inspect engineering set-up or to check the standard of training or other facilities provided by the Club. The fees of such officer or officers shall be fixed by the State Government and shall be paid out of the funds of the Club.

(2) The provisions of this rule shall have effect notwithstanding anything to the contrary contained in these rules.....”

(35) It may also be relevant to mention here that the lands where the air-strips have been developed or the Aviation Clubs have been set-up, are owned by the State Government and air-crafts made available for training purposes, are also statedly owned by the State Government only.

(36) Another document having direct bearing on the issue involved, is the ‘Subsidy Agreement’ (Annexure R-VI) executed between the State Government on one part and the Patiala Aviation Club on the other, on annual basis with standard terms and conditions. The Subsidy Agreement, which commenced from 01.04.2004 for a period of one year, refers to the following amongst others relevant terms and conditions agreed to between the parties:-

*“1. The operation of these present shall commence from 1st April, 2004 and shall continue (unless previously determined as hereinafter provided) for a period of one year from the aforesaid date and thereafter shall continue for such further period and subject to such variation of its terms including the terms in regard to financial assistance to the club as may be specified by the Government.*

*. The grant paid to the club shall be applied by the club in and towards expenses of the maintenance and operation of aircraft engine glider winches and other equipment necessary for gliding/ flying activities and the purchase of replacement and of such*



*(10) The payments in the proceeding clauses hereof agreed to be made by the Government shall only be payable during the period of operation of this agreement after deducting the amounts due and payable by the club to the Government provided the Club faithfully applies such payments for the purpose for which they are given and faithfully observes and performs to the satisfaction of the State Government the agreements and stipulations contained in and Instructions issued by the State Government under these presents required to be performed or observed on the part of the club. In event of the State Government not being so satisfied, Government shall under no circumstances be required to State reasons orally or to give reason in writing such part of the grant or any other payments as the State Government may deem fit shall be withheld.....”*

(37) These agreed terms and conditions are in addition to the obligation casts upon the Club vide Clause-12 of the bilateral agreement.

(38) There is no other Memorandum of Association, Rules, Regulations or Constitution on record in respect to the establishment of Aircraft Maintenance Engineering School or College by the Patiala Aviation Club nor any separate ‘subsidy agreement’ in relation thereto has been pointed out by counsel for the parties.

(39) The petitioners thus say that the Aviation Clubs have been set-up by and at the instance of State Government through its Aviation Department; the affairs of the Clubs are under the control of the Deputy Commissioner of the concerned district who is Ex-officio President of the Club; the movable and immovable assets in possession of the Clubs are actually owned by the State Government, who has got overriding powers under the rules to take over the affairs of the Clubs; Aviation Wing is a vital and highly sensitive issue of paramount public importance; the Aviation Clubs are substantially funded by the State Government; The Aviation Clubs perform public duties without any business of profiteering; a plethora of documents on record would show that day to day affairs of the Clubs are totally under the pervasive control of State Government and thus, these Clubs fully satisfy the trio-test of Administrative, Financial and Functional dominance by or under pervasive control of the State Government to bring

them within the ambit of instrumentality of the State under Article 12 of the Constitution. Expanding this very analogy, learned counsel urged that the petitioners are employees of the State Government and are entitled to be paid salaries or other service-benefits out of the State exchequer.

(40) Learned Additional Advocate General, on the other hand urges that the Club is a private entity created under the Societies Registration Act; it is not originated by a statute; there is no legal obligation on the Deputy Commissioner or other officers of District Administration to be the members or office bearers of the Club; the Aviation is no longer a State controlled subject and even at the macro level, the private public joint ventures are at the helm of affairs; the State Government has volunteered to provide land or equipment including aircraft, subject to the agreed terms and conditions; the subsidy or grant-in-aid has also been released conditionally for the maintenance of equipments or to run the workshop etc and no grant was ever paid towards the salary or other expenses of the staff; the petitioners have been appointed by the Presidents of the respective Clubs without following any transparent procedure like an instrumentality of the State; there is no statutory protection to the engagement/ employment of the petitioners with the Clubs as it is purely a master and servant relationship between two private individuals; even if the Clubs are held to be 'State' for performing public duties, it does not clothe the petitioners to seek a writ for the enforcement of a private contract of service. There is thus no relationship of 'employer' and 'employees' between the State and the petitioners.

(41) Constituents of an 'instrumentality' of State within the meaning of Article 12 of the Constitution to make such entities amenable to the writ jurisdiction of Superior Courts under Articles 32 or 226 of the Constitution are by now well defined in a catena of decisions. From *Ajay Hasia* versus *Khalid Mujib (I)*, onwards, it stands crystalized that if the cumulative facts brought on record unveil that the financial, functional and administrative dominance is under the complete and pervasive control of the Government, such body is a 'State' within the meaning of Article 12 of the Constitution and would be amenable to the writ jurisdiction for the purpose of enforcement of constitutional and fundamental rights. But where the control whether under the statute or otherwise is regulatory in nature, it may not be sufficient to hold the body as an organ of the State. These principles have been

reiterated in the recent decisions in (i) *Ramesh Ahluwalia* versus *State of Punjab and others* (2) and (ii) Civil Appeal No.9017 of 2013 Thalappalam Ser. Cooperative Bank Limited and others versus State of Kerala and others, decided on 07.10.2013.

(42) The second principle that has emerged from a string of decisions commencing from *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others* versus *V.R. Raudani and others* (3), is an intent to liberalize the maintainability of writs against the 'instrumentalities' of State on the premise that when a body or an institute is not a 'State' under Article 12 of the Constitution but if it performs functions or duties of paramount public importance, a writ Court can compel such body or institute to adhere to the Constitutional philosophy while performing that public duty/function.

(43) The third stream in fact flows out of the second principle noticed above and it says that a private institution though may be amenable to writ jurisdiction in relation to the performance of its public duties, yet the employees of such body or institute cannot seek parity at par with employees of public sector as any such claim by them would amount to seeking specific performance of the private contract of their service. No such writ can thus be issued, as ruled in : (i) *Nandganj Sihori Sugar Co. Limited & another* versus *Badri Nath Dixit and others* (4), (ii) *Smt. J. Tiwari* versus *Jawala Devi Vidya Mandir and others* (5).

(44) This Court in *Mrs. Naqvi* versus *State of Punjab and others* (6), also summarized these principles and held that:-

"...20. It appears to me from the above quoted case laws that power to issue a writ under Article 226 of the Constitution is no longer confined to the restricted arena of statutory authorities or instrumentalities of the State. Even a person or body performing public duty can also be commanded with an appropriate writ. If it is found that the right to perform public duty has been conferred upon a private body either by the State or by its instrumentalities or by some statutory authority, such private body can always be commanded to adhere to the philosophy of Article 14 of the

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(2) 2012 (12) SCC 331

(3) 1989 (2) SCC 691

(4) 1991 (3) SCC 54

(5) 1979 (4) SCC 160

(6) 2004 (4) SLR 362

Constitution of India. The Statutory Authorities like a University, Medical Council of India or AICTE which are empowered to recognize and/or affiliate a private institution can also be commanded to ensure that such private body recognized and/or affiliated with them, does not act in violation of Article 14 of the Constitution of India. Similarly, if it is found that the institution has failed to carry out an obligation under the Constitution or the Rules/Regulations framed by the affiliating Statutory Authority, it can always be compelled to perform the public duty through an appropriate writ. If an interest has been created by the Government in a private institute imparting education either by prescribing the service conditions of employees of such institute or by providing financial assistance in terms of grant-in-aid, the teachers who impart education get an element of public interest in the performance of their duties and such an element of public interest requires that the conditions of their service are properly regulated. The Government aided institution without any exception discharge public functions by way of imparting education and they being subject to the Rules and Regulations of the affiliated University, employment in such institutions is not devoid of any public character. If the Government or its authorities or a statutory body recognizing such private Government-aided educational institutions, takes a decision to regulate the service conditions of employees of such private institutions, the relationship of Master and Servant between the employees of such private institutions would not remain purely of a private character. The protection granted to such relationship by enacting Rules/Regulations would be sufficient to command the Management(s) through a writ of mandamus, if so required. However, if an office/post is essentially of a private character, neither a writ in the nature of certiorari to quash the order of termination nor a mandamus to order reinstatement would lie to secure the performance of obligations by a body towards its employees or to resolve a private dispute. Similarly, if the relationship between the employer and the employee is based on contract and was purely one of Master and Servant, the relief of reinstatement cannot be granted as it would amount to granting specific performance of contract of service which is prohibited in law. Still further, a private institution even if recognized

or affiliated with a statutory body like University, though purely private in character being a Society registered under the Societies Registration act, 1860, no declaration of continuation in service can be granted in favour of its employee even if the termination of employment is found to be unlawful though in such a case, the affiliating statutory authority like University might be entitled to disaffiliate the institution but the relief of reinstatement to an employee into service has not been recognized.....”

(45) We are thus of the view that even on the plain application of these principles, the Aviation Clubs do not come within the first category of cases though they undoubtedly fall within the periphery of the second category. There is no Statute for setting up the Aviation Clubs under the exclusive control of State or the Central Governments nor such a provision has been brought to our notice. Voluntary initiative taken by a group of officers with the active support of the Aviation Wing Department of the State Government, would not and cannot be the sole basis to recognize the clubs as an extended hand of the State. Air space and aviation activities are indeed highly sensitive and ticklish issues vital to the nation's security and integrity but the activities for which the Aviation Clubs have been set-up, are not relatable to such issues. The Clubs have been set-up to impart training to Aeronautical young students who aspire to become Pilots or Engineers/ Mechanics. Flying hours training or a technical course imparted by the Clubs are purely business ventures or at best technical training programs which can be effectively imparted by a private entrepreneurs as well.

(46) There is no obligation on the State to provide funds to run the affairs of the Club and the grant-in-aid agreed to be released though the 'Subsidy Agreement' is basically meant for the maintenance and upkeep of the expensive equipments like air-crafts etc. given by the State to these Clubs. The State Government has neither sanctioned the posts nor deployed its own staff for the day to day control on the functioning of Clubs. The over-riding powers given to the State Government under the Rules and Regulations are only for the preservation of State properties and the funds for maintenance released by the State from time to time. These powers fall short of the pervasive control, needed to term the Clubs as a wing of the State Government.

(47) The Hon'ble Supreme Court in the context of the question whether a 'Cooperative Society' is the State under Article 12 of the Constitution, has drawn fine distinction in its recent decision in Thalappalam Scr. Coop. Bank Ltd. & ors (Supra) laying down as follows:-

".....17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the cooperative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State...."

(48) Since the Clubs are the creation of voluntary initiatives including the functionaries of District Administration and their affairs are run in accordance with the Memorandum of Association or the Rules and Regulations framed by each Club, though exhibiting undue favour to some of the State Functionaries, we are of the considered view that such like regulatory measures cannot be termed as pervasive control over the administrative or financial affairs of the Clubs to enable them to qualify as 'State' under Article 12 of the Constitution.

(49) There is no gain saying that the activities undertaken by Aviation Clubs are important public functions. Since the State Government has been vested with over-riding powers to ensure that grant-in-aid released by it under the 'Subsidy Agreement' is properly utilized by each Club, the performance of public duties by such clubs indeed falls within the scope of judicial scrutiny under Articles 32 and 226 of the Constitution. The first question stands answered accordingly.

(50) Q.No.(iii) Whether there is a binding contract between the Club(s), their employees and the State of Punjab for the release of grant-in-aid by the latter in favour of the former(s) and if so, what is the nature of such grant-in-aid?



There is concededly no legislative enactment imposing obligation on the State to release grant-in-aid to meet the day to day expenses incurred by the Clubs on their activities or for payment of salary/wages to their staff. The petitioners have also nowhere referred to or relied upon any statutory obligation on the State or its authorities for the funding of Aviation Clubs or their allied activities.

(51) In the absence of statute, the Rules which are statutory in character and have some bearing on the issue in hand may be referred to. Rule 8.14 of the Punjab Financial Rules, Volume-1 finds mention in Clause-8 of the Subsidy Agreement (Annexure R-VI) and it reads as follows:-

*"8.14. Grants-in-aid or contributions to educational and other institutions, local bodies and Co-operative Societies are sanctioned either by the Government or the authorities subordinate to it (Heads of Departments etc.) and are regulated by the orders contained in rule 19.9 of this volume (see page No.624) and the detailed rules made by the Heads of Department under the powers vested in them. After the budget allotment have been communicated by the Department of Finance, the payment is authorized at the treasury through the Accountant-General or direct, as the case may be, vide Subsidiary Treasury Rule 4.4 (See page No.268). The following instructions are issued for the guidance of sanctioning authorities in the matter of according sanctions for grants-in-aid:*

*(a) (1) Unless in any case Government directs otherwise, every order sanctioning a grant should specify clearly the object for which it is given and the conditions, if any, attached to the grant. In the case of non-recurring grants for specified objects, the order should also specify the time-limit within which the grant or each installment of it is to be spent.*

*(2) Only so much of the grant should be paid during any financial year as is likely to be expended during that year. In the case of grants for specific works or services such as buildings, water-supply schemes and the like, the sanctioning authority should use its discretion in authority payments according to the needs*

*of the work. The authority signing or countersigning the bill for grants in aid under subsidiary Treasury rule 4.4 (see page No.268) & 4.71 (see below) should see that money is not drawn in advance of requirements. There should be no occasion for a rush for payment of these grants in the month of March..... ”*

(52) The above quoted rule also, unfortunately, does not advance the case of petitioners. It can not be interpreted, construed or stretched to create an obligation of binding nature on the State or its Civil Aviation Department to release grant-in-aid to the Clubs even though discretionary release of such grants can be justifiably sheltered under the above-stated rule only.

(53) We may now advert to the Administrative decision, if any, on the basis of which the principle of estoppel can possibly be invoked or which may have some compelling force over the State. The orders dated 7.1.1981 and 19.7.1994 (Annexures P-7 and P-14, respectively), followed by yet another order dated 19.2.1999 appended with the affidavit of Sukhpal Singh Gill, the then Director, Civil Aviation, Punjab, filed in compliance of the order dated 07.09.2000 (which has since been set-aside by the Hon'ble Supreme Court), have been heavily relied upon by the petitioners. The order dated 19.02.1999 unveils the release of grant-in-aid to Civil Aviation Department, for "Training and Education". None of these orders unveils any commitment by State Government to provide financial aid to Aviation Clubs.

(54) The above-mentioned administrative orders or the executive instructions issued by the Finance Department of State Government or the provisions contained in the Punjab Finance Rules do not, in any manner, bind down the State Government to release the funds towards deficiency incurred by Aviation Clubs or the Aircrafts Maintenance Engineering College at Patiala. To say it differently, in the absence of any obligation or an enforceable bilateral agreement, it is beyond the jurisdictional scope of this Court to compel or command the respondents to act against their wishes or violate the administrative decision consciously taken by them and release funds from the State exchequer in favour of petitioners or their parent organizations.

(55) We may, at the cost of repetition, reiterate that as per clause 8 of the 'Subsidy Agreement' it is the sweet-will of the State Government to provide financial assistance and that too if it is satisfied with the usual conditions laid down in Rule 8.14 of the Financial Rules (ibid). That apart, the State Government has in so many words clarified that the grant-in-aid to the Clubs shall be utilized towards "the expenses of maintenance and operation of aircraft, engines, gliders, winches and other equipment necessary for gliding/ flying activities and the purchase of replacement and of such material and spare parts as may be requisite for such maintenance and operation and in and towards the salary and allowances of instructions and other necessary technical staff and the establishment..."

(56) The third question stands answered accordingly. It is held that there is no binding contract between the Clubs and the State Government which obligates the latter to provide financial aid to the former to defray its day to day expenses. It is further held that grant-in-aid released in the past was discretionary in nature guided by the principles contained in Rule 8.14 of the Punjab Financial Rules which do not cast any corresponding duty on the State to release such grant-in-aid continuously and forever and that too to the extent demanded by the Clubs.

(57) Q.No.(iv) Whether there exists relationship of 'employer' and 'employees' between the State of Punjab and the petitioners/appellants?

We may now dwell upon the fourth issue, namely, is there any relationship of 'employer' and 'employees' between the State and the petitioners? The uncontroverted facts are that no post in any Club was ever created by the State Government though at one point of time, the matter was seriously considered on an initiative taken by the Advisor, Civil Aviation, Punjab. The nature or nomenclature of the posts, qualifications, pay-scales or the conditions of service, nothing has been laid down by the State Government. All such decisions have been taken by the management of Clubs only. The posts, as it appears from the record, were never advertised nor the petitioners were recruited by following any transparent or fair competitive procedure. They were hand-picked by the managements of respective Clubs.

(58) In all fairness, it may be noticed that the petitioners have placed on record several administrative orders to indicate that the Director/Advisor, Civil Aviation, Punjab, has been controlling or taking decisions in the matter of disciplinary action and retirement etc. of the employees of Clubs. Such an exercise, in our considered view, falls short of establishing a relationship of the employer and the employee between the State and the petitioners and was at best an act of monitoring the affairs of Clubs as per the terms and conditions of the 'Subsidy Agreement'. Since none of the administrative decisions starting from the creation of posts, manner of recruitment, selection or appointment of petitioners, prescription of pay structure and consequential payment of salary etc. were undertaken by the State Government, it is not possible to hold the petitioners to be employees of the Punjab State or its agency. We have already held that the Aviation Clubs or Aircraft Management Engineering College even if fall within the ambit of 'State' under Article 12 of the Constitution for a limited purpose, yet they are not a 'Department' or 'Wing' of the State Government. As a necessary corollary, it is held that no fiduciary relationship came into existence between the petitioners and the State.

(59) The issue in fact no-longer is res-intgra. Very close to the facts of the case in hand, the Hon'ble Supreme Court in State of Assam versus Barak Upatyaka D.U. Karmchari Sanstha (2009) 5 SCC 694, dealt with the case of a Cooperative Society registered under the Assam Cooperative Societies Act, 1949. The composition of that Society, is explained in para No.3 of the judgment which says:-

*".....CAMUL is a Society registered under the Assam Cooperative Societies Act, 1949 ("the Act", for short). The respondent, a trade union representing the workers of CAMUL, filed the said writ petition (Civil Rule No.2996 of 1995) contending that the State Government formed and registered CAMUL as a cooperative Society to run its cattle development project; that its Board of Directors including the Managing Director (always a government servant on deputation) were appointed by the State Government; that the post of the Managing Director of CAMUL was declared to be a post equivalent to a Head of Department under the State Government; that initially the entire staff of CAMUL were drawn on deputation from the Veterinary, Agriculture & Cooperative Departments of*

*the State Government; that in a phased manner, those employees were reverted back to their parent departments and replaced by the staff appointed by CAMUL through a selection board set up by the State Government with representatives from the Central Government and the National Dairy Development Board; that the State Government sanctioned the staffing pattern of CAMUL; that from the year 1982-83 onwards the Government was extending financial assistance by way of grants to CAMUL to meet the expenditure (including the expenditure relating to its employees); and that for the year 1994-95 though the State Government had sanctioned financial assistance in a sum of Rs. 7 lakhs as grant-in-aid, it was not disbursed and consequently CAMUL did not pay the monthly salaries to its employees from December, 1994 onwards....." (emphasis applied)*

(60) In the light of the above stated composition of the Society and the fact that the State Government had been providing financial assistance by way of grant-in-aid from time to time, the contention raised on behalf of employees of the Society finds mentioned in para Nos. 4 & 5 of the report which reads as follows:-

*"4. It is contended that the State Government had all-pervasive control over the affairs and management of CAMUL and therefore, it should be treated as a department of the Government of Assam, though registered as a cooperative society by lifting the corporate veil. It was further contended that the State Government was responsible and liable to pay the salaries and emoluments of the employees of CAMUL and it was not justified in withholding the grant amount.*

*5. The respondent Union, therefore, sought a direction to the State Government to release the arrears of pay and allowances of employees of CAMUL with effect from December, 1994 and for a direction to continue to pay the salary and allowances to the employees of CAMUL, every month in future. In addition to the State Government (respondent No. 1) and its officers (respondent Nos. 2 to 4), the Union of India (respondent No. 5) and CAMUL and its Managing Director (respondent Nos. 6 and 7) were impleaded as parties to the writ petition....."*

(61) The above-stated claim of the workers' union was opposed by the State Government, inter-alia, contending that the grant-in-aid was extended to the Society for development activities and that at no point of time the State Government made any statement or agreed to bear the salary of employees of the Society and that it was for the Society to generate funds and pay salaries to its staff.

(62) The High Court though rejected the defence pleaded by State Government but on an appeal, the Apex Court accepted the same and held as follows:-

*"... Therefore, CAMUL, even if it was 'State' for the purpose of Article 12, was an independent juristic entity and could not have been identified with or treated as the State Government. In the view we have taken; it is not necessary in this case to examine whether CAMUL was 'State' for the purpose of Article 12....."*

(63) It further held that:-

*"....12. Section 43 of the Act provides that notwithstanding anything contained in any law for the time being in force, the State Government may grant loans or give financial assistance in any form to any registered society. Therefore, the fact that the State Government had given financial assistance in the form of grant-in-aid to CAMUL, continuously for some year, either to meet its development activities or for even meeting the salaries, does not mean that the State Government is responsible bear and pay the salaries and emoluments of the employees of CAMUL or other liabilities of CAMUL. Nor can the State Government be made liable for extension of financial assistance for all times to come, to cover the payment of salaries of employees of CAMUL.*

*13. If the salaries are not paid, the remedy of the employees of CAMUL is to proceed against CAMUL, in accordance with law, by approaching the forum under the appropriate labour legislation or the Cooperative Societies Act. But a trade union representing the employees of a cooperative society cannot by filing a writ petition, require the Government to bear and pay*

*the salaries of the employees of the cooperative society, howsoever pervasive, the control of the State Government, over such society. Nor is any right created to demand the continuance of financial assistance to a cooperative Society on the grounds that such assistance has been extended by the Government, for several years.*

*14. The respondent has not been able to show any right in the employees of CAMUL, against the State Government, or any obligation on the part of the State Government with reference to the salaries/ emoluments of employees of CAMUL, either under any statute or contract or otherwise....” (emphasis applied)*

(64) While laying down the above-stated principles, reliance was placed on an earlier Constitution Bench decision of the Supreme Court in *Steel Authority of India Limited versus National Union Waterfront Workers (7)*, wherein it was ruled that:-

*“.....37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/ corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law.....” (emphasis applied)*

(65) In the light of the above, the only answer to question No.(iv) would be to hold that there is no relationship of ‘employer’ and ‘employee’ between the State of Punjab and the petitioners.

(66) Having held so, ordinarily we would have dismissed these writ petitions.

(67) However, one cannot lose sight of the fact that various authorities of the State Government have shown keen interest in setting-up the Aviation Clubs. Big chunk of prime land, aircrafts and other equipments were made

available for these Clubs by the State of Punjab only. Even before the year 2000 (when this Court issued directions for the release of adequate grant-in-aid regularly), the State Government has been granting financial aid to the Clubs from time to time. The initial interest expressed by the State in the affairs of these Clubs started fading with the passage of time and finally reached a stage where the State Government wanted to wash off its hands from any kind of their liability. In view of what has been held above, though the respondents cannot be directed to take-over the management of Aviation Clubs or release funds for their smooth functioning, the affairs and activities of the Aviation Clubs cannot be left unattended. The State Government thus is obligated to take a holistic view and form a definite opinion as to whether it wants the Clubs to be run and controlled by private agencies and/or a de-facto State affair. The State Government is fully aware of the fact that the affairs of these Clubs cannot be run smoothly unless adequate financial aid is given. Let the State of Punjab, therefore, formulate its aviation policy and take an appropriate decision which would necessarily include the fate of the employees appointed by the Clubs. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.

Dasti.

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*J. Thakur*