IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12676 OF 2024

Pandurang Punja Avhad
Age 70 years,
Residing at – Devendra Niwas,
S-10/3, Sr. No.94/95, Indranagari,
Opp. Rahul Residency, Kothrud,
Pune – 411 038. ....Petitioner

V/S

Director,
The Automotive Research
Association of India,
Sr.No.102, Vetal Tekdi,
Aside of Karve Road,
Kothrud, Pune – 411 038. ....Respondent

Mr. Nitin A. Kulkarni *for the Petitioner.*
Mr. Avinash Jalisatgi with Mr. Varun Joshi, Mr. Chetan Alai and Ms. Divya Wadekar for *Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 27 FEBRUARY 2025.
PRONOUNCED ON : 10 MARCH 2025.

J U D G M E N T :

1) The pivotal issue that arises for consideration in the present Petition is whether the Appropriate Government in respect of the Respondent-Automotive Research Association of India (**ARAI**) is Central or State Government. If it is held that the Appropriate Government for Respondent-ARAI is the State Government, the next issue for consideration is whether Petitioner fits into the definition of a term 'workman' within the meaning of Section 2(s) of the Industrial

Disputes Act, 1947 (**ID Act**). If the Petitioner is able to clear the two hurdles, the Complaint filed by him challenging his termination can be adjudicated on the merits.

2) The Petition arises out of challenge to the Award dated 15 May 2024 passed by the learned Presiding Officer, First Labour Court, Pune, in Reference (IDA) No.328 of 2010 by which the Reference relating to termination of Petitioner's services with effect from 8 August 2005 is rejected.

3) Respondent-ARAI is a Society registered under the Societies Registration Act, 1860 and is established with the objectives of promoting research and other scientific work connected with design, development, manufacture and operation of motor vehicles, internal combustion engine, products of industries, etc. and to assist the research work of associations or institutions, whose objects include scientific and industrial research. Respondent-ARAI has been set up by Indian vehicle and automotive auxiliary manufactures. Almost all vehicle manufactures and major auxiliary manufactures are members of Respondent-ARAI.

4) Petitioner joined the services of Respondent-ARAI as Technical Assistant on 17 June 1980 on probation of one year. He was absorbed in the regular service of Respondent-ARAI by order dated 23 June 1981. He was promoted to the post of Senior Technical Assistant with effect from 1 January 1982. Thereafter he was further promoted to the position as Project Engineer with effect from 1 March 1985. Petitioner worked in the Vehicle Testing Department. He was further promoted to the position of Senior Project Engineer.

5) While working as Senior Project Engineer, a show-cause notice dated 30 July 2005 was issued to the Petitioner alleging that he was engaged in private business with his son and was accepting illegal gratification from various Three-Wheeler Manufactures by assisting them in getting clearance for their certification at Respondent-ARAI. Petitioner replied the show- cause notice on 2 August 2005 and denied the allegations. By letter dated 8 August 2005 Respondent-ARAI terminated the services of the Petitioner with immediate effect by crediting salary for three months in his account.

6) Aggrieved by his termination order, Petitioner was advised to file Original Application No.548 of 2005 in Central Administrative Tribunal, Mumbai challenging the termination order dated 8 August 2005. Respondent-ARAI filed Reply before the Tribunal contending *inter alia* that Respondent-ARAI is neither Department of Central Government nor is owned by the Central Government. That the Central Government does not hold the entire share capital of Respondent-ARAI nor exercises deep or persuasive control over the functioning of Respondent-ARAI. It was contended that functions of Respondent-ARAI are not closely related to the Government functions. The Tribunal therefore proceeded to dismiss the Original Application preferred by the Petitioner by order dated 27 November 2006 holding that it did not have jurisdiction to decide validity of termination order issued by Respondent-ARAI.

7) Petitioner thereafter decided to exercise the remedies under the Labour Laws. At the instance of the Petitioner, Reference was made by Deputy Commissioner of Labour, Pune to First Labour Court, Pune, which was registered as Reference (IDA) No.328 of 2010. The Reference was with regard to termination of the Petitioner with effect

from 8 August 2005 and for relief of reinstatement with continuity and backwages. Petitioner filed his statement of claim before the Labour Court, which was resisted by the Respondent-ARAI by filing Written Statement. Parties led evidence in support of the respective claims. By Award dated 15 May 2024, the Labour Court proceeded to reject the Reference holding that the same to be not maintainable. The Labour Court held that Appropriate Government for Respondent-ARAI is the Central Government. The Labour Court also went into the issue of status of the Petitioner as 'workman' under section 2(s) of the ID Act and held that he does not fit into the definition of the term 'workman'. This is how the Reference is rejected by the Labour Court by Award dated 15 May 2024, which is subject matter of the challenge in the present Petition.

8) Mr. Kulkarni, the learned counsel appearing for the Petitioner would submit that the Labour Court has grossly erred in holding that the Appropriate Government for Respondent-ARAI is Central Government. He would submit that when Petitioner approached Central Administrative Tribunal under impression that Respondent-ARAI is autonomous body of the Central Government, the Original Application was opposed contending that the Central Government does not exercise deep or persuasive control over Respondent-ARAI. After ensuring dismissal of Original Application filed before the Central Administrative Tribunal, Respondent-ARAI could not have contended before the Labour Court that the Appropriate Government for it is Central Government. He would rely upon judgment of Division Bench of this Court in ***Nandkumar Nivrutti Baptiwale vs. Automotive Research Association of India and others.***[1] in support of his contention that the Respondent-ARAI is held to be not

1 2002 (2) Mh.L.J. 191

an authority, agency or instrumentality of the State. He would also rely upon judgment of the Apex Court in ***Kishor Madhukar Pinglikar vs. Automotive Research Association of India***[2] in support of his contention that Respondent-ARAI performs several other functions in addition to certification of vehicles, which activity is done by several other institutes across the country. He would rely upon judgment of this Court in ***Tata Memorial Centre and others vs. Tata Memorial Hospital Workers Union Tata Memorial Hospital and another***[3] in support of the contention that the expression 'under the control' would connote absolute control by the Central Government. He would submit that far from absolute control, the Central Government does not even exercise deep or persuasive control over Respondent-ARAI as per defence adopted by Respondent-ARAI before the CAT.

9) Mr. Kulkarni would thereafter submit that the Labour Court has erred in holding that the Petitioner is not a 'workman' within the meaning of Section 2(s) of the ID Act. He would submit that the predominant nature of duties and responsibilities of the Petitioner are technical and skilled in nature. That though his designations have changed from Technical Assistant Engineer to Senior Project Engineer, ultimately there has been no change in his duties and responsibilities. That merely because Petitioner recommended leave of few employees, the same did not make him their supervisor in absence of authority to sanction the leave. He would rely upon judgment of this Court in ***Jayhind Vithoba Mahadik vs. General Manager, Maharashtra Scooters, Ltd.***[4] in support of his contention that even if the workman is found to have sanctioned leave,

2 2022 SCC OnLine SC 1799
3 2024 SCC OnLine Bom. 869
4 2004 (4) LLN 429

the same does not *ipso facto* make him a supervisor. He would submit that the Petitioner discharged the burden of proving that he is a workman. That in any case, if dispute is created about status by Respondent-ARAI, the burden shifted on it to prove that Petitioner is the Supervisor or Manager. In support he would rely upon judgment of Division Bench of this Court in ***Waman Ganpat Raut vs. Cadbury-Fry (India) (Private), Ltd. and Anr.***[5] He would further submit that since no enquiry is admittedly conducted into alleged misconduct, reinstatement with full backwages is a natural corollary after upholding maintainability of the Reference. He would accordingly pray for reinstatement of the Petitioner with full backwages. He would accordingly pray for setting aside the impugned award.

10) The Petition is opposed by Mr. Jalisatgi, the learned counsel appearing for Respondent-ARAI. He would submit that Respondent-ARAI carries on industry under the authority of Central Government and that therefore the appropriate Government for it is the Central Government. That Respondent-ARAI directly comes under the control of Ministry of Heavy Industries of Government and therefore State Government could not have ordered Reference relating to termination of the Petitioner. He would submit that though Respondent-ARAI is not an Instrumentality of State within the meaning of Article 12 of the Constitution of India, the same would not *ipso facto* mean that it is not an industry under the control of the Government of India. That the concept of being a State under Article 12 of the Constitution of India is entirely different and distinct from the concept of an industry under the control of Government of India. That therefore the judgment of this Court in ***Nandkumar Nivrutti Baptiwale*** (supra)

5 1980 (1) LLN 488

or of the Apex Court in ***Kishor Madhukar Pinglikar*** (supra) are totally irrelevant for the purpose of deciding the issue of Appropriate Government. He would rely upon judgment of the Apex Court in ***Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others***[6] in support of his contention that the test is whether the industry is carried on by virtue of conferment of power or permission by the Central Government and not whether the undertaking concerned falls within the meaning of 'State' under Article 12 of the Constitution of India. He would therefore submit that the finding recorded by the Labour Court about Appropriate Government in respect of the Respondent-ARAI being Central Government does not warrant any interference.

11) So far as the issue of status of Petitioner as workman is concerned, Mr. Jalisatgi would submit that Petitioner was working on the post of Senior Project Engineer in supervisory and managerial capacity and cannot brand himself as ordinary workman. That he was deputed to foreign countries for acquiring training. That he used to recommend leave of employees posted in his Section meaning thereby that he used to take a decision relating to manpower availability in his own Section. That he has approved tour programs of employees working in his Section. That therefore it cannot be contended that he was performing skilled, manual or technical job. That the predominant nature of his duties was supervisory and managerial. He would submit that the entire burden of proving skilled, manual or technical work vested entirely on the shoulders of the Petitioner, which he failed to discharge. He would rely upon judgment of this Court in ***Shrikant Vishnu Palwankar vs. Presiding Officer of First Labour Court***[7] in support of his contention that

6 (2001) 7 SCC 1
7 1991 Mh.L.J. 1565

recommendation of leave is one index of supervisory functioning. He would submit that the doctrine of *res ipsa loquitur* would apply to the present case where the burden would be on Petitioner to prove that he was performing skilled, manual or technical nature of duties. In support of said submissions he would rely upon judgment of the Apex Court in ***Sonepat Cooperative Sugar Mills Ltd. vs. Ajit Singh***[8]. Lastly, Mr. Jalisatgi would rely upon judgment of this Court in ***Standard Chartered Bank vs. Vandana Joshi and another***[9] in support of his contention that power to sanction leave or initiate disciplinary proceedings is an indicator of supervisory and managerial nature of duties. He would therefore submit that the Labour Court has rightly held that the Petitioner does not fit into the definition of the term 'workman'. He would accordingly pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) The fist issue to be decided is whether the Appropriate Government in respect of Respondent-ARAI is Central or State Government. The term 'Appropriate Government' has been defined under Section 2(a) of the ID Act as under:

> (*a*) "Appropriate Government" means—
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> (*i*) In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a Railway Company (or concerning any such controlled industry as may be specified in this behalf by the Central Government) or in relation to an industrial dispute concerning (a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance

8 (2005) 3 SCC 232
9 2010 (2) Mh.L.J. 22

> Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Sections 5-A and 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India [the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or (an air transport service, or a banking or an insurance Company), (a mine, an oilfield), (a Cantonment Board), or a (major port, the Central Government), and
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> (*ii*) in relation to any other industrial dispute, the State Government.

14) Thus, in relation to any industrial dispute concerning any industry carried ‘by or under the authority of Central Government’, the appropriate Government is Central Government. The definition of the term ‘Appropriate Government’ underwent a major change by the Amendment Act 2010, under which a Company in which Central Government holding 51% paid-up share capital or a Corporation established by or under law made by the Parliament or Central Public Sector Undertaking and autonomous bodies owned or controlled by the Central Government, the Appropriate Government is now the Central Government. The Amendment of 2010 assumes importance as the legislature realised that an industry carried on by or under the

Authority of the Central Government was excluding most of the public sector undertakings from the ambit of section 2(a)(i) of the ID Act. In ***Tata Memorial Hospital Workers Union*** (supra) 3-Judge Bench of the Apex Court held on the basis of unamended definition of the term 'Appropriate Government' that the industry or undertaking has to be carried out under the authority of the Central Government and mere control of the Government, ownership of paid-up share capital etc. was not sufficient for holding Central Government to be the 'appropriate Government'. The Apex Court held in paragraphs 29, 30, 59, 60 and 63 as under:

> **29.** It was accepted by the corporation that it could not be said to be an "industry" carried on by the Central Government. The limited issue was whether it could be regarded as an "industry", carried on *under the authority* of the Central Government. The question was as to how to construe the phrase "under the authority of the Central Government". This Court held: (*Heavy Engg. Mazdoor Union case* [(1969) 1 SCC 765 : (1969) 3 SCR 995] , SCC pp. 768-69, para 4)
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> > "*4*. … There being nothing in Section 2(*a*) to the contrary, the word 'authority' must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to another to do an act. A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act. For instance, if *A* authorises *B* to sell certain goods for and on his behalf and *B* does so, *B* incurs no liability for so doing in respect of such goods and confers a good title on the purchaser. There clearly arises in such a case the relationship of a principal and an agent. *The words 'under the authority of' mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master*. Can the respondent Company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association."
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> (emphasis supplied)
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> **30.** This Court noted in *Heavy Engg. Mazdoor Union case* [(1969) 1 SCC 765 : (1969) 3 SCR 995] that an incorporated company has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. The mere fact that the entire share capital of the

company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The Court noted that a notice to the President of India and the officers of the Central Government, who hold between them all the shares of the company would not be a notice to the company nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

59. As far as an industry "carried on by the Central Government" is concerned, there need not be much controversy inasmuch as it would mean the industries such as the Railways or the Posts and Telegraphs, which are carried on departmentally by the Central Government itself. The difficulty arises while deciding the industry which is carried on, not by but "under the authority of the Central Government". Now, as has been noted above, in the Constitution Bench judgment in *SAIL* [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] , the approach of the different Benches in the four earlier judgments has been specifically approved and the view expressed in *Air India* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] has been disagreed with. **The phrase "under the authority" has been interpreted in *Heavy Engg*. [(1969) 1 SCC 765 : (1969) 3 SCR 995] to mean "pursuant to the authority" such as where an agent or servant acts under authority of his principal or master. That obviously cannot be said of a company incorporated under the Companies Act, as laid down in *Heavy Engg. Mazdoor Union case* [(1969) 1 SCC 765 : (1969) 3 SCR 995]. However, where a statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State.**

60. The judgment in *Heavy Engg. Mazdoor Union* [(1969) 1 SCC 765 : (1969) 3 SCR 995] observed that the inference that a corporation was an agent of the Government might also be drawn where it was performing in substance governmental and non-commercial functions. The Constitution Bench in *SAIL case* [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] has disagreed with this view in para 41 of its judgment. Hence, even a corporation which is carrying on commercial activities can also be an agent of the State in a given situation. ***Heavy Engg*. [(1969) 1 SCC 765 : (1969) 3 SCR 995] judgment is otherwise completely approved, wherein it is made clear that the fact that Minister appoints the members or Directors of corporation and he is entitled to call for information, to give directions regarding functioning which are binding on the Directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. The fact that entire capital is contributed by the Central Government and wages and salaries are determined by it, was also held to be not relevant**.

63. The propositions in *SAIL* [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] are to be seen on this background viz. that merely because the government companies/corporations and societies are discharging public functions and duties that does not by itself make them agents of the Central or the State Government. The industry or undertaking has to be carried under the authority of the Central Government or the State Government. That authority may be conferred either by a statute or by virtue of a relationship of principal and agent, or delegation of power. When it comes to conferring power by statute, there is not much difficulty. However, where it is not so, and whether the undertaking is functioning under authority is a question of fact. It is to be decided on the facts and circumstances of each case.

15) Applying the tests determined by the Apex Court to the establishment of Tata Memorial Centre, the Apex Court held that though the Central Government had power to appoint its nominees on Governing Council of the Tata Memorial Centre, which was controlling entire administration and management, the Apex Court held that the Tata Memorial Centre was not "under the control" of the Central Government. Shortly after rendering of judgment of the Apex Court in ***Tata Memorial Hospital Workers Union*** on 10 February 2009 definition of the term 'Appropriate Government' under section 2(1)(a) underwent a change with effect from 15 September 2010 and all autonomous bodies owned and controlled by the Central Government came to be included under Section 2(1)(a) of the ID Act.

16) Though Mr. Jalisatgi has relied upon judgment of the Apex Court in ***Steel Authority of India Ltd.*** (supra), which is considered in ***Tata Memorial Hospital Workers Union*** (supra), in my view, it is not really necessary to delve deeper into the differentiation between the concept of being a State under Article 12 of the Constitution of India and an industry carrying out under the authority of the Central Government. In my view, the answer to the issue of the exact Government which would be appropriate Government can be found in the judgment of the Apex Court rendered in the case of Respondent-ARAI itself in ***Kishor Madhukar Pinglikar*** (supra). Though it is sought to be urged before me that Respondent-ARAI carries on industry under the authority of the Central Government, the Apex Court has held in ***Kishor Madhukar Pinglikar*** that certification of vehicles under the Motor Vehicle Act, is not the only function performed by Respondent-ARAI and that it carries on various other functions under the Memorandum of Association. The Apex Court

held in ***Kishor Madhukar Pinglikar*** (supra) in paragraphs 21 and 24 as under:

> **21.** Learned counsel for the appellant, however, had relied upon Rule 126 of the Central Motor Vehicles Rules, 1989, which requires that every manufacturer or importer of the motor vehicle shall submit the prototype of the vehicle to be manufactured or imported by him to specified Associations/Authorities for issuance and grant of certificate by that agency for compliance of the provisions of the Motor Vehicle Act and Rules. In our opinion, the High Court rightly observed that the aforesaid task has been performed by a large number of agencies and the Central Government is entitled to take help and avail services of these specialized agencies/associations. The respondent Association and other agencies must undertake the test in accordance with the procedure laid down by the Central Government. It is pointed out that the certificates issued by the respondent Association are recommendatory in nature. The aforesaid function performed by the respondent has to be read along with the other functions which the respondent Association is obliged to perform as per the Memorandum of Association, which we have referred to briefly.
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> **24.** In light of the law as accentuated and facts as presented, it is clear that the respondent Association is not an agency or instrumentality of the Government. Further, the Government does not have deep and pervasive control over it. The writ petition was rightly not entertained.

17) In my view, the above finding recorded in ***Kishor Madhukar Pinglikar*** (supra) squarely answers the issue with regard to the 'Appropriate Government'. Once it is held that several other functions of Respondent-ARAI are not conducted under the authority of the Central Government, it cannot be contended that the 'appropriate Government' for Respondent-ARAI would be Central Government. Therefore, mere act of certification of vehicles under provisions of Rules 126 and 126A of the Central Motor Vehicles Rules, 1989 (**the Rules**), which is one of the several activities of Respondent-ARAI, it cannot be contended that it carries on industry under the authority of the Central Government.

18) This Court otherwise does not appreciate the changing stands taken by Respondent-ARAI. Right since the judgment of Division Bench in ***Nandkumar Nivrutti Baptiwale*** (decided on 11 January 2002) Respondent-ARAI is emphatic in contending that it is not a State within the meaning of Article 12 of the Constitution of India. In ***Nandkumar Nivrutti Baptiwale*** (supra) Division Bench of this Court held, after considering provisions of Rule 126 of the Rules, 1989, that mere authority conferred upon Respondent-ARAI to carry out test under Rules 126 and 126A of the Rules would not confer the status of authority or instrumentality or agency of State to the Association. The relevant finding recorded by the Division Bench in paragraph 15 reads thus:

> **15.** What is provided under Rules 126 and 126-A of the aforesaid rules is that prototype of every motor vehicle shall be subject to the test which may be carried out by various agencies including the first respondent Association. We are afraid by providing that the respondent Association is recognised body to carry out the test under rules 126 and 126-A and that it is approved by Government for certification of roadworthyness, fuel efficiency test shall not confer the status of authority or instrumentality or agency of the State to the Association. Mr. Bukhari, learned counsel for the petitioner relied upon the judgments of the Apex Court in *Ajay Hasia* v. *Khalid Mujib Sehravardi and ors.* 1981 (1) LLJ 103, *B.S. Minhas* v. *Indian Statistical Institute and ors.* 1984 LIC 15 and *P.K. Ramchandra Iyer* v. *Union of India*, 1984 LIC 301. In Ajay Hasia, the Apex Court based on the judgment in International Airport Authority culled out the following tests:—
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> > "(1) 'One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.'
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> > (2) 'Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.'
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> > (3) 'It may also be a relevant factor….. whether the corporation enjoys monopoly status which is the State conferred or State protected.'
> >
> > (4) 'Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.'

> (5) 'If the functions of the corporation of public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation on an instrumentality or agency of Government.'
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> (6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.'"

19) In ***Kishor Madhukar Pinglikar*** (supra) also Respondent-ARAI maintained its defence that the Central Government does not exercise deep or persuasive control over it. Thus, when employees of Respondent-ARAI sought to invoke jurisdiction of this Court for challenging punitive actions meted out to them, Respondent-ARAI defended the same contending that it is not an instrumentality of State. However, in the present case where Petitioner's Reference was made by the State Government, it has altered its position by contending that it carries on industry under the authority of the Central Government. While this Court appreciates the difference between the concept of carrying on industry under the authority of Central Government and a particular entity being a State within the meaning of Article 12 of the Constitution of India, this Court does not appreciate the changing stands adopted by Respondent-ARAI to suit its convenience to defeat jurisdiction of every possible Court its employees seek to approach relating to their service grievances.

20) In fact, the rigour of test of industry being carried out 'under the authority of Central Government' is stricter than the test of being an autonomous body of the Central Government. An autonomous body enjoys some degree of autonomy in performance of its functions even though the Central Government may exercise deep and persuasive control over it. On the other hand if an industry is carried out under the authority of the Central Government, there would be

complete control of the Central Government on activities performed by the establishment. It cannot be that the ARAI would escape from being treated as an autonomous body of the Central Government, but would continue to be an industry carried out under the authority of Central Government.

21) In my view therefore, Respondent-ARAI is not an industry carried on by or under the authority of the Central Government. It is just an association formed by Indian Vehicles Manufacturers. It performs various functions other than certification of vehicles and all its functions are not carried out under the authority of the Central Government. The Central Government has not authorized Respondent-ARAI to carry out each and every function that it undertakes. Certification of vehicles under Rules 126 and 126A of the Rules is just small part of activities of Respondent-ARAI. It therefore cannot be contended, by any stretch of imagination, that every activity conducted by Respondent-ARAI is under authority of the Central Government. The Labour Court, in my view, has grossly erred in holding that the Appropriate Government for Respondent-ARAI is Central Government. The Assistant Labour Commissioner of the State Government rightly made a Reference relating to termination of the Petitioner to the Labour Court. The Reference was thus perfectly maintainable as it did not suffer from any inherent error of jurisdiction.

22) Coming to the issue of status of the Petitioner, it appears that his designation at the time of termination was Senior Project Engineer. His services are terminated without holding enquiry by levelling allegations against him in the show-cause notice. The issue however is whether Petitioner could have invoked jurisdiction of

Labour Court in view of his status as Senior Project Engineer. By now it is well settled position of law that mere designation of a person is not indicative of the exact nature of duties and responsibilities discharged by him/her. Therefore, I am not going by mere designation of the Petitioner as Senior Project Engineer at the time of his termination. However, there are several factors which seek to indicate that the predominant nature of his duties and responsibilities were either supervisory or managerial. Respondent-ARAI has placed on record copies of several leave applications of employees working in the Section of the Petitioner. The leave application contains heading under clause 10 'Recommendation of the Department/Section Head" and Petitioner has signed against the said column, meaning thereby that Petitioner was the Section Head. True it is that a different authority has ultimately sanctioned the leave. The Petitioner has however taken part in recommending the leave to the higher official. Mr. Jalisatgi is right in contending that by recommending the leave Petitioner actually used to take decision about management of the staff in his own Section.

23) Respondent-ARAI has placed on record tour programs of the several employees sanctioned by the Petitioner in his capacity as Senior Project Engineer. This again indicates that he was performing supervisory functions by sanctioning the tour programs of other employees. To make the case of Petitioner worse, Respondent-ARAI relied upon copy of the tour program of the Petitioner by which he was deputed at Datron-Messtechnik and Pierburg Messtechnik in West Germany during 2 September 1989 to 27 September 1989. Surely an ordinary workman would not be deputed by the employer in the year 1989 for training in Germany. During late eighties, foreign tour was something which was beyond the reach of ordinary Indians. Unless

Petitioner was a senior official in Respondent-ARAI, he would not have been deputed for training in a foreign country.

24) It appears that further promotion of the Petitioner from the position as Senior Project Engineer was to the position of Assistant Director. He pleaded in paragraph 2.3 of his Statement of Claim that he was invited for interview for position as Assistant Director on 30 July 2005, but was not selected. The Petitioner was thus working on a position immediately below the position of Assistant Director. It surely cannot be contended that such a senior level official would be offered to an ordinary workman performing predominantly manual, unskilled, skilled, technical, operational or clerical work. After his employment in Respondent-ARAI, he climbed the ladder of several promotions. He was initially appointed as Technical Assistant and got three further promotions to the post of Senior Technical Assistant, Project Engineer and finally Senior Project Engineer.

25) It is sought to be contended by Mr. Kulkarni that clause 4 of appointment order of Petitioner stipulated that the Standing Orders of Respondent-ARAI would govern the Petitioner. However, the said terms and conditions related to initial appointment of Petitioner as Technical Assistant effected on 17 June 1980. He thereafter earned three promotions as Senior Technical Assistant, Project Engineer and Senior Project Engineer. In fact, the office order dated 17 June 1980 contained a stipulation that “he will report to Mr. S Raju, Senior Project Engineer for necessary instructions”. This shows that position of Senior Project Engineer was supervisory post to all Technical Assistants. There was meteoric rise in his pay. The pay-scale of Technical Assistants was Rs. 425-700/- whereas the pay-scale of Project Engineer (one position below the position of Senior Project

Engineer) was Rs. 700-1300/-. Petitioner admitted in his cross-examination that he was drawing salary of Rs. 30,000/- at the time of his dismissal on 8 June 2005. Considering the salary structure prevalent in India in the year 2005, it becomes difficult to believe that ordinary workman drew salary of Rs. 30,269/-.

26) So far as duties and responsibilities are concerned, Petitioner stated in paragraph 5 of Affidavit of evidence that his duties involved repairs of instruments, testing of vehicles, generator centres and components, operation of instruments together with other workers in the workshop. On the other hand, the witness of the employer led evidence that the nature of duties performed by him were coordination of genset testing, instrumentation maintenance, upkeep of lab equipment and supervising day to day lab activities.

27) Considering the above evidence, it becomes difficult to believe that the Petitioner discharged the burden of proving that predominant nature of his duties involved skilled and technical work and he did not work in managerial and supervisory capacity. He did not examine any co-worker to prove that he used to work like an ordinary workman in workshop. He did not explain as to how he was recommending leave of other employees or sanctioning tour program of other employees. The signature of the Petitioner appears in the tour program as “team leader”. There is no explanation from the Petitioner as to how an ordinary workman could be deputed for training to Germany. It is not Petitioner’s case that other workmen were also deputed for training to Germany. I am therefore of the view that Petitioner failed to discharge the burden of proving that he was workman within the meaning of Section 2(s) of the I.D. Act.

28) After considering the cumulative effect of above factors where Petitioner was found to be i) recommended leaves, ii) sanctioned tour programs of other employees, iii) deputed for training in foreign country, iv) appeared for interview on position as Assistant Director, v) received three promotions and vi) held the position of Senior Project Engineer, it becomes difficult to hold that the predominant duties and responsibilities performed by him were manual, unskilled, skilled, technical, operational or clerical in nature. He was undoubtedly employed in managerial capacity and in any case in a supervisory capacity drawing wages exceeding Rs.10,000/-. In my view therefore, no serious error can be traced in the view taken by the Labour Court that Petitioner cannot be considered as workman within the meaning of Section 2(s) of the ID Act.

29) It would be apposite to refer to some of the judgments relied upon by Mr. Jalisatgi. In ***Standard Chartered Bank*** (supra) it was sought to be contended that absence of power to sanction leave or initiate disciplinary proceedings would be sufficient to uphold status of person as workman. A Coordinate Bench of this Court (*Dr. D.Y. Chandrachud, J. as he then was*) disagreed and held in paragraph 14 as under:

> **14.** During the course of her submissions, the first respondent sought to place reliance on the cross-examination of the two witnesses who deposed on behalf of the bank. MW 1, during the course of her cross-examination admitted that the first respondent did not sanction leave and that she was not aware as to whether the first respondent could initiate proceedings against an employee of the bank. The Tribunal has during the course of its award placed a great deal of emphasis on the fact that the first respondent could also not recommend leave nor could she initiate disciplinary action against other employees. The fact that an employee is not vested with the power to sanction leave or to initiate disciplinary proceedings is not conclusive of the question as to whether the work that is performed by the employee falls within one of the categories stipulated in section 2(s). Whether leave can be sanctioned and

> whether disciplinary proceedings can be initiated may in a given case be one of the circumstances which may be considered in the balance. The balance, however, has to be drawn on the basis of the overall nature of the duties and responsibilities performed and the dominant nature of the work that is performed by an employee. Virtual offices are now a reality and paperless transactions are no longer a novelty. Managerial organisation today is radically different from the pre-liberalization era. Tests of control which were appropriate to a society thirty years ago have become relics of an era which India has left behind in the annals of history. The law has kept pace with the times by recognizing that in order to determine whether a person is a workman under section 2(s), contemporary notions of business cannot be stratified by notions of economic organisation developed for an era which is no more.

30) In ***Shrikant Vishnu Palwankar*** (supra) Coordinate Bench of this Court (*B.N. Srikrishna, J., as he then was*) held that recommendation of leave is one index of supervisory function. This Court held in paragraph 8 as under:

> **8.** Mrs. Menon then contended that recommending of leave was not indicative of supervisory duty as the evidence nowhere showed that the Petitioner was empowered to grant leave. In my view, this contention is misconvceived. When a person is working as a Supervisor, he is required to oversee the working of the Department. Since he is put incharge of the outturn of the Department, he has to efficiently manage the men, machines and material under his control. For this purpose, he alone is the best judge as to which person is to be spared at any given time. It is for this reason that the supervisor, who is on the spot, is expected to make a recommendation as to whether leave could be granted to any workman working in his Department. It is precisely for this reason that the authority competent to grant leave seeks his recommendation and does not pass an order without his recommendation. In my view, recommendation of leave is one index of supervisory function.

31) Though Mr. Kulkarni has relied upon judgment of another Coordinate Bench of this Court (*Nishita Mhatre, J.*) in ***Jayhind Vithoba Mahadik*** (supra), judgment does not assist the case of the Petitioner. It is held in the said judgment in paragraph 8 as under:

> **8.** Documents which were filed before the Labour Court have been produced before me to indicate that the petitioner was not a

> workman but in fact was an officer of the respondent. I have gone through this documentary evidence and I do not find that it clearly establishes the fact that the petitioner was not a workman. Reliance placed on certain documents which indicate that the petitioner was appraising the performance of the watchmen, would not mean that he was an officer. This was only part of a job that he was required to do. Moreover, appraisal was not confined only to petitioner's report but he was required to be appraised by other higher authorities. Although leave could have been sanctioned by the petitioner to the watchman concerned and their roster made by him, this would not in my view indicate that the petitioner was not a workman. In any event, it is trite law that nomenclature does not in any manner establish the status of the person working in an establishment. The nature of the work that the person performs is required to be considered. The duties which the person is expected to carry out has also to be considered. The learned advocate for the petitioner has rightly placed reliance on the judgments which were similar to the case before me.

32) The judgment in ***Jayhind Vithoba Mahadik*** (supra) in my view cannot be cited in support of an absolute proposition of law that every person clothed with power to sanction leave would still be covered by definition of the term ‘workman’. In the present case, power to recommend leave being vested in the Petitioner is just an additional factor and combination of various factors discussed above, makes it difficult to believe that he is a workman within the meaning of Section 2(s) of the ID Act.

33) Both the sides have relied upon judgments in support of their respective contentions on the issue of burden of proof. Mr. Kulkarni has relied upon old judgment of Division Bench of this Court in ***Waman Ganpat Raut*** (supra) in which it is held that once the employer raises an objection to the maintainability of the Reference, it is for the employer to make good the said objection. However by now it is well settled position of law that the burden of proving status as a workman is on a person who claims the same. Reference in this regard can be made to the recent judgment of the Apex Court in

Lenin Kumar Ray vs. Express Publications (Madurai) Ltd.[10] in paragraph 15 as under:

> **15.** The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.

34) Thus, the burden of proving the status of workman was on the Petitioner which he has failed to discharge the same. On the contrary various factors as discussed above would clearly indicate the employment of the Petitioner was in managerial or supervisory capacity.

35) Consequently, the Petition can succeed only partly to the extent of issue of Appropriate Government in respect of the Respondent-ARAI being State Government. However, it would fail on the issue of status of the Petitioner as 'workman'.

36) I accordingly proceed to pass the following order:

i) The finding recorded by the Labour Court that Appropriate Government for Respondent-ARAI is the Central Government is set aside.

ii) It is declared that Appropriate Government for Respondent-ARAI is the State Government.

iii) The finding recorded by the Labour Court that Petitioner is not a 'workman' within the meaning of Section 2(s) of the ID Act is upheld.

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iv) Consequently, though finding of the Labour Court on the issue of Appropriate Government is set aside, the ultimate order rejecting the Reference will have to be upheld and is accordingly upheld.

v) The amount deposited in this Court by the Respondent is permitted to be withdrawn by the Petitioner alongwith accrued interest.

37) Writ Petition is accordingly **dismissed.** There shall be no order as to costs.

(SANDEEP V. MARNE, J.)