2024 INSC 621

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 30976 of 2017)

RAJKARAN SINGH & ORS. ....APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. The present appeal by special leave, is preferred on behalf of the appellants, assailing the judgment dated 25th April, 2017 passed by the High Court of Delhi in Writ Petition (Civil) No. 3543 of 2017, dismissing the writ petition filed by the appellants and upholding the judgment dated 4th October, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter being referred to as the 'Tribunal') in Original Application Nos. 60 of 2013 and 459 of 2013. The Tribunal had

rejected the appellants' claim for benefits of the replacement scales of the Revised Pay Rules, 2008 (hereinafter referred to as 'RP Rules') in accordance with the 6th Pay Commission Report, with effect from 1st January, 2006.

Brief facts: -

4. The facts in a nutshell, are that the appellants (Appellant No. 1 to Appellant No. 6) were appointed to manage the Compulsory Saving Scheme Deposits (hereinafter referred to as SSD) Fund of the Special Frontier Force (hereinafter referred to as SFF) in various positions such as Junior Accountant, Accountant, Upper Division Clerk (UDC), and Lower Division Clerk (LDC), on running pay scales. The SSD Fund is a welfare initiative funded through the personal contributions of the SFF troops from their salaries. Upon having been engaged as above, the appellants also received Traveling Allowance (TA), Dearness Allowance (DA), House Rent Allowance (HRA), Special Security Allowance (SSA), Gratuity, Bonus, Winter Allowance, and High-Altitude Allowance, etc. along with salary as per the 4th and 5th Central Pay Commissions ('CPC').

5. On 1st January, 2006, the Union of India implemented the 6th Central Pay Commission and made the same applicable to all government employees of the SFF. However, these benefits were

not extended to the appellants i.e. SSD employees and instead, an *ad-hoc* amount of Rs. 3,000/- per month was given to each of them. For the sake of brevity, the details of the appellants with reference to their appointments, retirement, length of service, and their salaries in accordance with the different CPC are illustrated in a tabular form below: -

Name of the Appellant	**Appointment Date**	**Post**	**Date of Retirement**	**Service rendered**	**Salary paid initially**	**Salary paid after 2010**
Rajkaran Singh ('A1')	1st January, 1975	Lower Division Clerk	31st August 2012	37 years and 8 months	Rs. 220-270	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC
Jagat Ram Joshi ('A2')	25th April, 1975	Lower Division Clerk	28th February 2013	37 years and 10 months	Rs. 220-270	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC
Vishu Dutt Tripathi ('A3')	2nd May, 1978	Lower Division Clerk	31st July 2013	35 years and 3 months	Rs. 260-400	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC
HK Naithani ('A4')	27th November,1982	Lower Division Clerk	31st August 2018	35 years and 9 months	Rs. 260-400	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC

Shiv Kumar ('A5')	25th May, 2005	Junior Accountant	18th February 2014 (VRS)	8 years and 9 months	Rs. 5000-8000	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC
Surat Singh ('A6')	16th July, 1977	Lower Division Clerk	1st January 2009 (VRS)	31 years and 5 months	Rs. 260-290	As per the 5th CPC & Rs. 3,000/- instead of 6th CPC

6. Upon attaining the age of superannuation i.e., 60 years, the appellants claimed pensionary benefits under the 6th Central Pay Commission ('CPC'). On 28th July, 2011, appellant No. 1 (Rajkaran Singh) filed a representation to the respondent No. 1 seeking pensionary benefits under the 6th CPC, however, the same was rejected *vide* order dated 15th October, 2012, on the ground that he was not a government employee and had not been appointed by following any Recruitment Rules, and therefore, the Central Civil Services (Pension) Rules, 1972(hereinafter being referred to as 'CCS Rules'), would not apply to him. The other appellants (appellant No. 2-appellant No. 6) also filed similar representations to the respondents which met a similar fate on the same reasoning.

7. Aggrieved by the rejection of their claim for pensionary benefits under the 6th CPC, the appellants filed Original Applications before the Tribunal, laying a challenge to the non-implementation of the benefits of the 6th CPC and also raising a grievance about the lack of General Provident Fund (GPF) provisions in the SSD Fund, despite they having been appointed to posts created under the authorisation of the Cabinet Secretariat and after following the due process of law in making the appointments.

8. The Tribunal, *vide* order dated 4th October, 2016 dismissed the Original Applications and rejected the appellants' claims holding that they were not employed in government service. The Tribunal referred to Rule 2 of the CCS Rules, and held that the appellants were not entitled to the benefits under the CCS Rules as their salaries were neither paid from the Consolidated Fund of India, the Contingent Fund or the Public Accounts Funds, nor were their services governed by statutory obligations i.e. no recruitment rules were applicable to them. The Tribunal further held that the appellants were not recruited under an advertisement issued where people at large were given the opportunity of appearing; there was no question of any obligation

cast under the Factories Act for running the SSD Fund, as it was not covered under the definition of a factory; and the services performed were not statutory in nature because the SSD Fund is a voluntary contribution made by the SFF employees. The Tribunal found that the SSD Fund was financed by voluntary contributions from SFF employees and hence the services rendered therein did not qualify as government service.

9. The appellants challenged the Tribunal's order by filing a writ petition before the Delhi High Court which came to be rejected and the Tribunal's order was affirmed, taking note of the fact that the appellants were appointed for the purpose of maintaining the SSD Fund, a welfare scheme run through personal contributions made by the troops of SFF. The High Court held that while the troops of SFF, undoubtedly, are government servants, however, that by itself would not clothe the appellants with the status of government servants. The impugned order dated 25th April, 2017 passed by the High Court is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellants: -

10. Ms. Neha Rathi, learned counsel representing the appellants, vehemently and fervently contended that the appellants had served the department for more than three decades to maintain

the accounts of the SSD Fund and therefore, not granting them pensionary and other service benefits in accordance with the 6th CPC on a surmise, that their employment was temporary/non-governmental in nature, tantamounts to grossly arbitrary action, violative of the fundamental rights of the appellants as guaranteed under the Constitution of India.

11. Learned Counsel submitted that the appellants satisfy all the characteristics of regular government servants, considering the fact that they were appointed in a regular pay scale and received increments and promotions at par with those being admitted to other government employees, along with leave and other benefits and emoluments. Additionally, they were granted the benefits of Assured Career Progression (ACP).

12. Learned counsel further contended that the nature of the work assigned to the appellants was similar to the work of the regular employees of the Accounts Section of SFF HQ Estt. No.22. Moreover, permanent employees of the SFF Accounts are also working with the SSD Staff for maintaining the SSD Fund, performing the same duties. Learned counsel submitted that following the transfer of the SSD Funds Accounts to HQ SFF w.e.f. 1st April 2003, the SSD Funds are being managed by the Deputy

Director (AG) at HQ SFF, under the overall control of the Inspector General of SFF. Consequently, the appellants' services have been brought within the jurisdiction of HQ SFF and fall under the aegis of the Inspector General of SFF. It was further contended that for all other purposes, the appellants have been treated at par with regular employees of the Accounts Section, which places them at same level with government employees. Therefore, the appellants are entitled to receive the same benefits as the regular employees of the Accounts Section and also to receive the pensionary as well as consequential benefits flowing from the 6th CPC.

13. Learned counsel also submitted that the denial of pensionary benefits to the SSD Fund staff, while granting the same to the SFF personnel and other SFF Accounts staff, constitutes an arbitrary and discriminatory decision, violating Article 14 of the Constitution of India. The pensionary benefits were extended to SFF personnel from 1st January, 2009 and to other SFF Accounts staff employed through the same procedure at SSF HQ Estt. No. 22, under the Commandant's authority, from the onset of their employment (initially temporary for six months). Despite being part of the same establishment and governed by the same Commandant, the appellants working at the SSD Fund were

unjustly excluded from these benefits. This differential treatment lacks a reasonable basis and is discriminatory. Learned counsel highlighted the comparative statement of benefits and allowances granted to SSD Fund and SFF permanent employees as per the following table:

Particulars	**SSD Staff**	**SFF Permanent employees**
Basic Pay	Yes	Yes
Dearness allowance	Yes	Yes
TA/DA (on deputation)	Yes	Yes
House Rent Allowance	Yes	Yes
Transport Allowance	Yes	Yes
Children Education Allowance	**No**	**Yes**
High Altitude Allowance	Yes	Yes
Winter Allowance	Yes	Yes
Ration Allowance	Yes	Yes
Special Security Allowance	Yes	Yes
Gratuity	Yes	Yes
Leave Encashment (Not paid at the time of retirement after 6th CPC)	**No**	**Yes**
Yearly Bonus	Yes	Yes
Yearly increments	Yes	Yes
LTC	Yes	Yes
ACR (till 6th CPC)	Yes	Yes
Maintenance of Service Book (till 6th CPC)	Yes	Yes
ACP for higher pay scale	Yes	Yes
Promotions	Yes	Yes

Member of SSD Provident Fund	Yes	Yes
Member of Group Insurance Policy	Yes	Yes
CGHS facility (at New Delhi)	**No**	**Yes**
Medical facility at Military Hospital	Yes	Yes

14. Learned counsel further contended that the responsibility to devise a suitable scheme for the regularisation of employees who have served for more than ten years lies with the respondents i.e., the State. She submitted that the respondent had rejected the appellants' representation on a purely arbitrary ground that they were not appointed through a rigorous selection process and that the CCS (Conduct) Rules, 1964 did not apply to them. She urged that the appointment of the appellants was conducted under due process of selection, following the rules of the Cabinet Secretariat, and cannot be deemed irregular or illegal simply for the lack of statutory recruitment and service rules. Learned counsel in this regard placed reliance upon the decision of this Court in the case of the ***State of Karnataka & Ors. v. M.L. Kesari & Ors***[1]**.**

15. Learned counsel further submitted that the case of the appellants is squarely covered by the principle of "equal pay for equal work" and that the right of equal wages conferred upon

[1] (2010) 9 SCC 247

temporary employees flows, *inter alia*, from Article 39 of the Constitution of India. This principle of "equal pay for equal work" expounded through various decisions of this Court constitutes the law, which is binding upon all the Courts in India and consequently upon the respondents. It also extends to temporary employees performing the same duties and responsibilities as regular employees. Learned counsel in this regard placed reliance upon the decisions of this Court in the cases of ***Surinder Singh and Another v. Engineer-in-Chief, C.P.W.D. and Another***[2], ***State of Punjab & Ors. v. Jagjit Singh & Ors.***[3], ***Union of India v. Dineshan K.K.***[4], **and** ***Randhir Singh v. Union of India & Ors.***[5]**.**

On these grounds, learned counsel for the appellants implored the Court to accept the appeal, set aside the impugned judgments and direct the respondents to release in favour of the appellants, the benefits of the replacement scales set out in the RP Rules issued in pursuance of the 6th CPC report with effect from 1st January, 2006.

---

[2] (1986) 1 SCC 639
[3] (2017) 1 SCC 148
[4] (2008) 1 SCC 586
[5] (1982) 1 SCC 618

Submissions on behalf of the Respondents: -

16. Mr. K.M. Nataraj, learned ASG, representing the respondents, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. He submitted that the SSD Fund is a welfare scheme, introduced with effect from 1st October 1964, for force personnel on the analogy of the Armed Force Personnel Provident Fund to cater to their welfare measures. It is a contributory fund subscribed by force personnel for their better future and no government funds are involved in the SSD Fund, thereby, establishing a clear alienation from the Central government. The government has no control what to talk of deep and pervasive control over the affairs of the fund.

17. Learned ASG further submitted that the appellants were hired on a temporary basis to manage the SSD Fund, which is generated from the difference between the interest earned on the invested amount and the annual interest paid to subscribers. The recruitment, selection, and promotion process for SSD Fund employees (i.e. appellants) did not adhere to the procedures applicable to regular Central government employees. Since the appellants were hired temporarily, they were not subjected to probation or given confirmation letters as permanent employees

and unlike Central government employees, there was no provision for the annual evaluation of their performance. The terms of engagement of these employees explicitly outlined their temporary status and the associated conditions, including the potential for termination without prior notice. This aligns with the fundamental nature of their employment, which does not confer upon them, the status or entitlements typically associated with regular government employees.

18. Learned ASG also submitted that the appellants' salaries, which were finally increased by Rs. 3,000/- per month in September 2009, are paid from the SSD Fund, which is contributed by SFF personnel and involves no government money. Furthermore, following the 4th and 5th CPC, the Government examined and extended limited benefits thereof to the SSD Fund employees (i.e., appellants), but with specific reference to maintain the fund's objectives. These conditions include not comparing their pay scales to those recommended by the 4th CPC in future references and considering pay increments or Dearness Allowance instalments on an *ad hoc* basis, when necessary. He urged that the Commandant, SFF HQ Estt. No. 22, holds discretionary authority over the SSD Fund in accordance with the Cabinet

Secretariat Order No. EA/EF-EST-13/75 dated 11th October, 1976. This order underscores the fact that the fixation of pay for these employees is not mandated to adhere to scales applicable to Central government employees.

19. Learned ASG further submitted that the claim of benefits accorded under the 6th CPC and RP Rules relied upon by the appellants is totally unfounded. These benefits are expressly designed for and applicable exclusively to Central government employees and do not extend to individuals engaged in roles akin to those overseeing contributory schemes like the SSD Fund. While certain benefits were extended to the fund employees post the 5th CPC, the feasibility of aligning their compensation with the 6th CPC was constrained by the financial limitations of the SSD Fund. Any enhancements in pay, allowances, or promotions were dispensed judiciously as welfare measures, guided by the operational imperatives and financial health of the SSD Fund.

20. Learned counsel further submitted that the appellants' entitlements, including any financial assistance and promotions, were provided in consideration of their service and the prevailing socio-economic conditions, and do not establish a precedent for future claims. The respondents maintain that these distinctions

are essential to uphold the integrity and sustainability of the SSD Fund, which operates independently of governmental appropriations and is solely reliant on contributions from subscribing SFF personnel.

On these grounds, the learned Additional Solicitor General implored the Court to dismiss the appeal and affirm the impugned judgments.

Discussion and Conclusion: -

21. We have given our thoughtful consideration to the submissions advanced at a bar and have perused the impugned judgments. With the assistance of learned counsel for the parties, we have thoroughly examined the material available on record.

22. The core issue presented for adjudication by the Court is whether the appellants herein, despite being classified as temporary employees of a scheme managed by contributory pooling of funds, can claim entitlement to pensionary benefits in accordance with the 6th CPC.

23. To address this issue, we must first consider the legal framework established by this Court in various landmark decisions, particularly in ***Ajay Hasia and Others v. Khalid Mujib***

Sehravardi and Others[6] and ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others***[7]. While ***Ajay Hasia***(*supra*) and ***Pradeep Kumar Biswas***(*supra*) primarily dealt with determining whether a corporation could be considered an instrumentality of the state, the principles laid down therein provide valuable guidance in assessing the nature of employee-employer relationships. The relevant paragraphs of ***Ajay Hasia****(supra)* are reproduced below: -

> "**7.** .....If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government", the court, must not allow the enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental rights as the Government.
>
> **8.** We may point out that this very question as to when a corporation can be regarded as an "authority" within the meaning of Article 12 arose for consideration before this Court in R.D. Shetty v. International Airport Authority of India[(1979) 3 SCC 489]....
>
> The court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed:
>
> > "A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation

[6] (1981) 1 SCC 722
[7] (2002) 5 SCC 111

is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of Directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, 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. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of Directors appointed by Government though this consideration also may not be determinative, because even where the Directors are appointed by Government, they may be completely free from Governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those

> which are instrumentalities or agencies of Government and those which are not."

The court then proceeded to indicate the different tests, apart from ownership of the entire share capital: (SCC pp. 508 & 509, paras 15 & 16)

> "…..
>
> ……There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: The Constitutional Law of the 'Security State' [5 10 Stanford Law Review 620, 644] …. It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram [(1975) 1 SCC 421] where the learned Judge said that 'institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed Government agencies. Activities which are too fundamental to the society are by definition too important not to be considered Government functions'."

….

These observations of the court in the International Airport Authority case have our full approval.

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case…..We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

> "(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. (SCC p. 507, para 14)
>
> (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. (SCC p. 508, para 15)
>
> (3) It may also be a relevant factor … whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)
>
> (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)
>
> (5) **If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.** (SCC p. 509, para 16)
>
> (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." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

….

11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. **The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered**

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

24. This Court in ***Ajay Hasia***(*supra*) established several tests to determine whether an entity can be considered an instrumentality or agency of the Government, and thus an "authority" under Article 12 of the Constitution of India. These tests include but are not limited to ;

1. Extent of financial support from the government;
2. Deep and pervasive control of the government;
3. Functions performed are of public importance and closely related to governmental functions;
4. Entity enjoys monopoly status conferred or protected by the State;
5. The government department has been transferred to the entity.

25. In ***Pradeep Kumar Bishwas***(*supra*), this Court held that the tests laid down in ***Ajay Hasia***(*supra*) are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned.

26. The relevant paragraphs of ***Pradeep Kumar Biswas****(supra)* are reproduced below: -

> **"98.** We sum up our conclusions as under:
>
> (*1*) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of "other authorities" in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to the public. Further, the statute *creating* the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people — their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power —

> constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722] enable determination of governmental ownership or control. Tests 3, 5 and 6 are "functional" tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between "instrumentality and agency" of the State and an "authority" having been lost sight of sub silentio, unconsciously and undeliberated. In our opinion, and keeping in view the meaning which "authority" carries, the question whether an entity is an "authority" cannot be answered by applying *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722] tests.
>
> (*2*) **The tests laid down in *Ajay Hasia case* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722] are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither *all the tests* are required to be answered in the positive nor a positive answer to *one or two tests* would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the court of brooding presence of the Government or deep and pervasive control of the Government so as to hold it to be an instrumentality or agency of the State."**
>
> (emphasis supplied)

27. Applying these principles to the case at hand, we find compelling evidence on record which establishes that the appellants meet the characteristics of regular government servants. Admittedly, the appellants were appointed on a regular

pay scale. This factor strongly indicates a formalised employee-employer relationship akin to permanent government employees. In ***Ajay Hasia****(supra)*, this Court observed that the nature of financial arrangements can indicate governmental character. The use of government pay scales for the appellants suggests a level of integration into the government's financial structure that goes beyond typical temporary employment. During the course of their service, the appellants received increments and promotions comparable to those of other government employees. This pattern of career progression mirrors that of regular government servants and suggests a deep and pervasive governmental control over their employment terms. In ***Ajay Hasia*** *(supra)*, the degree of state control was highlighted as a key factor for identifying State instrumentalities. The chart*(supra)* provides positive evidence to show that the appellants' career paths were managed like permanent employees indicating a level of governmental oversight and control consistent with regular government service. Furthermore, the office order dated 12th March 2003, issued by the Deputy Director (AG), which transferred the SSD Funds Accounts to HQ SFF under the overall control of the Inspector General of SFF, along with the associated documents and clerical staff,

demonstrates that administrative recognition of the appellants' services was made which is integral to the governmental structure. This transfer of the entire cadre of SSD Fund to the HQ SFF aimed at ensuring better utilization and monitoring of the fund, fortifies the concept that the appellants possessed the characteristics of regular government servants.

28. The provisions of leave and other benefits, including grant of Assured Career Progression (ACP), further reinforces the similarity between the appellants' employment conditions and those of regular government employees. These benefits are typically associated with formalized, long-term employment relationships within the government sector. The proceedings of the Board of Officers dated 23rd June, 2006 unequivocally acknowledged that the terms and conditions, including the pay and allowances payable to SSD Fund staff, were fixed in March 1978 in accordance with those applicable to the ministerial staff employed in the Accounts Section of SSF HQ Estt. No. 22. The extension of Assured Carrer Progression (ACP) and alignment of terms and conditions with regular government employees, in particular, is an affirmative action indicating that the government viewed and treated these employees as long-term assets, despite their ostensibly temporary

status. Substantially, the appellants' charter of duties involving the maintenance of accounts for the SSD Fund, can be considered as an assignment of public importance closely related to governmental functions. This aligns with another test laid down in ***Ajay Hasia****(supra)*, which considers the public importance and governmental nature of the functions performed. The management of funds generated from the personal provident fund contributions of the entire SFF cadre is a critical function that has a direct bearing on the public interest and the effective operation of government services.

29. Indisputably, the appellants have served SFF HQ Estt. No. 22 for over three decades. While the duration of service alone may not be determinative, it is a significant factor when considered in conjunction with the other aspects of their employment. Such long-term service suggests a level of permanence and integration into the governmental structure that belies their classification as temporary employees. The appellants performed duties similar to those of regular employees in the Accounts Section of SFF HQ Estt. No.22. This similarity in job functions further blurs the line between the appellants' status and that of regular government employees, suggesting that the distinction may be more formal

than substantive. The extension of significant elements from the 4th and 5th CPC to the appellants further cements their plea of being employed in governmental functions.

30. Learned ASG appearing for the respondents has argued that the recruitment, selection, and promotion processes for SSD Fund employees did not follow the procedures used for regular employees and that the appellants were not subjected to probation or given confirmation letters as permanent employees. However, this Court finds such argument to be untenable as it fails to account for the substantive nature of the appellants' employment over an extended period running into three decades. In this regard, reference may be made to the judgment of this Court in the case of ***Vinod Kumar and Others v. Union of India***[8], wherein this Court noted;

> **"5.** Having heard the arguments of both the sides, **this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement.** Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained

[8] 2024 SCC OnLine SC 1533

service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. **The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service**. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128], R.N. Nanjundappa [(1972) 1 SCC 409] and B.N. Nagarajan [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover

> of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."
>
> **8.** In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations**."**
>
> (emphasis supplied)

31. As held in ***Vinod Kumar****(supra)*, "the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time."

32. This Court fully associates with this principle and finds it wholly applicable in the present case, especially in light of the administrative orders and Board proceedings referred to *supra* that have consistently treated the appellants as equivalent to regular government employees. The mere classification of employees as 'temporary' or 'permanent' is not merely a matter of nomenclature

but carries significant legal implications, particularly in terms of service benefits and protections.

33. In the present case, the totality of circumstances indicates that despite their formal classification as temporary employees, the appellants' employment bears substantial hallmarks of regular government service. The denial of pensionary benefits solely on the basis of their temporary status, without due consideration of these factors, appears to be an oversimplification of their employment relationship with the government. This approach runs the risk of creating a class of employees who, despite serving the government for decades in a manner indistinguishable from regular employees, are deprived of the benefits and protections typically accorded to government servants.

34. Thus, we are of the opinion that the denial of pensionary benefits to the appellants is not tenable or justifiable in the eyes of law as the same is arbitrary and violates the fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India. It is indeed relevant to note that the appellants' batch seems to be the last in their genre of SSD Fund temporary employees and thus, manifestly, the direction to extend the benefits of the 6th CPC and

the RP Rules to the appellants shall not form a precedent so as to have a detrimental effect on the financial health of the SSD Fund.

35. In the wake of the discussion made hereinabove, we are of the view that the impugned judgment rendered by the High Court does not stand to scrutiny and the same is unsustainable in the eyes of law and is set aside.

36. The respondents are directed to extend the benefits of the 6th Central Pay Commission including the pensionary benefits under the Revised Pay Scale Rules, 2008 to the appellants herein in the same terms as are being afforded to their peers in the Accounts Section of SFF HQ Estt. No. 22.

37. The appeal is allowed in these terms. No costs.

38. Pending application(s), if any, shall stand disposed of.

.....J.
(HIMA KOHLI)

.....J.
(SANDEEP MEHTA)

New Delhi;
August 22, 2024