IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1876 OF 2001
WITH
CHAMBER SUMMONS NO. 284 OF 2004

Mr. M. Yogeshwar Raj,
101,Satyam-II, K.Raheja Complex,
Malad (East), Mumbai-400097. ...Petitioner

Versus

Air India Limitd,
Air India Building,
Nariman Point,
Mumbai-400021. ...Respondent

WRIT PETITION NO. 809 OF 2002

Mrs. Shobha Girish Bagwe
401-A, Nirakar Building,
Kalyan (West), Mumbai-400061. ...Petitioner

Versus

1. Air India Limited,
Air India Building,
Nariman Point,
Mumbai-400021.

2. Mr. A.P. Tambe
Assistant Manager,
Properties & Facilites Department
Air India Ltd, Old Airport,
Santa Cruz (E), Mumbai-400029. ...Respondents

WITH
WRIT PETITION NO. 1333 OF 2002

1. V. Pichumani
Residing at c-5, Balaji Building
Opp. Canara Bank, Kalina.
Mumbai 400 098.

Mayur

2. T.V. Jacob
residing at E/1/18-B2, Sector
10, Nerul, Navi Mumbai 400 806.
3. R.B.S. Kunde
residing at B/102, Urvashi
Sunder Nagar, Kalina,
Mumbai-400098. ...Petitioners

Versus

1. Air India Limitd,
Air India Building,
Nariman Point,
Mumbai-400021.

2. Union of India
(through the Secretary to the
Government of India, Ministry of Civil
Aviation, Rajiv Gandhi Bhava,
Sadarjung Airport, New Delhi-100011. ...Respondents

Mr. Ashok D. shetty with Ms. Rita Joshi (Through V.C) with Mr. Shashikant Patil with Mr. Rahul P. Shetty and Bushra Moughal, for the Petitioner in WP No. 1876 of 2001 and WP No. 809 of 2002.

Adv. Lancy D'souza i/by Deepika Agarwal i/by V.M. Parkar, for the Respondents in WP No. 1876 of 2001.
Mr. Aditya Mehta with Mr. Rakesh Singh, with Ms. Heena Shaikh i/by M.V. Kini and Co., for the Respondents (Air India) in WP No. 809 of 2002.

Mr. Rakesh Singh with Ms. Heena Shaikh i/b M.V. Kini and Co., for the Respondents in WP No. 1333 of 2022.

Coram : SHREE CHANDRASHEKHAR &
MANJUSHA A. DESHPANDE, JJ.

RESERVED ON : 30 JULY 2025

PRONOUNCED ON : 25 AUGUST 2025

Mayur

JUDGMENT (Per MANJUSHA A. DESHPANDE, J.) :

1. In all the three writ petitions the employer of the petitioners is Air India Limited, but the facts as well as reliefs claimed by them are distinct from one another. Hence, considering that the employer is common and maintainability of writ petition itself is under issue, the writ petitions are being heard together. When the Writ Petition No. 1876 of 2001 and Writ Petition No. 809 of 2002 were listed before this Court on 21 June 2024, this Court has observed that "the petitioners are the employees of the respondent-Air India Limited (hereinafter referred to as "*AIL*"). During the pendency of writ petitions the status of respondent employer, has undergone a change, as such the respondent-AIL is not amenable to the writ jurisdiction of this Court. The learned counsel for the petitioner states that, even in the changed circumstances the petition can still be prosecuted and seeks time to prepare compilation of decisions and address this Court. The matter was thereafter directed to be listed on 15 July 2024. Hence the matters are listed before this Court and in view of the aforementioned order passed by this Court the writ petitions are heard.

2. In the first Writ Petition No. 1876 of 2001, the prayer of the petitioner is to declare that his dismissal order is passed without jurisdiction and is non-est, by granting all the consequential benefits. In Writ Petition No. 809 of

2002, the prayer is to stay the effect, operation and implementation of the orders/decisions dated 06.08.2001 and 21.02.2002 issued by the respondent no. 1. In Writ Petition No. 1333 of 2002, the prayer is for the extension of the benefit of the pension scheme, which is made applicable to the employees retiring after 01.04.1994, claiming that it should be also made applicable to the employees, who retired prior to 01.04.1994. In all the writ petitions the facts as well as the prayers made by the petitioners are totally distinct from one another. However, the common thread in all the three writ petitions is the employer of the petitioners i.e., Air India Limited, which was the company owned by the Government, registered under the Companies Act, 1956.

3. While deciding the maintainability of the writ petitions the facts giving rise to the respective petitions and prayers made by petitioners will have to be taken into consideration. All the writ petitions have been filed by the Employees of the Air India Limited (AIL) claiming various reliefs against the respondent Employer. The facts in writ petition No. 1876 of 2001 shorn of unnecessary details can be summarized as under :-

"WRIT PETITION NO. 1876 of 2001

Mr. M. Yogeshwar Raj. vs. M/s. Air India Ltd."

4. The petitioner joined service of the Air India Limited in 1976 as Traffic Assistant, on a post reserved for scheduled tribe. This services were confirmed in 1977, after being promoted as an Assistant Flight Purser in 1977, he was

further promoted to the post of Flight Purser in 1994, and continued to serve as Flight Purser till his dismissal from service with effect from 14 June 2000 vide order dated 19.06.2000. According to the petitioner, he had received a communication dated 18.12.1997, from H.R.D. Department Special Cell for SC/ST, Santa Cruz, requiring him to submit his caste certificate in prescribed format after a lapse of 21 years of his service, even though he had already submitted a caste certificate available with him at the time of joining of service. Due to his nature of work, he could not personally visit Hyderabad for obtaining a fresh caste certificate, therefore he asked his wife who was then present at Hyderabad to take necessary steps. He also addressed a communication to the Mandal Revenue Officer, for issuance of caste certificate in prescribed format on 26.12.1997. Since his wife was looking after her ailing sister, she further authorized one Mr. Narayana Murthy to obtain the caste certificate. They received the caste certificate through post from Shri. Narayana Murthy, which was submitted to the respondent-employer.

5. All of a sudden, the petitioner received a chargesheet dated 29.12.1998, issued by the respondent-employer. The allegations against him were that, his previous caste certificate, which was submitted by him at the time of joining service in the year 1976, was issued by the Tutor of Pathology Department of Osmania Medical College, which did not bear the signature of the Tahsildar and it was not in a prescribed format, issued by the competent authority. The

fresh caste certificate dated 04.02.1998, in the prescribed format submitted by the petitioner, on its verification it was found to be bogus and not genuine. In view of the fact that the certificates submitted by the petitioner were not genuine and not issued by the competent authority, the petitioner was charged under the 'Clause 19(2)(xi)' of the Certified Standing Orders of respondent, alleging "commission of an act which amounts to a criminal offence involving moral turpitude". Initially the petitioner filed a complaint against Mr. Narayan Murthy, thereafter FIR No. 6/1999 was lodged against the petitioner on 12.01.1999. He then replied to the chargesheet on 08.02.1998. However, ignoring his reply, the respondent-company without taking into account his explanation, has constituted an Enquiry Committee by the office order dated 05.02.1999. During the enquiry no witnesses were examined of either side. His categorical defence was that, according to the circular issued by the Employment and Social Welfare Department, of Andhra Pradesh dated 17.10.1976, Gazetted Officers serving under the State Government were competent to issue community certificates to members of the Scheduled Castes, Scheduled Tribe and Backward Classes. Therefore the certificate that was issued to him, which was submitted by him while joining the service was a valid certificate. It was his stand that, the chargesheet as well as the initiation of the disciplinary proceedings against him are by way of victimization with the sole purpose of harassing him.

6. According to the petitioner he submitted a verification certificate dated 11.03.1999 issued by the Collector, Hyderabad certifying that he belongs to Scheduled Tribe "KOLAM". The Collector Hyderabad who was the competent authority has also certified that, the caste certificate issued in favour of the petitioner in the year 1976 is genuine. He submitted his final statement on 07.04.1999, after the conclusion of enquiry proceedings. According to him the management is responsible for the delay caused in getting his caste certificate verified. It is the contention of the petitioner that, the respondent should have taken timely steps for getting the verification of his caste certificate confirmed from the competent authority, hence the delay occurred in taking the appropriate steps cannot be attributed to him.

7. The petitioner received the report of the Enquiry Committee dated 29.04.1999, the Enquiry Committee has recorded that, the petitioner was not guilty of the charges levelled against him, with further recommendation that the competent authority should review the career record of the petitioner and take appropriate measures. In spite of receiving clean chit by the Enquiry Committee, the competent authority of the respondent-company, did not agree with the findings of the Enquiry Committee, and proposed to impose punishment of dismissal from service, and accordingly issued Show Cause Notice dated 30.08.1999. Upon receiving show cause notice dated 30.08.1999, calling upon him to show cause as to why the punishment of

dismissal should not be imposed upon him, the petitioner filed Writ Petition No. 2293 of 1999 in this Court. This Court granted stay to the show cause notice dated 30 August 1999.

8. Being aggrieved by the order of stay granted by this Court dated 18 September 1999, the respondent-company filed SLP No. 1477 of 2000, before the Hon'ble Supreme Court. The Hon'ble Supreme Court has set aside the order dated 18 September 1999, passed by this Court granting stay to the operation of show cause notice issued against the petitioner. The respondent-company thereafter directed the petitioner to submit his say to the show cause notice, accordingly the petitioner gave his reply to the show cause notice on 6 June 2000. The respondent-company informed the petitioner vide communication dated 14 June 2000, that the disciplinary authority has imposed punishment of removing him from service with effect from 14 June 2000.

9. It is the contention of the petitioner that though the stay to the operation of the show cause notice was vacated by the Hon'ble Supreme Court. Significantly while passing order dated 2 May 2000, the Hon'ble Supreme Court, had not set aside the part of the order dated 18 May 1999, whereby this Court had issued 'Rule' in the petition and directed to continue the petitioner in service. Hence, after issuance of the impugned order, directing his removal from service, the petitioner brought to the notice of the

respondent authorities that, High Court had in fact directed to continue him in service. He therefore, addressed a communication to the respondent, to continue him in service, further apprising respondent-employer that failure to do so would amount to contempt of the order passed by this Court.

10. The petitioner thereafter filed the Chamber Summons No. 81 of 2000 for amendment of Writ Petition No. 2293 of 1999, meanwhile the petitioner has filed present writ petition. The petitioner has carried out amendment to the memo of writ petition bringing on record the details about his earlier writ petition and subsequent withdrawal of writ petition along with certain other pleadings and prayer clauses. In the present writ petition, the petitioner has made following prayers

> *"A) to quash and set aside the order dated 9 June 2000 and letter dated 14 June 2000 passed by the Deputy Manager presently dismissing the petitioner from service with effect from 14 June 2000.*
>
> *B) Direction to the respondent to reinstate the petitioner in service and allot him work and pay full back wages and consequential benefits."*

11. By way of amendment-Rider C and D have been added in the prayer clause, in both riders the incidental prayer clauses have been added. In sum and substance, the relief claimed by the petitioner is that it should be declared that the order of dismissal dated 09.06.2000 is without jurisdiction and non-est and to declare that his caste certificate dated 30.05.1996 is valid and withholding of his increment and other incidental benefits such as of time

bound promotion etc. is illegal.

12. In the reply affidavit, the respondent contends that, the petitioner was appointed as an Assistant Flight Pursuer against a vacancy reserved for Scheduled Tribe candidates. The petitioner has produced caste certificate issued by the Tutor of Pathology Department of Osmania Medical College, Hyderabad. Since the Employer had a doubt regarding the caste certificate produced by the petitioner and also considering the various complaints regarding improper caste certificates submitted by the various employees, for obtaining benefit of reservation, the Air India Limited by letter dated 8 August 1994, forwarded the caste certificate submitted by the petitioner for verification, to the competent authority at Hyderabad, Andhra Pradesh for verification of social status of the petitioner. On scrutiny of the caste certificate, it transpired that it was neither in prescribed format nor issued by the competent authority. Therefore, in order to expedite the caste certificate verification process, the respondent authorities requested the petitioner to submit caste certificate in the prescribed format. In response to which they received the caste certificate dated 4 February 1990, issued by the Mandal Officer, Pargi. The certificate did not bear the constitutional provision, against which his community was recognized as Scheduled Tribe, as is done while issuing the certificate in the prescribed format. The verification of the certificate is necessary for employment in Government Department and

undertakings. The revenue officer, Pargi, has given a clarification that the certificate dated 04.02.1990 was not issued through his office; the seal on the certificate does not tally with the seal of his office; and the residence shown in the certificate is not existing within the Pargi Circle. Similarly, the signature of the certificate issuing authority holding office in February 1998, does not tally with the signature on the certificate. It is therefore the case of the respondent that, the petitioner has with a dishonest intention to obtain wrongful gain, by depriving an eligible Schedule Tribe candidate an opportunity of employment, has submitted false declaration of belonging to the "KOLAM" Scheduled Tribe.

13. Since the certificate submitted by the petitioner was found to be bogus, chargesheet was issued and thereafter his services have been terminated. Since his certificate was found to be bogus action is taken by the competent authority by terminating his service which is valid and fully justified. It is submitted that, the petitioner is not singled out, nor is the action actuated with a malafides. The National Commission for Scheduled Caste and Scheduled Tribe, time and again seeks information from the respondent-company about the action taken against the candidates, who submit bogus certificate. The employees appointed on reserved posts on the basis of caste certificate have been called upon to submit validity certificates, which is mandatory according to the presidential order. Hence this is not a case of

targeting or causing harassment to the petitioner. The order of dismissal therefore does not require any interference.

"WRIT PETITION NO. 1333 of 2002

V. Pichumani vs. M/s. Air India Ltd."

14. In this writ petition the grievance of the petitioner is regarding the cut off date prescribed for implementation of the pension scheme by the respondent no. 1 only to the employees who retired after 01.04.1994. The petitioners are the employees of Air India Limited ("***AIL***") who retired from service prior to 01.04.1994. According to the petitioner, there is no logic for the cut off date of 01.04.1994, for implementation of the pension scheme and thereby creating an artificial discrimination between two set of employees.

15. On 01.08.1953 the Parliament enacted the Air Corporations Act, 1953, pursuant to which two corporations came into existence. All the employees of the two airlines existing at the time of nationalization, were absorbed as the employees of these two corporations. On 02.02.1997, a Memorandum of Settlement was entered between the Air Corporation Employees Union and management of Air India Corporation. In accordance with Section 2 of the Industrial Disputes Act, 1947, the management of Air India Corporation agreed in principle to introduce a pension scheme applicable to the employees of Air India Corporation, with effect from 01.04.1978. The Government approved Memorandum of Settlement except, the clause relating to pension

scheme applicable to the employees of Air India Corporation. Feeling aggrieved by the act of the Government, two employees i.e., Shri. M.S. Kolwankar and Shri. M.S. Chavan filed a Writ Petition No. 3316 of 1988 in this Court. Simultaneously the Air India Corporation Employees Guild, challenged the settlement before the National Industrial Tribunal. The National Industrial Tribunal, approved the Memorandum of Settlement dated 02.02.1979, between the Air India Corporation Employees Union and the management of Air India Corporation.

16. According to the petitioners, the intention of the respondent no. 1 to create a pension scheme can be gathered from the fact that, it had earmarked a sum of Rs. 5.12 Crores for that purpose as early as in the year 1979, which continued up to 1997-98. After making an initial provision, it was not supported by investing further amount. Had there been an investment of the amount so earmarked, it would have fetched at least Rs. 20-25 crores including interest thereon, when such scheme came to be introduced subsequently.

17. In the year 1998-99 the fund which was separately kept aside was transferred back to the profit and loss account. On 26.02.1994 the Air Corporation Act, 1953 was repealed and the company viz. Air India Limited, came into existence under the Companies Act, 1956. Some time around June 1996, pension scheme was introduced by respondent no. 1 with retrospective

effect on 01.04.1994.

18. In the interregnum, during the pendency of the Writ Petition No. 3316 of 1988. The respondent management entered into an agreement in 1996, with Air India Employees Guild, making contributory pension scheme applicable to those employees who retired after 01.04.1994. According to the petitioner, in view of the fact that Writ Petition No. 3316 of 1988, was still pending before this Court, the Air India could not have entered into the agreement with Air India Employees Guild. The respondents ought not to have entered into an agreement relating to pension scheme with any union, when one of the union had already filed a writ petition which was pending consideration before this Court.

19. As a result of the agreement between the Air India Limited and the Air India Employees Guild, artificial discrimination is created between the individuals belonging to the same group. As a result of agreement entered by the Air India Limited, the Writ Petition No. 3316 of 1988, was dismissed.

20. The petitioners who retired before 1st April 1994 are excluded from the scheme, thus, by providing a cut off date without any logic has amounted to creating an artificial discrimination between the employees who were retired before 1st April 1994 and those who retired after 1st April 1994. Considering the service rendered by them in the Air India Limited from the days of its infancy, the pension scheme ought to have been made applicable to

the petitioners as well. According to the petitioners, now it is well settled that, giving pension is neither a bounty nor a matter of grace but its a matter of right. There cannot be two methods of computing pension for retired employees.

21. The respondent no. 1 has filed affidavit opposing the petition. According to the respondent, there is no discrimination whatsoever against the employees who retired prior to 1994. According to the respondent, it is a self-contributory pension scheme established, controlled and funded entirely by the employees themselves and the said Trust is neither a "State" nor does it fall within the definition of 'any other authorities', within the meaning of Article 12 of the Constitution of India. It is categorically stated that the Air India Limited neither funded any pension scheme, nor it has any control over the internal management and affairs of the 'Air India Employees contributory Superannuation Pension Scheme'. It is a scheme completely guided and controlled by provision of trust deed. At the most they have contributed maximum of Rs. 100 per year for all the employees taken together. However, it is admitted that, in the interest of the employees themselves, the power to review and vary the scheme was reserved by the employer, i.e., Air India Limited, upon recognition of the union. The respondent no. 1 as an employer has participated in assisting its employees to establish the said pension scheme, which was done in accordance with the Memorandum of

Understanding with the recognized Union. Mere participation and settling of the scheme, does not change the nature of scheme, nor does it make amenable to the writ jurisdiction of this Court. The scheme was approved by the Central Government in April 1994, followed by clearance from the Ministry of Civil Aviation dated 30 March 1995, with a rider that the scheme was totally self-contributory and Air India would not contribute anything in excess of Rs. 100 per annum for its all the employees. There is no contribution from the Air India Limited, as the scheme is self-contributory, hence no discrimination can be attributed to the respondent no. 1. On this background the respondent has opposed the writ petition and prayed that the writ petition deserves to be dismissed.

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22. The third writ petition raises challenge to the promotion order issued in favour of respondent no. 2. In this petition the petitioner is challenging the legality and validity of the order dated 06.08.2001 and 21.02.2002 issued by the respondent no. 1 promoting the respondent no. 2 retrospectively with effect from 1983 and proposing to promote him as Manager with effect from 01.01.1999.

23. The promotion orders issued in favour of respondent no. 2 – Mr. A.P. Tambe has been challenged by the petitioner on the ground that it is against

the policy of the company. The respondent no. 2 who belongs to Scheduled Tribe category joined service on 06.09.1979 and was promoted as a senior clerk subject to his seniority on 01.01.1987. He was promoted to the post of Office Assistant from 01.01.1990, in accordance with the time bound promotion policy adopted by the department. While doing so, he was adjusted against point no. 8 reserved for Scheduled Caste category, though, there was backlog of one post for Scheduled Tribe. According to the rule of reservation interchangeability of vacancies between Scheduled Castes and Scheduled Tribes is allowed to be carried forward, provided, it can be effected only if it is applied in the third year of such promotion. Though, the respondent no. 2 was at Serial No. 9 in the seniority list and not within the zone of consideration yet, he made representation to the respondent no. 2 for promotion. The general Manager (HRD) of respondent no. 1 has categorically expressed his opinion that, his request cannot be considered, since it was contrary to the rules. In spite of clear opinion given by the General Manager, respondent no. 2 continued to represent respondent no. 1. As a result, the committee was appointed by the respondent no. 1 under chairmanship of one Shri. Narayan Murthy, to look into the grievance of respondent no. 2. The committee under the chairmanship of Shri. Narayan Murthy submitted report dated 01.02.1999. In its report the committee observed that it would not be possible to promote the respondent no. 2 to the

post of Office Assistant from 01.10.1983, since the post of Office Assistant was held by one Mr. Kardile. The respondent no. 2 in spite of the adverse report of the committee, insisted the management to put up his case before the Managing Director of respondent no. 1 for seeking approval to his request by treating it as special case due to the continuous representation made by the Scheduled Cate/Scheduled Tribe Association.

24. The Managing Director of the respondent no. 1, acting contrary to their own rules and policies, granted his approval for promotion of respondent no. 2. As a result of the retrospective promotion granted to respondent no. 2, to the post of Office Assistant effective from 01.10.1983, and even subsequent promotion orders based on retrospective promotion were issued and the respondent no. 2 was promoted to the post of Deputy Manager with effect from 01.01.1999, illegally superseding seven officers, by order dated 06.08.2001.

25. It is the contention of the petitioner that, according to the rules of reservation applicable to the respondent no. 1, the carry forward point can be exchanged between Scheduled Caste and Scheduled Tribe, only in third promotion year. As far as promotion in the category of Assistant Manager is concerned one Mr. V.R. Shirke, a candidate from Scheduled Caste Category was promoted at point no. 4, reserved for Scheduled Tribe category out of turn and adjusted against the backlog of Scheduled Caste at point no. 1.

Thus, Scheduled Tribe point was carried forward being a single vacancy. The year 1990 was the first year of carry forward vacancy, one Mr. E. Coutinho was promoted as roster point no. 5. In second year of carry forward, the petitioner was promoted against point no. 6. Since the exchange is permitted only in the third year of promotion, adjusting respondent no. 2 against point no. 5 was illegal.

26. Being aggrieved by the promotion of respondent no. 2 against the vacancy which was carried forward, to be filled by persons belonging to Scheduled Tribe category, the petitioner and other officers made representation, since it caused them grave prejudice. However, their representations dated 31.10.2001, 18.01.2002 and 08.02.2002 did not receive any response. Only with a view to favour the Scheduled Caste and Scheduled Tribe Association as well as the petitioner, the Secretary and Director for Corporate Affairs, recommended the promotion of respondent no. 2 with effect from 01.10.1983 as Assistant Manager, as Deputy Manager from 1st May 1996 and Manager with effect from 01.01.1999.

27. According to the petitioner, the respondent no.1, was determined to promote respondent no. 2, contrary to the rules and policy of promotion. As a result an office note dated 21.02.2002 is prepared to seek approval of the Managing Director, to constitute a panel for promotion of respondent no. 2, to the post of Manager (Administration) with effect from 1st January 1999.

The grievance of the petitioner is that it would result in superseding the petitioner and other similarly placed officers. It would cause serious prejudice and hardship as well as monetary loss to the petitioner as well as the other officers. On aforementioned background, the petitioner has assailed the orders passed by respondent no. 1.

28. The averments made in the writ petition have been controverted by respondent no. 1, by filing a reply affidavit. It is the defence of the respondent that, the writ petition is founded on disputed questions of fact and that the allegations made therein are baseless, since no promotions have yet been effected. Consequently, the writ petition being devoid of merits does not deserve consideration. It is submitted that the proposed promotion contained in the communication dated 6 August 2001, has not been given effect to, till the date of filing of affidavit. The comparative promotional chart of petitioner and respondent is produced on page no. 3 of the reply affidavit. According to the respondent no. 1, though the respondent no. 2 joined in 1979, as compared to petitioner who joined in the year 1980, his last promotion order to the post of Assistant Manager was issued in the year 1999, whereas petitioner was promoted to the post of Assistant Manager on 01.05.1991 itself. It is demonstrated that, the case of the respondent no. 2, could not be considered for promotion on various occasions by adhering to the policy of reservation. It is the defence of the respondent no. 1 that, respondent no. 2 in

the corporate seniority list was at serial no. 4 in his category. However, he was shown at serial no. 7, therefore he could not be considered for promotion on the assumption that he did not fall within the zone of consideration. Hence, in order to rectify the error, respondent no. 2 was promoted to the post of Office Assistant with effect from 01.10.1983. Accordingly, subsequent promotion orders were also issued, treating him as promoted to the post of Office Assistant on 01.10.1983. His further career progression was thus considered admissible from the date of his promotion. The Liason officer of the Association of Scheduled Caste and Scheduled Tribe, strongly recommended retrospective promotion of respondent no. 2, without any monetary benefit for the previous period i.e., only grant of notional benefits, which was accepted and matter was treated as closed.

29. The case of the respondent no. 2 was favourably considered since no monetary benefits were to be extended to him except for the promotion from 01.01.1991 onwards, as a one time settlement with the Scheduled caste/Scheduled Tribe Employees Association. The reliance is placed on the decision of the Hon'ble Supreme Court in the ***Arati Ray Choudhury v. Union of India & Ors***[1] in context with reservation of scheduled caste and scheduled tribe. It is therefore prayed that there is no case made out for interference of this Court under Article 226 of the Constitution of India.

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1. 1974 AIR SC 532

30. The respondent no. 2 – A.P. Tambe has also filed his affidavit on 17th June 2002. According to the respondent no. 2, the respondent no. 1 – Company provided for two kinds of promotions, the first channel of promotion is 'Standard Force Vacancies', based on selection of eligible candidates from feeder cadre, on the basis of assessment on the actual vacancies. While the second kind of promotions is known as 'Supernumerary or Time Bound Promotion' which is not based on actual vacancy, existing in higher cadre, but in the nature of up-gradation being effected upon completion of minimum number of years in the feeder cadre. The petitioner joined in the organization as stenographer on 23.06.1980, while the respondent no. 2 joined on 06.07.1979 as typist clerk. Both the posts are feeder cadre post for the post of Officer Assistant. In 1982 three posts of Office Assistants were available, though three persons were eligible to be promoted on completion of 9 years service, those promotions were delayed. One post of Office Assistant became available on account of promotion of one candidate to higher post in 1983. The vacancy known as standard force vacancy, was available to be filled from feeder cadre. The respondent no. 2 was at serial no. 8 in the seniority. According to the respondent no. 2, if the three persons belonging to the said cadre had been granted time-bound promotions in the year 1982, itself he would have been in the zone of consideration for the post of Office Assistant, which became available in the

year 1983, and was reserved for Scheduled Tribe Category.

31. Though the respondent no. 2 belongs to Scheduled Caste category, interchangeability was permissible, since no other candidates belonging to the Scheduled Tribe category was available within the zone of consideration, the respondent no. 2 could have been selected in the year 1983 itself. Due to the failure of the respondent no. 1 to promote three persons who were due for promotion in the year 1983 itself, the respondent no. 2 was continued to be shown at serial no. 8, and was ousted from the zone of consideration. No prejudice is caused to the petitioner, as a result of his promotion. As has been demonstrated by the respondent no. 1 in his affidavit by relying on the comparative chart of promotions of both the petitioner as well as respondent no.2. It is therefore prayed that the writ petition deserves to be dismissed. The petitioner has also filed rejoinder to the affidavit filed by the respondents dated 26 June 2002.

32. All the three writ petitions as stated hereinabove are filed with different prayers made by individuals holding different posts on the establishment of the Respondent-Air India Limited "AIL". Undoubtedly the prayers made by the petitioners in all the writ petitions are distinct. However, the common thread in all the three writ petitions is the employer i.e., the AIL. Although, when the writ petitions were filed, the writ petitions were very much maintainable before this Court. Since the respondent was a company duly

registered under the provisions of the Companies Act, 1956 and fully owned by the Government of India, hence it was "State" within the meaning of Article 12 of the Constitution of India, as such amenable to the writ jurisdiction of this Court. The writ petitions have been filed under Article 226, 14 and 16 of the Constitution of India, alleging discriminatory treatment at the hands of the employer i.e., Air India Limited.

33. During the pendency of these writ petitions, the status of the employer-AIL, has changed due to its privatization. On 27 January 2022 the AIL was privatized and is disinvested, pursuant to share purchase agreement with Talace India Private Limited. Resultantly it ceased to be a Government company, due to transfer of 100% equity shares of Government of India in Air India Limited, to Talace India Private Limited. When the matter came up for hearing the question of maintainability of writ petition under Article 226 of the Constitution of India against the respondent no. 1 has been raised.

34. Incidentally this Court had an occasion to deal with the issue of maintainability of writ petition under Article 226 of the Constitution of India, due to privatization of the AIL. This Hon'ble Court in its judgment in case of ***R.S. Kotyswara Rao Madireddy and another vs. Union of India and others***[2] has taken a view that, the jurisdiction to issue a writ to the respondent – company no longer exists due to changed circumstances in the intervening

2. 2023(1) Bom. C.R. 317

period as a result of the privatization of the Air India Limited. The Division Bench of this Court (Coram : Dipankar Datta (C.J) & M.S. Karnik,JJ,) has elaborately dealt with issue of the maintainability of writ petitions against the persons, bodies and authorities, including individuals who do not fall within the definition of "State" under Article 12 of the Constitution of India. After deliberating over the issue, this Court has taken a view that, with its privatization the AIL has ceased to be an 'Authority' under Article 12 of the Constitution of India, hence writ cannot be issued against an Authority, that is not discharging the public functions.

35. This court has further observed that, during the pendency of the writ petitions, due to change in status of AIL writ petition would not be maintainable. However, the petitioner would be at liberty to explore the alternate remedy in accordance with law.

36. Shri. Ashok Shetty, learned counsel for the petitioner advanced his arguments on behalf of the petitioners. According to him though the decision was rendered by this Court in *R.S. Kotyswara Rao Madireddy (supra)* vide judgment dated 24th August 2022, which was further confirmed by the Hon'ble Apex Court by upholding the decision of this Court, in the case titled as ***R.S. Madireddy and another vs. Union of India and others***[3] in the interregnum the five judges Constitution Bench of the Hon'ble Supreme

3. 2024 SCC OnLine SC 965

Court in its judgment in the case of ***Kaushal Kishor vs. State of Uttar Pradesh and Others***[4] has formulated six questions of law. Amongst which one of the questions was whether writ can be issued against the private individuals. While answering the issue, the Hon'ble Supreme Court has held that a writ petition would be maintainable even against private entity, if there is a violation of fundamental rights. Our attention is drawn to question no. 2 with its answer in the judgment of *Kaushal Kishor (supra)*, which reads thus :-

Question No. 2

> *"51. The second question referred to us is as to whether a fundamental right under Articles 19 or 21 can be claimed against anyone other than the State or its instrumentalities. Actually, the question is not about "claim" but about "enforceability"*

Answer

> *83. Thus, the answer to Question 2 is partly found in the nine-Judge Bench decision in K.S. Puttaswamy (Privacy-9 J.J20 itself. We have seen from the line of judicial pronouncements listed above that after A.K. Gopalan v. State of Madras101 lost its hold, this Court has expanded the width of Article 2t in several areas such as health, environment, transportation, education and prisoner's life, etc. As Vivian Bose, J., put it in a poetic language in S. Krishnan v. State of Madras102: (S. Krishnan case102, SCC p. 524, para 63)"*
>
> *"63. Brush aside for a moment the pettifogging of the law and forget for the nonce all the learned disputations about this and that, and "and" or "or";, or "may" and "must". Look past the mere verbiage of the words and penetrate deep into the heart and spirit of the Constitution." (emphasis supplied)*
>
> *The original thinking of this Court that these rights can be enforced only against the State, changed over a period of time. The transformation was from "State" to "Authorities" to "instrumentalities of State" to "agency of the Government" to "impregnation with Governmental character" to "enjoyment of monopoly status conferred*

4. (2023) 4 SCC

by State" to "deep and pervasive control" l03 to the "nature of the duties/functions performed"39. Therefore, we would answer Question 2 as follows:

"A fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities."

37. The question no. 3 and its answer as relied by the petitioner in the judgment is also reproduced hereinbelow, which reads thus :-

"Question-3
84. "Whether the State is under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or private agency?" is the third question referred to us.

Answer

113. Therefore, our answer to Question 3 would be that the State is under a duty to affirmatively protect the rights of a person under Article 21, whenever there is a threat to personal liberty, even by a non-State actor."

38. The above questions are framed and answered in the judgment authored by Justice. V. Ramsubramian on behalf of Justice Abdul Nazeer, Justice. B.R. Gavai, A.S. Bopanna, JJ, while Justice B.V. Nagarathna has given a partly concurring and partly dissenting judgment. It is held by Justice. B.V. Nagarathna that, she agrees with reasoning and the conclusion arrived at by His Lordship Justice V. Ramasubramanian, but preferred to provide a different perspective on certain issues by way of separate opinion. Justice. B.V. Nagarathna has relied on the table which is prepared in three columns First column is the questions framed by the majority, second column is the view

taken by the majority, third column is the view taken by the Justice B.V. Nagarathna. Particularly, while answering question no. 2, the majority view was that the fundamental rights under Article 19 and 21 of the Constitution of India can be enforced even against persons other than the "State" or its instrumentalities. While expressing her views on the question no. 2, it is held by Justice. B.V. Nagarathna that, fundamental rights under Article 19 and 21 of the Constitution of India cannot be enforced against private persons i.e., those who are not the "State" or its instrumentalities under Article 12 of the Constitution of India. However, a remedy in the form of writ of Habeas Corpus against private individuals would be maintainable, before a Constitutional Court i.e., by way of writ petition under Article 226 of the Constitution of India, before the High Court or under Article 32 read with Article 142 of the Constitution of India before the Hon'ble Supreme Court, only when such relief is claimed on the basis of a violation of Article 21 of the Constitution of India. With regard to non-State entities those do not fall within the scope of Article 12 of the Constitution of India, it is held that a writ petition for enforcement of fundamental rights would not be maintainable against them. It is further observed that, such cases may involve disputed questions of fact, which may impact the maintainability of writ petitions.

39. In the same table, question no. 3 formulated is whether the "State" is

under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution of India, even against threat to the liberty posed by actions or initiatives of another citizen or private agency. The majority view on this question is that the "State" does indeed has a duty to affirmatively protect a person's rights under Article 21, whenever there is a threat to personal liberty, even if such a threat arises from a private actor. According to the views expressed by Justice Nagarathna, failure by the *State* to carry out its constitutional and statutory duties to protect the rights of a citizen could result in the deprivation of that citizen's right to life and personal liberty. When a citizen is so deprived of his right to life or personal liberty, the "State" would have breached the negative duty cast upon it under Article 21 of the Constitution of India. Hence the State has an affirmative duty to carry out obligations cast upon it under the constitutional and statutory law. Such obligations require the State to intervene, when acts committed by private parties may threaten the life or liberty of another individual.

40. Shri. Ashok Shetty, learned counsel for the petitioner submits that after the judgment in *R.S. Kotyswara Rao Madireddy (supra)* was delivered by the Bombay High Court on 24.08.2022. The judgment of *Kaushal Kishor (supra)* has been delivered on 3 January 2023. The judgment of *Kaushal Kishor (supra)* which is five judge Constitution Bench decision, was cited before the Hon'ble Supreme Court in the SLP filed by *R.S. Madireddy*

(supra). The Hon'ble Supreme Court though referred to the said judgment has not discussed it in extenso. Upon perusal of the said judgment in *R.S. Madireddy (supra)* before the Hon'ble Supreme Court even the counsel for Air India appears to have made a reference to the said judgment with a view to emphasize that Air India is private entity which does not discharge public functions and running an air line is not a public function, hence writ petition would not be maintainable. It is therefore submitted that though the petitioner as well as respondent have cited the judgment of *Kaushal Kishor (supra)* before the Hon'ble Supreme Court, the Hon'ble Supreme Court did not deal with the said judgment. Though the judgment of *Kaushal Kishor (supra)* is referred no finding is recorded based on it, hence the judgment of *R.S. Madireddy (supra)* cannot be construed as a ratio decidendi or lays down any law on the point of maintainability. The petitioner therefore is urging this Court, to follow the decision in *Kaushal Kishore (supra)* and hold that, the writ petition is maintainable.

41. In order to lay support to this argument that, no ratio is laid down by the Hon'ble Supreme Court in the case of *R.S. Madireddy (supra)*, hence it will have to be classed as *obiter dicta* and not an authoritative pronouncement, the learned counsel for the petitioner relies on the judgment of ***Municipal Corporation of Delhi vs. Guram Kaur***[5]**.** Particularly Paragraph

5. (1989) 1 SCC 101

11 of the said judgment relied upon by the petitioner is reproduced hereinbelow:-

> *"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words :*
> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio"*

42. The learned counsel for the petitioner has further relied upon observations made by the Hon'ble Supreme Court in the case of ***State of U.P. and another vs. Synthetics and Chemicals Ltd and another***[6] to lay emphasis on the doctrine of Precedent paragraph 40 and 41 of the judgment, relied by

6. (1991) 4 SCC 139

the petitioner is reproduced hereinbelow :-

> *40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority', (Young v. Bristol Aeroplane Co. Ltd."). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey'2 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.*
>
> *41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd."' the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry's it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.*

43. Mr. Ashok Shetty, learned counsel further submits that though the judgment in the case of *Kaushal Kishor (supra)* has been cited and referred by the Hon'ble Supreme Court yet no findings are recorded by the Hon'ble Supreme Court with reference to the said judgment. Since the judgment of *Kaushal Kishor (supra)* is a Constitution Bench judgment, which had laid down a ratio, is binding on all the courts. Thus, the present writ petition would be maintainable in view of the judicial pronouncement of the Constitution Bench decision, holding that writ petition is maintainable even against a 'Person'.

44. It is submitted that considering the law laid down by the Constitution Bench in *Kaushal Kishor (supra)* a writ petition even against a 'person' can be entertained, hence it is not necessary that the change in management and control of Air India Limited, would automatically result in dismissal of the writ petition on the ground of maintainability. The learned counsel for the petitioner referred to paragraph nos. 9, 17 and 22 of the judgment of *R.S. Madireddy (supra)*, which are reproduced hereinbelow which reads thus :-

> *"9. Learned senior counsel further contended that the scope of issuing a writ, order, or direction under Article 226 of the Constitution of India is much broader than the high prerogative writs issued by the British Courts and this position has been recognised by this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and ors. vs. V. R. Rudani and ors., (1989) 2 SCC 691, and following the said decision, Courts in India have consistently issued writs even to private persons performing public duties and this position has further been reiterated by the recent judgment of this Court in the case of Kaushal Kishor vs. State of U. P.*

and ors., 2023 MhLJ Online (S.C.) 91 = (2023) 4 SCC 1. The relevant portions of Andi Mukta (supra) as relied upon by the learned senior counsel are extracted hereinbelow :—

> *"16. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure". The Law Commission made their report in March, 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review" :*
>
> *"At one stroke the Courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge. The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the Courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are — and who are not — public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing." (See the Closing Chapter by Rt. Hon. Lord Denning, p. 122]*
>
> *17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued*

> *"for the enforcement of any of the fundamental rights and for any other purpose."*
>
> *17. Learned senior counsel further submitted that this Court in the case of Kaushal Kishor (supra) has held that a writ cannot be issued against non-state entities that are not performing any 'Public Function'. He further pointed out that it is the conceded case of the appellants that post privatisation, respondent no. 3(AIL) does not perform any 'Public Function' and in any case running a private airline with purely a commercial motive can never be equated to performing a 'Public Duty'"*

45. The Hon'ble Supreme Court in the judgment of *R.S. Madireddy (supra)* has framed question for adjudication of issue of maintainability of writ against private entity, which is reproduced hereinbelow :-

> *"22. The questions of law presented for adjudication of this Court are :*
> *(I) Whether respondent no. 3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court?*
> *(ii) Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity?*
> *(iii) Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity?"*

46. While answering the question no. 1, the Hon'ble Supreme Court has made observations in paragraph nos. 32 and 33, which read thus:-

> *"32. There is no dispute that the Government of India having transferred its 100% share to the company Talace India Pvt. Ltd., ceased to have any administrative control or deep pervasive control over the private entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company. Thus, unquestionably, the respondent No. 3(AIL) after its disinvestment ceased to be a State or its instrumentality within the meaning of Article 12 of the Constitution of India.*

33. Once the respondent No. 3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India."

47. Reliance is also placed on paragraph 57 and 61 in the case of ***R.S. Kotyswara Rao Madireddy and another vs. Union of India*** and others, which reads thus :-

"57. That a writ could be issued to an 'authority' within the meaning of "the State" as in Article 12 of the Constitution as well as an 'authority' within the meaning of Article 226 has never been in dispute. By judicial pronouncements, law has developed over a period of time that a writ or order or direction under Article 226 can also lie against a 'person', even though it is not a statutory body, it if performs a public function or discharges a public duty or owes a statutory duty to the party aggrieved. These are unquestionable principles and the parties are ad idem in respect thereof. However, they have joined issue because of the intervening event of privatization of AIL.

61. We have noted on perusal of the decisions in Rajamundry Electric Supply Corporation Ltd. (supra) and P. Venkateswarlu (supra), relied on by Mr. Singhvi, that the proceedings dealt with by the Court did not arise out of any writ petition. The reasons for the inapplicability of the ratio of the former decision, proferred by Mr. Khambatta, are acceptable to us and hence we refrain from restating the reasons. We, however, wish to add that a sentence in a decision of the Supreme Court does not constitute the ratio of its decision, and that a statement of law enunciated by the Supreme Court must be read in the light of the principle which it seeks to effectuate and it should not be construed as if it were a section of an enactment. In the latter decision, the Supreme Court dealt with the adjectival activism relating to post-institution circumstances and laid down the proposition that "it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding". This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted.

> *Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because had the Court found his facts to be true the day he sued, he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or right crystallized in the initial cause of action."*

48. It is submitted that the delay in deciding the writ petition cannot be attributed to the petitioner. The changed circumstances cannot deprive the petitioners of their rightful claim which existed at the time of institution the writ petition. The rights of the petitioners were crystallized, at the time of filing the writ petition. The changed circumstances cannot deprive the petitioners of their rightful claim. It is therefore submitted that grave prejudice would be caused to the petitioner if after a period of almost 20 years, the writ petitions are dismissed on account of maintainability. Hence the objection to the maintainability raised by the respondent deserves to be ignored by entertaining the writ petition, on its own merits.

49. Per contra the learned counsel Mr. Aditya Mehta appearing for the respondent-Air India Limited has raised a strong objection to the maintainability of the writ petition. It is contended that the Air India Limited was privatized and dis-invested pursuant to a share purchase agreement entered with Talace India Private Limited, whereby 100% equity shares of the Government of India in Air India Limited were purchased by the private limited company. Relying to the observations made by this Court in the

judgment of *R.S. Madireddy (supra)*, it is submitted that though the writ petitions were very much maintainable, when they were filed, yet due to the developments that have occurred in the interregnum, the writ petitions ceased to be maintainable by reason of privatization of Air India Limited. The view taken by this Court is confirmed by the Hon'ble Supreme Court thus there is no question of entertaining the present writ petition.

50. The respective counsels for the respondent further submit that though the writ petitions have been dismissed as not maintainable, however, this Hon'ble Court while dismissing the writ petition has held that, the petitioners should seek an alternate remedy by instituting fresh proceedings. While entertaining such proceedings the time exhausted during pendency of the writ petition would be excluded for the purpose of computation of period of limitation. Hence the doors of the petitioner are not closed for redressal of their grievance. It is submitted that the stand of the petitioner that decision *R.S. Madireddy (supra)* is *per incuriam* is legally untenable, in view of the fact that constitution Bench judgment of *Kaushal Kishor (supra)* has been considered by the Hon'ble Supreme Court in paragraph nos. 9 and 17 of its judgment. While trying to distinguish between the case of *Kaushal Kishor (supra)* and case of *R.S. Madireddy (supra)*. The learned counsel for the respondent submits that the subject matter in *R.S. Madireddy (supra)* involved issues such as anomalies in pay fixation, denial of promotion, and

pay revision etc., i.e., issue relating to service benefits. In contrast, the *Kaushal Kishor (supra)* deals with issues concerning enforceability of fundamental rights under Articles 19 and 21 of the Constitution of India. Hence while answering the questions that were framed, the Hon'ble Supreme Court has held that, the fundamental rights under Article 19 and 21 of the Constitution of India can be enforced even against the 'Persons' other than the State or its instrumentalities. The present writ petition does not concern with the enforcement or violation of the fundamental rights under Article 19 and 21 of the Constitution of India. Thus ratio in case of *Kaushal Kishor (supra)* is not applicable to the facts of the present case. The Hon'ble Supreme Court has considered all previous judgments including that of *Kaushal Kishor (supra)*. Hence the case of *R.S. Madireddy (supra)* cannot be considered as *per incuriam*. The issue before this Court is squarely covered by the decision in *R.S. Madireddy and another (supra)*. Hence the writ petition filed by the petitioners deserves to be dismissed solely on the ground of maintainability.

51. The insistence of the petitioners is on the application of the findings recorded by the Hon'ble Supreme Court, in case of *Kaushal Kishor (supra)* declaring that, a writ petition would be maintainable for enforcement of fundamental rights under Article 19 and 21 of the constitution of India, even against a 'person'. The whole thrust of arguments is that, a Constitution Bench judgment, which has laid down a ratio, would be binding on all the

subordinate courts, including High Court.

52. There is no doubt whatsoever about the applicability of the law of Precedent and doctrine of 'Stare decisis', which binds all the courts in India. It is the fundamental legal principle, followed by Indian legal system, its applicability ensures consistency, stability and avoids divergence of opinion on similar issue, dealt with by the different courts. Article 141 of the Constitution of India also, makes a decision or a ratio laid down by the Hon'ble Supreme Court, binding on all the courts within the territory of India. The hierarchy of courts in India with the Supreme Court at its apex, requires the law laid down by it, binding on all the courts subordinate to it.

53. Though Law of 'Precedent' is settled, however some times its applicability to certain cases is debated and disputed. There are catena of decisions of the Hon'ble Supreme Court, explaining the law of 'Precedent' and 'Stare Decisis' with its applicability. It would be apposite to refer to the observations of the Hon'ble Supreme Court, enunciating the importance of doctrine of binding Precedent in the case of ***Union of India and Another vs. V. Raghubir Singh***[7]. The issue about the applicability of Section 30 of the Land Acquisition Act, after its amendment was referred to the Bench of 5 Judges, when the two judges Bench of the Supreme Court, found doubt in applicability of the view taken by a Bench of three Judges. When objection

7. AIR 1985 Delhi 228

was raised to the reference made to the larger Bench, the Supreme Court has thought it necessary to lay down law on the point. The relevant extracts of the judgment are reproduced hereunder which read thus :-

> *"8. Taking note of the hierarchical character of the judicial system in India it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the Courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law."*
>
> *9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to' the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court…….*
> *……...*
> *……..*
> *……27. There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt has arisen on the point because of certain observations made by O. Chinnappa Reddy, J. in Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, AIR 1985 SC 23 1. Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in T. V. Vatheeswaran v. State of Tamil Nadu, AIR1983 SC 361(2) that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three Judges in Sher Singh v. State of Punjab, AIR 1983 SC 46-5, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in T. V. Vatheeswaran ('supra), the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the*

conduct of the accused. As a member of another Bench of two Judges, in Javed Ahmed Abdul Hamid Pawala (supra) O. Chinnappa Reddy, J. questioned' the validity of the observations made in Sher Singh (supra) and went on to note, without expressing any concluded opinion on the point, that it was a serious question "whether a Division Bench of three Judges could purport to overrule judgment of a Division Bench of two Judges merely because three is larger than two. The court sits in Divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of two Judges. Vide Young v. Bristol Aeroplane Co. Ltd., (1944) 2 All ER 293. It may be otherwise where a Full Bench or a Constitution Bench does so." It is pertinent to record here that because of the doubt cast on the validity of the opinion of Sher Singh (supra), the question of the effect of delay on the execution of a death sentence was referred to a Division Bench of five Judges, and in Triveniben v. State of Gujarat, AIR 1989 SC 142 the Constitution Bench overruled T. V

28. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention,may find most appropriate. It is in order to' guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point.

*In John Martin v. State of West Bengal, (1975) 3 SCR 211 (**AIR 1975 SC 775**) a Division Bench of three Judges found*

*it right to follow the law declared in Haradhan Saha v. State of West Bengal, (19751) 1 S CR778: (**AIR 1974 SC 2154**) decided by a Division Bench of five Judges, in preference to Bhut Nath Mate v. 'State of West Bengal, AIR **1974 SC 806** decided by a Division Bench of two Judges. Again in Smt. Indira Nehru Gandhi v. Raj Narain, (1976) 2 SCR 347 : (**AIR 1975 SC 2299**) Beg, J. held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala' 1973 Suppl SCR I : (' **AIR 1973 SC 1461**). In Ganapati Sitaram Belvalkar v. Waman Shripad Mage (Since Dead) Through Lrs. (1981) 4 SCC 143: **AIR 1981 SC 1956**), this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, (1975) 1 SCR 127 : (**AIR 1974 SC 1596**) this Court specifically observed that where the view expressed by two different Division Benches of this Court could . not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharaya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat (1975) 2 SCR 317 : (**AIR 1974 SC 2098**), that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was re-affirmed in Union of India v. Godfrey Philips. India Ltd (1985) 4 SCC 369: (**AIR 1986 SC 806**) which noted that a Division Bench of two Judges of this Court in Jit Ram v. State of Haryana, (1980) 3 SCR 689 : (**AIR 1980 SC 1285**) had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U. P., (1979) 2 SCR 641 : (AIR 1079 SC 621), on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.*

29. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons, that is not conveniently possible.

30.Upon the aforesaid considerations, and in view of the nature and potential of the questions raised in these cases we are of the view that

> *there was sufficient justification for the order dated 23 September, 1985 made by the Bench of two learned Judges referring these cases to a larger Bench for reconsideration of the question decided in K. Kamalajammaniavaru (dead) by Lrs. (**AIR 1985 SC 576** (supra) and Bhag Singh (**AIR 1985 SC 1576**) (supra). The preliminary objection raised by learned counsel for the respondents to the validity of the reference is overruled."*

54. In a recent decision in the case of ***Career Institute Educational Society vs. Om Shree Thakurji Educational Society*** [8], the Hon'ble Supreme Court has thrown further light on what constitutes a 'Precedent'. The Hon'ble Supreme Court has held that not everything said by a Judge while delivering the judgment, constitutes a precedent, only thing in a judges decision that can be construed as precedent is the principle upon which the case is decided. The relevant paragraph of the judgment is reproduced hereunder :-

> *"7. In Jayant Verma, this Court has referred to an earlier decision of this Court in Dalbir Singh v. State of Punjab to state that it is not the findings of material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, albeit operates as res judicata. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the obiter dicta."*

55. The above preposition of law on the law of 'Precedent', declared by the Hon'ble Supreme Court, leaves no doubt whatsoever, about the hierarchy of the Courts and the binding character of the law declared by the higher courts

8. (2023) 16 SCC 458

on the lower courts, as well as the decision of Bench of larger strength, over the decision of lesser strength. Though the law declared by the Supreme Court, in the form of ratio, is the law of the land, it is equally important, that the law so declared should have its application to the given facts of the case. In the reported decision in the case of ***Krishena Kumar vs. Union of India***[9] the Hon'ble Supreme Court once again (a Bench of 5 Judges) has explained the importance of sparing application of Doctrine of 'State Decisis', which reads as under :-

> *"33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara' it was never required to be decided that all the retirees formed a class and no further classification was permissible."*

56. It is quite natural and reasonable that the persons who are likely to be affected by the decisions of the Court, would think that the previous decisions of the Court rendered on identical facts shall be adhered to. The

9 (1990) 4 SCC 207

binding nature of a decision of the Court is an issue that also pertains to judicial discipline and propriety and requires that the decision of a co-ordinate Bench is followed by the other Courts of co-equal strength and are not lightly to be disregarded. The Supreme Court has reiterated time and again that judicial indiscipline is invaluable and inviolable rule to be followed by the Judges. The Hon'ble Supreme Court in the case of ***"Mary Pushpam v. Telvi Curusumary & Ors."***[10] has taken a view that a Bench of co-equal strength must respect a decision of the co-ordinate Bench of the same High Court and that decision shall have binding effect. In *"Krishena Kumar" (supra)*, the Hon'ble Supreme Court held that a principle of law laid down by the Court should be adhered to and applied to all future cases where facts are substantially the same. We may also refer to ***"Hari Singh v. State of Haryana"***[11] wherein the Hon'ble Supreme Court observed that in a judicial system the Courts of co-ordinate jurisdiction must have consistent opinions on identical set of facts or on a question of law." The decision of this Court in *"R.S. Kotyswara Rao"* (supra) which stands affirmed by the Hon'ble Supreme Court is binding on us and we do not find any reason to record our disagreement with the said judgment.

57. In a recent decision of the Hon'ble Supreme Court in the case of ***S.***

10. 2024 INSC 8A
11. (1993) 3 SCC 114

Shobha vs. Muthoot Finance Ltd*[12]*., the supreme Court had an occasion to deal with the similar situation as like in the present case, wherein the petitions were filed against a company named 'Muthoot Finance Company', which is registered under the Companies Act, 1956. The respondent raised an objection to the maintainability of writ petition against the company on the ground that the respondent could not be said, to be discharging any Public function or could not be said to be in the Public realm. Since the company was not discharging any public function, which has the trappings of public duty. Being a private company registered under the Companies Act, 1956, it was not "State" within the meaning of Article 12 of the Constitution of India. After dwelling on this issue, the Hon'ble Supreme Court laid down certain principles to ascertain whether a body is 'public' or 'private' and should it be categorized as amenable to writ jurisdiction. The relevant paragraphs of the judgment are reproduced hereunder, which read thus :-

> *7. Applying the above test, the respondent herein cannot be called a public body. It has no duty towards the public. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Governmental functions.*
>
> *8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with*

12. 2025 SCC OnLine SC 177

that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

9. We may sum up thus:
(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or 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.
(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority: (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.
(3) Although a non-banking finance company like the Muthoot Finance Ltd, with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.
(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.
(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutorv rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.
(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.
(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.
(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of

each case decide the point.

58. On perusal of the findings recorded by the Hon'ble Supreme Court, applying the functionality test, we do not find that the respondent -AIL, is discharging any public function. Its status is that of a private company, established with sole commercial object of making profit. The Hon'ble Supreme Court in the case of *R.S. Maddireddy (supra)* has taken a view that, due to change in the status of AIL, after its privatization it is a private entity, and not performing any public functions, therefore it would not be amenable to writ jurisdiction, and no writ can be issued against it. The judgment in the case of *Kaushal Kishore (supra)* was pointed out by both the parties before the Hon'ble Supreme Court and the expression "for any other purpose" has been dealt with in paragraph no. 21, as under:-

> *"21. After aforesaid two decisions, Parliament sought to amend the Constitution through the Constitution (First Amendment) Bill, 1951. In the Statement of Objects and Reasons to the First Amendment, it was indicated that the citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) has been held by some Courts to be so comprehensive as not to render a person culpable, even if he advocates murder and other crimes of violence. Incidentally, the First Amendment also dealt with other issues, about which we are not concerned in this discussion. Clause (2) of Article 19 was substituted by a new clause under the Constitution (First Amendment) Act, 1951."*

59. Even if there is no detailed discussion of *Kaushal Kishor (supra)*, it is not within our domain to record our observations for non consideration of the judgment of *Kaushal Kishore (supra)* while deciding the case of *R.S.*

Madireddy (supra). As on today the issue in the present case stands squarely covered by the decision of the Hon'ble Supreme Court in the case of *R.S. Madireddy (supra)*, and we are bound by the said decision. We do not find any reason to take a different view from the one taken by this Court and affirmed by the Hon'ble Supreme Court.

60. Hence following the same view, we hold that all the three writ petitions, although maintainable on the dates on which they were instituted, have ceased to be maintainable, due to privatization of AIL, which is not discharging any public duty. For the reasons recorded hereinabove, the writ petitions along with pending Interim Applications, if any, stand disposed of with liberty to the petitioner to avail remedy in accordance with law. If the petitioners take recourse to such remedy, the time consumed in pursuing the present writ petition, shall be excluded for the purpose of limitation, if any question of limitation arises.

61. The Writ Petition No. 1876 of 2001, Writ Petition No. 809 of 2002, Writ Petition No. 1333 of 2002 are dismissed. The Chamber Summons No. 284 of 2004 is discharge. No order as to costs.

[MANJUSHA A. DESHPANDE, J.] [SHREE CHANDRASHEKHAR, J.]

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