



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 07th April, 2026.
Pronounced on: 29th May, 2026.
Uploaded on: 31st May, 2026.

+ **W.P.(C) 5425/2019, CM APPL. 23802/2019, CM APPL. 31394/2021, CM APPL. 44857/2021, CM APPL. 35652/2023, CM APPL. 78384/2025, CM APPL. 8020/2026**

ALI AHMAD KHAN

.....Petitioner

Through: Mr. Biswajit Das, Mr. Deepak Kumar
and Ms. Neha Yadav, Advocates.

versus

COUNCIL FOR LEATHER EXPORTS AND ORS.

....Respondents

Through: Mr. Nalin Kohli, Senior Advocate
with Ms. Anshul Malik and Mr.
Ayuushman Arora, Advocates for R-
3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The present writ petition assails disciplinary proceedings initiated by the Council for Leather Exports¹ against one of its senior officers. The dispute arises from a chain of public deputations, repatriation from National Book Trust,² refusal of physical joining by the parent organisation, salary directions passed by this Court, and thereafter a charge-sheet and suspension

¹ "CLE"



order founded substantially on alleged acts during the Petitioner's tenure as Secretary, Central Waqf Council.³

2. The Petitioner seeks quashing of the charge-sheet/memorandum dated 1st March, 2019, the disciplinary proceedings initiated pursuant thereto, and the suspension order dated 15th April, 2019. He also seeks consequential service benefits and directions for being permitted to discharge duties in the appropriate post. CLE, arrayed as Respondent no. 1, contests the petition at the threshold. It claims that it is not "State" under Article 12 of the Constitution, is not otherwise amenable to writ jurisdiction in service matters, and that the Petitioner's remedy, if any, lies elsewhere.

3. The connected writ petition [*W.P.(C) 6602/2018*] arises from the relieving order dated 29th May, 2018 issued by NBT, by which the Petitioner was prematurely repatriated to his parent organisation. That petition also contains a prayer for consideration of the Petitioner's representation dated 3rd May, 2018 for release of outstanding dues. The two matters have overlapping facts. They have therefore been heard together on the preliminary objection of maintainability. They are, however, not identical in cause, relief or legal enquiry. The present judgment deals with the challenge to CLE's disciplinary action. The connected writ petition concerning NBT's relieving order is being dealt with separately.

Factual background

4. The Petitioner joined CLE as Regional Director on 21st July, 2005. His appointment was on the regular cadre of CLE and his service was governed by the Standing Orders of CLE. The charge-sheet itself relies upon

² "NBT"

³ "CWC"



the Petitioner's appointment order dated 20th June, 2005 and condition no. 5 thereof, which required him to maintain absolute integrity and devotion to duty.

5. CLE is an Export Promotion Council in the leather sector. Its governing documents describe it as an organisation functioning under the administrative aegis of the Ministry of Commerce and Industry, Government of India, while also operating with a measure of institutional autonomy. The 2016 amended Memorandum and Articles of Association, read with the Office Memorandum dated 10th November, 1997, indicate autonomy in day-to-day administrative matters, including staffing and internal management. At the same time, the governing framework retains a continuing nexus with the Central Government through provisions concerning Government nominees, appointment of the Election Authority, concurrence in appointment of auditors, restrictions on alteration of the constitutional documents without prior approval, and the binding power of Government directions under Article 76. CLE also functions as the recognised Export Promotion Council for the leather sector under the foreign trade regime, including in relation to Registration-cum-Membership Certificates.⁴ These features are relevant to the first issue in this case, namely whether CLE can resist writ jurisdiction on the ground that it is merely a private company.

6. The Petitioner's service history thereafter moved through two deputations. The first was to the CWC. The Petitioner was appointed as Secretary, CWC, under an Office Memorandum dated 17th July, 2012. CWC is a statutory body under the Waqf Act, 1995. The Petitioner asserts that, for the post of Secretary, CWC, the competent authority was the Union Minister



for Minority Affairs as ex-officio Chairperson of the Council. The Petitioner's tenure as Secretary, CWC, was extended from time to time by orders issued by the Government of India, Ministry of Minority Affairs. One such order dated 9th July, 2014 records extension of his term as Secretary, CWC, and also records that the post of Secretary, CWC, was upgraded to the level of Joint Secretary to the Government of India.

7. The second deputation was to NBT. The Petitioner was selected as Joint Director in NBT and joined there on deputation. The NBT appointment was for a tenure of three years, subject to the terms of deputation. By order dated 29th May, 2018, NBT relieved the Petitioner and repatriated him to his parent organisation. The Petitioner challenged that order in W.P.(C) 6602/2018. In that petition, CLE was not initially arrayed as a Respondent. It was impleaded later because, after repatriation, the Petitioner complained that CLE was not permitting him to join.

8. The order dated 20th November, 2018 passed in W.P.(C) 6602/2018 records that the Petitioner's grievance in that petition was against the NBT relieving order dated 29th May, 2018. The Court noted that CLE had earlier been considered not to be a necessary party, but on the Petitioner's statement that after the relieving order he tried to join the parent department and CLE did not allow him to do so, CLE was impleaded as Respondent no. 3 in that petition.

9. On 18th December, 2018, CLE appeared in W.P.(C) 6602/2018. It stated before the Court that it was not ready to give joining to the Petitioner, but would pay salary from 9th July, 2018 and continue to pay salary till further orders. The Court recorded the statement and made it clear that CLE

⁴ "RCMC"



shall continue to pay salary. The issue of salary for the period from 29th May, 2018 to 9th July, 2018 was left to final disposal.

10. The subsequent correspondence shows that the Petitioner repeatedly sought clarity on his posting, salary slips, admissible allowances and other service incidents. In an email dated 9th January, 2019, he acknowledged receipt of salary for the period from 9th July, 2018 till 31st December, 2018 and requested that salary slips be issued to him as issued to other employees of CLE. In another representation dated 3rd April, 2019, he complained that although he had reported back after repatriation from NBT, CLE had not allowed joining or posting, and that salary had been released only after the order dated 18th December, 2018.

11. The record also contains a later instruction sent by CLE to counsel on 9th April, 2026, in response to a query whether the Petitioner had joined CLE after repatriation. It states that CLE had released salary in adherence to the order dated 18th December, 2018 and that this was considered as the Petitioner's joining in the Council. It further states that the Petitioner was thereafter placed under suspension with effect from 15th April, 2019 and paid 50% wages as subsistence allowance.

Charge-sheet dated 1st March, 2019

12. CLE issued memorandum dated 1st March, 2019 proposing to hold an inquiry against the Petitioner under the Standing Orders of CLE. The memorandum enclosed the statement of articles of charge, the statement of imputations, the list of documents and the list of witnesses. The Petitioner was required to submit his written statement of defence within seven days of receipt and to state whether he desired to be heard in person. The memorandum also warned that, if he did not submit his defence or failed to



appear before the Inquiry Authority, the inquiry could proceed *ex parte*.

13. The charge-sheet contains seven articles. Articles I to V relate to the Petitioner's tenure as Secretary, CWC. Article I alleges irregular payment of Rs. 20,000/- in cash as brokerage for identifying residential accommodation while the Petitioner was serving as Secretary, CWC. CLE alleges that the Petitioner treated himself as the competent authority in his own personal case.

14. Article II alleges irregular payment by CWC to CLE towards employer's provident fund contribution of Rs. 6,00,294/- and pension contribution of Rs. 8,32,845/-. CLE alleges that these amounts were not admissible under the terms of appointment as Secretary, CWC and that there was no CPF or pension scheme in CLE.

15. Article III concerns alleged short deduction/payment of TDS of Rs. 52,223/- in relation to rent-free accommodation during the Petitioner's tenure as Secretary, CWC. CLE alleges that the value of perquisites was not included while calculating salary income and that the Petitioner failed to deposit the alleged short payment despite show-cause notice.

16. Article IV concerns medical reimbursement of Rs. 1,34,975/- in respect of treatment of the Petitioner's wife at a private IVF centre. CLE alleges that the clinic was not empanelled under CGHS and that the reimbursement was contrary to the relevant guidelines. The Petitioner's reply to the show-cause notice, as noticed in the charge-sheet itself, was that the reimbursement had the approval of the Minister for Minority Affairs and Chairperson, CWC, and that the applicable OM did not require the clinic to be CGHS-empanelled, provided it was registered with the State or Central Government.



17. Article V relates to payment of Rs. 15,000/- towards counsel fee in *W.P.(C) 4690/2012*, in which the appointment of the Petitioner as Secretary, CWC had been challenged. CLE alleges that the payment from CWC funds to the advocate representing the Petitioner personally was irregular and ought to have been borne by the Petitioner.

18. Articles VI and VII arise from the Petitioner's repatriation from NBT and his communications thereafter. Article VI alleges that, instead of joining CLE after premature repatriation from NBT, the Petitioner agitated against his repatriation, caused embarrassment to CLE and lowered its image in the general public. Article VII alleges that through letters/emails dated 7th September, 2018, addressed to the Chairman, CLE, and in a meeting dated 11th September, 2018, the Petitioner was impolite, discourteous and wilfully insubordinate.

19. The list of documents annexed to the charge-sheet shows that CLE proposed to rely on, among others, audit reports concerning CWC, correspondence from CWC, the Petitioner's appointment order in CLE, the CWC OM dated 17th July, 2012, the Ministry of Commerce communication dated 23rd July, 2018, the show-cause notice dated 19th September, 2018, and the Petitioner's reply dated 1st October, 2018.

Petitioner's reply and subsequent events

20. The Petitioner first sought further time by communication dated 11th March, 2019. He stated that he had received the memorandum dated 1st March, 2019 on 8th March, 2019 and that the reply was sought within seven days. He requested fifteen more days, stating that he was unwell, had domestic issues, and that the matter required mobilisation of records relating to issues which were several years old.



21. The Petitioner thereafter submitted a detailed reply dated 20th March, 2019, seeking withdrawal of the charge-sheet. He asserted that he had joined CLE in 2005, later held additional charge and then regular charge of Executive Director, and thereafter proceeded on deputation as Secretary, CWC, a statutory body under the Ministry of Minority Affairs. He asserted that the CWC was headed by the Union Minister for Minority Affairs as ex-officio Chairperson, and that the appointing and disciplinary authority for the post of Secretary, CWC, was the Union Minister/Chairperson under the Waqf Act, 1995 and the CWC Rules, 1998.

22. The Petitioner's reply raised a foundational objection. He said that the communications from CWC which formed the basis of the charge-sheet were not issued by the competent authority, namely the Minister for Minority Affairs and Chairperson, CWC. He further alleged that the inquiry had been initiated on unauthorised communications and that proceedings were being pushed while related matters were *sub-judice* before this Court. He also complained that CLE had misled the Court in its counter affidavit dated 15th January, 2019 by stating that an inquiry was pending, although the memorandum itself was issued only on 1st March, 2019.

23. On 22nd March, 2019, CLE appointed the Inquiry Officer and Presenting Officer. The Petitioner says that the appointment was made without meaningful consideration of his reply and without first deciding whether the foundational objections were correct. The Petitioner also sought documents before the Inquiry Officer, including approvals from the competent authority in CWC, records of CLE's authority to proceed, and documents relating to the Petitioner's deputation, repatriation and payment position.

***Suspension order dated 15th April, 2019***

24. By order dated 15th April, 2019, CLE placed the Petitioner under suspension with immediate effect. The order records that disciplinary proceedings were pending and that the charges being inquired into were serious and grave and warranted suspension. It invokes Clause 12(b)(i) of the Standing Orders of CLE. It fixes the Petitioner's headquarters at CLE's Regional Office at New Delhi and prohibits him from leaving headquarters without prior permission. It also grants subsistence allowance under Clause 12(b)(iii) of the Standing Orders, initially at one-half of basic wages, dearness allowance and other compensatory allowances, with provision for enhancement after ninety days if the inquiry was prolonged for reasons not attributable to the Petitioner.

25. The Petitioner challenges the suspension as arbitrary, punitive in effect, and unsupported by any reason showing that his presence would prejudice the inquiry or enable tampering with records. He submits that most records were with CWC, NBT or the Ministries, and that CLE had itself refused to allow him to work physically. The Petitioner further submits that the suspension, following the charge-sheet and the hurried appointment of Inquiry Officer, formed part of a predetermined course of action.

Interim directions and procedural history

26. The procedural course of the matter is important because the maintainability objection has surfaced repeatedly and because interim directions shaped the parties' conduct.

27. In W.P.(C) 6602/2018, by order dated 20th November, 2018, CLE was impleaded after the Petitioner complained that, after being repatriated by NBT, he tried to join CLE but was not allowed to do so.



28. By order dated 18th December, 2018, CLE stated that it was not ready to give joining to the Petitioner, but would pay salary from 9th July, 2018 and continue to pay till further orders. The Court recorded that statement and made it clear that CLE shall continue to pay salary. The question of salary from 29th May, 2018 to 9th July, 2018 was left open for final disposal.

29. On 5th October, 2020, a coordinate Bench, after perusing both writ petitions, recorded a *prima facie* view that the writ petitions were not maintainable and directed the Petitioner to satisfy the Court on maintainability on the next date.

30. On 20th January, 2026, both writ petitions were taken up together. The Court recorded the distinct subject matter of each petition. *W.P.(C) 6602/2018* was recorded as concerning NBT's relieving order dated 29th May, 2018 and the representation dated 3rd May, 2018 for release of outstanding dues. *W.P.(C) 5425/2019* was recorded as concerning the charge-sheet dated 1st March, 2019, proceedings emanating therefrom, the suspension order dated 15th April, 2019, and consequential benefits.

31. The order dated 20th January, 2026 further records CLE's objection that it is not amenable to writ jurisdiction, principally because it does not fall within Article 12. The Petitioner contended that the issue of maintainability was "done and dusted" by earlier orders dated 23rd February, 2024 and 10th May, 2024. The Court rejected that contention, holding that earlier orders had not determined maintainability in favour of the Petitioner and that the issue remained open. Since maintainability went to the root of the matter, the Court directed that it be decided at the outset.

The Petitioner's case

32. The Petitioner submits that CLE's objection to maintainability is



misconceived. He contends that CLE is not a private association of traders in the ordinary sense. It is sponsored by the Ministry of Commerce and Industry, performs functions under the foreign trade regime, acts as the recognised and, in certain respects, compulsory registering authority for leather exports, and discharges functions which would otherwise be performed by the Central Government. The Petitioner places reliance on the public notice and export-policy framework, and on the judgment of the Division Bench of the Madras High Court in *Council for Leather Exports v. All India Small Scale Tanners and Exporters Association*,⁵ where CLE itself was held to be acting as an instrumentality of the Central Government while discharging compulsory export-registration functions.

33. The Petitioner further relies on CLE's governing documents to contend that the Central Government retains a continuing role in the functioning of the Council. Reliance is placed on provisions concerning Government nominees, appointment of the Election Authority, concurrence in appointment of auditors, restrictions on alteration of the constitutional documents without prior approval, and the binding power of Government directions under Article 76.

34. On this basis, the Petitioner submits that CLE is "State" or an authority within Article 12. In the alternative, he submits that CLE is clearly amenable to writ jurisdiction under Article 226 because it performs public functions and public duties. He contends that incorporation under Section 25 of the Companies Act, 1956 cannot operate as a constitutional shield where the entity performs governmental or public functions.

35. On merits, the Petitioner contends that the charge-sheet is without

⁵ 1996 SCC OnLine Mad 1237



jurisdiction, founded on unauthorised communications, actuated by *mala fides* and issued without application of mind. He submits that Articles I to V relate to his tenure as Secretary, CWC, where he functioned under a statutory regime and under the authority of the Chairperson, CWC. According to him, CLE could not initiate disciplinary action on the basis of communications from subordinate CWC officials without ascertaining the position of the competent authority, namely the Union Minister for Minority Affairs and Chairperson, CWC.

36. The Petitioner submits that the alleged financial irregularities were either approved, ratified or processed within CWC. He contends that CLE's charge-sheet selectively relies on audit objections without considering the full record, subsequent audit settlement, approvals of the competent authority, or the statutory position of the Secretary, CWC. He asserts that several documents necessary for his defence were either not supplied or were dismissed as irrelevant.

37. As regards Articles VI and VII, the Petitioner says that the charges are contrary to CLE's own conduct. He reported to CLE after repatriation from NBT. CLE did not accept his joining and instead asked him to await NBT's response because CLE itself had sought reasons from NBT for premature repatriation and had asked for compliance with the three-month notice contemplated by the DoPT OM. Thereafter, CLE appeared before this Court and stated that it was not ready to give joining but would pay salary from 9th July, 2018.

38. The Petitioner therefore submits that CLE cannot refuse physical joining, pay salary pursuant to a Court-recorded arrangement, later treat that payment as deemed joining, and still charge him for not joining or for



agitating his service grievance. He says that his communications were not acts of insubordination but attempts to secure posting, salary and allowances for himself and his family after repatriation.

39. The Petitioner also challenges the suspension order dated 15th April, 2019. He says that the order contains no reason except a mechanical recital that the charges are serious and grave. The alleged incidents were old. The Petitioner was not permitted to work physically. The relevant records were with CWC, NBT or Ministries. There was therefore no basis to conclude that suspension was necessary for the inquiry. He submits that the suspension has operated punitively and has caused serious prejudice.

The stand of CLE

40. CLE submits that the writ petition is not maintainable. CLE is a company limited by guarantee, incorporated under Section 25 of the Companies Act, 1956, and not a department or instrumentality of the Government. It emphasises that it is an autonomous industry body and one among several Export Promotion Councils recognised by the Ministry of Commerce. Its internal affairs, according to CLE, are managed by its Committee of Administration.

41. CLE relies heavily on the Office Memorandum dated 10th November, 1997 and the Ministry letter dated 21st July, 2017. According to CLE, these documents show that Government granted autonomy to Export Promotion Councils in creation of posts, recruitment and administrative matters, and that CLE is not a Government organisation. CLE also says that Government funds, if any, are scheme-specific and do not meet its establishment costs. It further submits that its employees are paid from its own resources and not from the Consolidated Fund of India.



42. CLE also relies on the 2016 amended Memorandum and Articles and submits that Government nominees do not exercise controlling power over CLE. It says that the Government's role, if any, is supervisory or regulatory and not pervasive. It argues that regulatory oversight, recognition under the foreign trade regime, and some financial support for specific schemes do not make a body "State" under Article 12.

43. CLE relies on judgments concerning other Export Promotion Councils, including *Darshan Singh v. Union of India*⁶ relating to the Sports Goods Export Promotion Council, *Raj Rajeshwar Dadhich v. Gem & Jewellery Export Promotion Council*,⁷ and *Dr. Jitarani Udgata v. Union of India*⁸ relating to the Gems and Jewellery Export Promotion Council.⁹ CLE submits that these authorities show that Export Promotion Councils are not State instrumentalities merely because they are sponsored, recognised or regulated by Government.

44. On the Article 226 enquiry, CLE submits that even if certain public-facing functions are performed by it, the present dispute is a pure service matter. The Petitioner's appointment was contractual and governed by CLE Standing Orders. No statutory service rule is invoked. A writ, according to CLE, cannot be maintained to enforce a private contract of service or to interdict a disciplinary inquiry under non-statutory Standing Orders. It relies on *Ramakrishna Mission v. Kago Kunya*,¹⁰ *K.K. Saksena v. International Commission on Irrigation and Drainage*,¹¹ and allied authorities to contend

⁶ WP(C) 4125 of 2000 decided on 18th December, 2009

⁷ 1992 SCC OnLine Raj 202

⁸ 2022 SCC OnLine Del 3449

⁹ "GJEPC"

¹⁰ (2019) 16 SCC 303

¹¹ (2015) 4 SCC 670



that a body may perform some public functions, but not every internal employment decision becomes amenable to judicial review.

45. On merits, CLE submits that the Petitioner remained its employee throughout. His deputations to CWC and NBT did not sever the relationship of employment with CLE. As parent employer, CLE retained disciplinary control. CLE says that it received communications and material from CWC and the Department of Commerce concerning serious financial irregularities committed by the Petitioner while serving as Secretary, CWC. It therefore issued a show-cause notice and, thereafter, the charge-sheet.

46. CLE submits that the charges involve serious financial and administrative misconduct including handling of public finances, regulatory lapses in TDS and statutory contributions, improper medical claims, and the misuse of CWC funds for legal fees, reflecting poorly on the standards expected of a senior employee. CLE submits that these matters require inquiry and the Petitioner cannot seek quashing of a charge-sheet at the threshold. It submits that disputed questions of fact cannot be decided in writ proceedings and the Petitioner must participate in the inquiry.

47. As regards suspension, CLE submits that the charges are grave and that suspension was ordered in exercise of power under Clause 12(b)(i) of the Standing Orders and subsistence allowance has been paid in accordance with the Standing Orders. CLE further submits that the Petitioner's conduct after repatriation, including agitation and discourteous correspondence, justified disciplinary scrutiny.

Stand of the Union and other Respondents

48. The Union of India has appeared in both petitions. In substance, its role in the present petition is tied to the Petitioner's contention that CLE



functions under the Ministry of Commerce and Industry and that communications from Government/CWC formed the basis of the disciplinary process. The Union's position, as emerging from the record, is that CLE is an Export Promotion Council and that its administrative autonomy and legal status have to be assessed in the light of the relevant Ministry communications and governing documents.

49. The Central Waqf Council and National Book Trust enter the factual narrative because Articles I to V arise from the Petitioner's CWC tenure and Articles VI and VII arise from the aftermath of NBT repatriation. The validity of NBT's relieving order is the subject matter of the W.P.(C) 6602/2018 and is not being finally determined in the present judgment.

Issues for determination

50. Having regard to the pleadings, documents, interim orders and submissions, the following issues arise for consideration:

- i. Whether CLE is an authority or instrumentality of the State within the meaning of Article 12 of the Constitution.
- ii. Even if CLE is not held to be "State" for every purpose, whether it is amenable to writ jurisdiction under Article 226 having regard to its constitution, functions, Government control and role under the foreign trade/export regime.
- iii. Whether the present challenge to the charge-sheet dated 1st March, 2019 and suspension order dated 15th April, 2019 is maintainable, or whether it is barred as a private service dispute under non-statutory Standing Orders.
- iv. Whether CLE could initiate disciplinary proceedings on allegations substantially arising from the Petitioner's tenure as Secretary, Central Waqf



Council, without first satisfying itself as to the authority and validity of the CWC/Ministry communications forming the basis of such proceedings.

v. Whether the charge-sheet dated 1st March, 2019 suffers from non-application of mind, pre-determination, mala fides, denial of relevant documents, or any other foundational infirmity warranting interference at the threshold.

vi. Whether Articles VI and VII of the charge-sheet, concerning alleged failure to join after repatriation from NBT, agitation and discourteous conduct, can stand in the face of CLE's own refusal to permit physical joining and the Court-recorded salary arrangement dated 18th December, 2018.

vii. Whether the suspension order dated 15th April, 2019 is legally sustainable, having regard to the nature of the charges, the passage of time, CLE's own conduct, and the requirement that suspension should not be used punitively.

viii. What relief, if any, should be granted.

51. Since maintainability has been pressed as a preliminary objection and has been expressly kept open by order dated 20th January, 2026, it must be decided first.

Maintainability

52. The Court will therefore turn first to the constitutional status of CLE, under Article 12 of the Constitution, its amenability to writ jurisdiction under Article 226 and whether the present challenge, though arising from a disciplinary proceeding, has sufficient public law content to sustain the writ petition. The first three issues are thus taken up together.

53. CLE objects to the maintainability of the writ petition on the ground



that it is a company limited by guarantee, incorporated under Section 25 of the Companies Act, 1956. It claims that it is neither a department of the Government nor a statutory corporation. Its affairs are managed by its Committee of Administration and its employees are governed by CLE's own Standing Orders. On that basis, it is argued that the present *lis* is an employer-employee dispute arising under non-statutory service conditions. CLE also places reliance on the Ministry's letter dated 21st July, 2017 and the Office Memorandum dated 10th November, 1997. It contends that Export Promotion Councils were granted autonomy in administrative matters, including creation of posts and recruitment of staff, and that CLE has been specifically described as not being a Government organisation.

54. The Petitioner contests that characterisation. He submits that CLE cannot be judged merely by its corporate form. The substance of its constitution, control and functions must be examined. CLE is sponsored by the Ministry of Commerce and Industry, performs duties under the foreign trade and export regime, and has been notified as the registering authority for exporters in the leather sector. He also relies upon CLE's constitutional documents, which, according to him, reserve substantial authority in favour of the Central Government. The Petitioner further submits that the public character of CLE is no longer a matter of first impression. A Division Bench of the Madras High Court, while examining CLE's compulsory registration function in relation to leather exports, recognised it as acting as an instrumentality of the Central Government. On this foundation, the Petitioner contends that CLE answers the description of "State" or "other authority" within Article 12 of the Constitution. In any event, he submits that CLE performs public duties and is amenable to writ jurisdiction under



Article 226.

55. The objection raises a question of constitutional status and its amenability to writ jurisdiction. The enquiry, therefore, has two layers. The first is institutional: what is CLE? The second is functional and contextual: what is the character of the action challenged? A body may be “State” under Article 12 for all purposes. Even where it is not, it may be amenable to Article 226 in respect of public duties. Conversely, a body may perform public functions in one field, yet not be subject to writ jurisdiction for a purely private employment claim. The constitutional task is to avoid both over-inclusion and artificial exclusion.

56. Judicial decisions have not treated all Export Promotion Councils alike. Their status has turned on the governing documents of the particular Council, the nature of the function under examination, the degree and quality of Government control, and the character of the action impugned. It would therefore be unsafe to proceed on the assumption that every Export Promotion Council must fall on the same side of the constitutional line. The enquiry must remain institution-specific and, where Article 226 is invoked, function-sensitive. This Court must accordingly examine CLE on its own constitution, functions and history, and must also test the present dispute by reference to the setting in which the impugned action was taken.

57. In *Ajay Hasia v. Khalid Mujib Sehravardi*,¹² the Supreme Court held that the enquiry is not controlled by the form or manner in which a juristic entity is brought into existence. A society or company may, in a given case, constitute an instrumentality or agency of the Government. The indicia identified in *Ajay Hasia* are not rigid formulae, but relevant factors to



determine whether the body, in substance, answers the constitutional description of “State” under Article 12.

58. ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***,¹³ restated the principle with greater precision. The question in each case is whether, on a cumulative assessment, the body is financially, functionally and administratively dominated by, or under the control of, Government. The control must be particular to the body and pervasive; mere regulatory control, whether statutory or otherwise, is not sufficient. The focus, therefore, is on real and deep governmental control in substance, and not merely on the juristic form of the entity, governmental patronage, or supervisory oversight.

59. Article 226 stands on a wider footing. A writ may issue not only against the State and statutory bodies, but also against “any person or authority” performing a public duty or owing a positive obligation of a public nature. In ***Ramakrishna Mission v. Kago Kunya***,¹⁴ the Supreme Court reiterated that a writ under Article 226 can lie against a statutory body, an instrumentality of State, a company financed and owned by the State, a body substantially run on State funding, a private body discharging public duty, or a person/body under a statutory obligation.

60. The same judgment, relying on ***K.K. Saksena v. International Commission on Irrigation and Drainage***,¹⁵ draws another distinction which is material here. Even where a body performs some public function and is amenable to writ jurisdiction, all its decisions are not thereby subject to

¹² (1981) 1 SCC 722

¹³ (2002) 5 SCC 111

¹⁴ (2019) 16 SCC 303

¹⁵ (2015) 4 SCC 670



judicial review. A writ does not lie to enforce purely private law rights. If the action challenged lies wholly in the domain of a private contract of service, the High Court would ordinarily decline interference. But where the action bears a public law character, the width of Article 226 remains available.

61. In this backdrop, CLE's reliance on *S.K. Mukherjee v. Chemical & Allied Products Export Promotion Council*,¹⁶ does not carry the matter far. That decision concerned termination of a stenographer employed by an Export Promotion Council and proceeded on an older understanding of Article 12 and prerogative writs. It treated the Council as a company and held that appointment or dismissal of its employees did not involve statutory duties. The later constitutional development from *Rajasthan State Electricity Board*,¹⁷ *Sukhdev Singh*,¹⁸ *Ramana Dayaram Shetty*,¹⁹ *Ajay Hasia*, *Pradeep Kumar Biswas*, *Zee Telefilms*²⁰ and *Ramakrishna Mission* has substantially widened and refined the enquiry. *S.K. Mukherjee* may still be relevant to the proposition that every employment dispute of every Export Promotion Council is not automatically a writ matter. It cannot decide the present case, where the record contains later Governmental instruments, foreign trade policy functions, and direct judicial consideration of CLE's role.

62. CLE also relies on *Darshan Singh*, decided by this Court in relation to the Sports Goods Export Promotion Council. There, the Petitioners challenged reduction of the age of superannuation from 60 to 58 years. The

¹⁶ (1961) 31 Comp Cas 733

¹⁷ *Rajasthan State Electricity Board v. Mohan Lal*, 1967 SCC OnLine SC 18

¹⁸ *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.*, (1975) 1 SCC 421

¹⁹ *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*, (1979) 3 SCC 489



Council was a company registered under the Companies Act, its main object was to promote exports of sports goods, and the Court noticed the objection that it was a body of private individuals. The reasoning turned substantially on the internal management of that Council, its funding pattern, and the nature of the service dispute placed before the Court.

63. *Darshan Singh* cannot, however, be read as laying down an absolute proposition that no Export Promotion Council can ever answer the description of “State” under Article 12 or otherwise be amenable to writ jurisdiction. The decision turned on the institutional character of the Sports Goods Export Promotion Council and the nature of the dispute before the Court. The present case concerns a different body, a different constitutional record, and disciplinary action founded substantially upon acts allegedly committed by the Petitioner while serving, on deputation, in the Central Waqf Council, a statutory body. The question therefore requires independent examination on the material relating to CLE and the public law character, if any, of the impugned action.

64. *Raj Rajeshwar Dadhich v. Gem & Jewellery Export Promotion Council*,²¹ also does not carry CLE’s objection to its desired conclusion. In that case, the Rajasthan High Court found that the affairs of the Gem & Jewellery Export Promotion Council were managed by its Working Committee. Government control was viewed as limited, principally directed at ensuring proper utilisation of grants. The Court also noticed that Government nominees formed only a small part of a larger committee and did not control day-to-day management. The dispute, there too, arose from

²⁰ Zee Telefilms Ltd. and Anr. v. Union of India and Ors., (2005) 4 SCC 649

²¹ 1992 SCC OnLine Raj 202



an employment claim. The decision is useful to the limited extent that Government nomination, grant-in-aid or export-promotion activity, taken separately, may not be enough to attract Article 12. But it does not decide the question presented here. CLE must be tested on its own governing documents, its compulsory registration role in the leather export sector, the degree of Government control reflected in its constitution, and the public law setting in which the impugned disciplinary action arose.

65. CLE places its principal reliance on the Division Bench decision of this Court in *Dr. Jitarani Udgata v. Union of India*.²² The Division Bench cautioned that Article 12 cannot be expanded so widely as to bring every autonomous body with some Government nexus within the fold of “State”. It reiterated that powers, functions, finances and Government control are relevant indicators, but none of them is conclusive by itself. The control must be real and pervasive. A merely regulatory relationship with Government does not convert an otherwise autonomous body into an authority of the State.

66. On the facts before it, the Division Bench found that the Gem & Jewellery Export Promotion Council was essentially a collective body of exporters. Its role was to place the concerns of the export trade before Government. The Court found that it did not carry out Government policy, did not participate in governmental decision-making, and was managed by a Committee of Administration consisting predominantly of exporters. The three Government nominees on that Committee did not exercise controlling voting power. On that factual foundation, the Division Bench held that GJEPC was not “State” within Article 12, and that the service dispute before



it was not maintainable in writ jurisdiction.

67. *Jitarani* is binding on this Court for the principles it lays down. It does not, however, conclude the status of every Export Promotion Council irrespective of its own constitution, functions and entrusted role under the export regime. The Division Bench did not proceed on a class-wide assumption. It examined the particular Council before it and reached its conclusion on the material relating to GJEPC. *Jitarani* therefore supplies the governing caution, but not the factual answer to the present case.

68. The Petitioner relies on *All India Garment Exporters Common Cause Guild v. Union of India*.²³ In that case, AEPC was examined in the context of the Exim Policy. The Court noticed that AEPC was incorporated under Section 25 of the Companies Act, was sponsored by the Ministry of Textiles, received Government grants, was listed as an Export Promotion Council under the Exim Policy, and issued Registration-cum-Membership Certificates. The Court held that even if AEPC were not State under Article 12, it exercised public functions in ensuring implementation of the Exim Policy and was amenable to Article 226.

69. *All India Garment Exporters* recognises that the status of an Export Promotion Council cannot be determined only by its incorporation under the Companies Act. Its role under the foreign trade regime, the consequences of its decisions on exporters, and the source of its functions are material. The later appellate history of that case and its treatment in *Jitarani* must be kept in mind. Yet the underlying principle remains sound: where a body performs a function under a statutory or policy regime affecting legal rights in trade,

²² (2022) 6 HCC (Del) 1

²³ 2011 SCC OnLine Del 265



the nature of that function may attract Article 226.

70. ***Robin Sharma v. Apparel Training and Design Centre***,²⁴ strongly underscores this exact method of judicial enquiry. In that case, the Court refused to rest the matter on nomenclature, opting instead to microscopically examine the Memorandum of Association, the composition of the governing body, the presence of Government nominees, the funding patterns, assets, underlying public schemes, and the structural relationship between the training center and its parent Export Promotion Council. Guided by that precedent, this Court must look beyond the corporate label of a Section 25 company limited by guarantee and inspect the actual governing instruments and regulatory functions.

71. ***Sunirmal Kumar Roy v. Union of India***,²⁵ stands closer to the present controversy. The Calcutta Division Bench was concerned with CAPEXIL, earlier known as the Chemical and Allied Products Export Promotion Council, and examined whether it was amenable to writ jurisdiction. The Court noticed that the Department of Commerce had encouraged the formation of Export Promotion Councils under its administrative control. It also noticed that such Councils functioned as registering authorities for exporters under the foreign trade framework, that CAPEXIL's Memorandum could not be altered without prior Central Government approval, that Government nominees formed part of its committee, and that the Government supervised export promotion activities through it. The decision may not directly bind this Court. Its reasoning, however, is instructive. It recognises that an Export Promotion Council cannot be

²⁴ 2021 SCC OnLine Del 5886

²⁵ 2006 SCC OnLine Cal 868



assessed by nomenclature alone. Where its governing instruments, entrusted functions and Government control reveal a public character, such a Council may be amenable to writ jurisdiction.

72. The direct and most significant authority concerning CLE itself is *Council for Leather Exports v. All India Small Scale Tanners and Exporters Association*.²⁶ That case arose from a challenge to a circular issued by CLE demanding 5% development fee on finished leather exports and to the related public notice issued by the Director General of Foreign Trade. The Division Bench of the Madras High Court first noticed that the public notice inserted the condition “Registration of exports with Council for Leather Exports”.

73. The Division Bench then examined the Export and Import Policy for the period 1st April, 1992 to 31st March, 1997. It noted that the DGFT could specify, through public notice, terms and conditions according to which goods not in the Negative List may be exported, including registration with specified authorities. It further noted that Export Promotion Councils were enumerated as specified authorities and that CLE appeared as one such authority. The public notice then made registration of finished leather exports with CLE compulsory.

74. The finding of the Madras Division Bench bears directly on the present issue. It held that although CLE was a registered company under the Companies Act, it was recognised, for the purpose of exporting finished leather goods, as an Export Promotion Council regulating exports; that the function which the Central Government was required to perform had been entrusted to CLE; and that while discharging such functions, CLE acted as



an instrumentality of the Central Government and not merely as a company. The Court expressly rejected the contention that CLE's corporate form excluded relief under Article 226.

75. The Division Bench went further. It held that in view of the function entrusted to CLE, which formed part and parcel of the functioning of the Central Government, CLE could not escape judicial review in respect of its decision relating to the demand of development fee against registration of exports. It also observed that CLE was exercising powers which the Central Government was to exercise and, to that extent, became an instrumentality of the State.

76. CLE submits that the Madras decision arose in the context of levy of development fee and export registration rather than an employment dispute. That distinction is noted. The significance of the judgment, however, lies in its examination of CLE's institutional character and the nature of the functions discharged by it under the foreign trade regime. To that extent, the decision bears upon the enquiry into CLE's constitutional status and amenability to writ jurisdiction.

77. The governing documents of CLE nevertheless disclose that Government is not a distant external regulator standing wholly outside the Council's institutional framework. The material placed on record indicates Government-nominated members, Government involvement in aspects of internal governance including appointment of the Election Authority, concurrence in appointment of auditors, restrictions against alteration of the Memorandum and Articles without prior approval of the Central Government, provisions contemplating deputation of Government servants

²⁶ 1996 SCC OnLine Mad 1237



to the Council, and a binding power of Government directions under Article 76. These features assume significance when read alongside CLE's role within the foreign trade regime.

78. At the same time, following *Jitarani*, the Court does not proceed on the basis that Government nominees, approval clauses or audit concurrence, taken in isolation, would by themselves satisfy Article 12. The significance of these features lies in their cumulative effect and in the setting in which they operate. CLE performs functions carrying consequences under the foreign trade framework and, at the same time, remains institutionally linked with Government through binding directives under Article 76, Governmental involvement in electoral and audit processes and approval requirements for alteration of its governing instruments. The enquiry, therefore, does not stop at incorporation under the Companies Act.

79. The Court must therefore examine whether CLE's relationship with Government is merely regulatory, as was found in *Jitarani* in relation to GJEPC, or whether the present record reveals a deeper and more direct connection with governmental functions and control. In *Jitarani*, the Division Bench found that GJEPC was essentially a collective body of exporters. It placed trade concerns before Government. It did not carry out Government policy or participate in governmental decision-making. Its Committee of Administration was dominated by exporters, and the Government nominees did not exercise controlling voting power. The record before this Court, however, stands on a different footing.

80. CLE itself has been considered by a Division Bench of the Madras High Court. In proceedings concerning CLE, the Madras High Court held that, while discharging the compulsory registration function in relation to



leather exports, CLE acts as an instrumentality of the Central Government and not merely as a company. That finding is of direct relevance because it concerns the same body and the same export-sector function which gives CLE its public character.

81. Under the Foreign Trade Policy and the Handbook of Procedures, exporters in the leather sector are required to obtain a Registration-cum-Membership Certificate through the concerned Export Promotion Council. CLE is recognised as the Council for the leather sector. The regulatory framework accords institutional consequences to such recognition, including for compliance and availing benefits under the foreign trade framework. CLE's role is therefore not confined to representing industry concerns before Government, but forms part of the operational structure through which the foreign trade regime is administered in the leather sector. The Court is conscious that, in *Jitarani*, the Division Bench did not regard the functions of an Export Promotion Council under the foreign trade framework as sufficient, by themselves, to satisfy Article 12. The present case, however, concerns CLE functioning within a different institutional setting.

82. The significance of that role lies in the wider institutional setting in which CLE functions. Unlike the position noticed in *Jitarani*, where GJEPC was found to function essentially as a collective body of exporters and Governmental oversight was treated as regulatory, the material concerning CLE discloses a closer institutional nexus with Government. CLE performs functions carrying regulatory consequences under the foreign trade framework, including issuance of Registration-cum-Membership Certificates in the leather sector, and operates within a structure in which the



Central Government retains a continuing role in matters such as constitutional amendments, appointment of the Election Authority, concurrence in appointment of auditors, and deputation-related arrangements. These features, when read cumulatively with CLE's role under the foreign trade regime, place it on a materially different footing from the body considered in *Jitarani*.

83. There is another material distinction from the position considered in *Jitarani*. In that case, the Government's power to issue directions to GJEPC was confined to matters such as national security, national economy or public interest, which the Division Bench treated as supervisory or regulatory in character. CLE's governing framework stands on a different footing. Article 76 of the AoA contains a non obstante clause empowering the Union Government to issue directives "in respect of promotion and development of international trade" and requiring the Council to "give due effect" to such directions. The power, unlike in *Jitarani*, is neither confined to exceptional contingencies nor external regulation. It extends to the very field for which CLE exists and functions. This constitutes a material distinction in the cumulative assessment of Government control.

84. The historical record also reflects instances of direct Government involvement in executive appointments within CLE. The record contains the Government of India order dated 16th June, 2009, issued by the Ministry of Commerce and Industry, appointing the Petitioner, who was then Regional Director of CLE and holding additional charge of Executive Director, to the post of Executive Director, CLE. While this appointment arose under an earlier constitutional framework of the Council, it nevertheless illustrates the historically close governmental association with the highest executive office



in CLE. More importantly for the present enquiry, the Petitioner's own service relationship with CLE bears traces of direct Government involvement, lending additional public law colour to the present *lis*.

85. There is also another feature of CLE's institutional functioning which merits notice. The record indicates that part of CLE's revenue is derived from membership and registration mechanisms connected with the RCMC framework under the Foreign Trade Policy. The significance of this circumstance lies in the fact that a part of CLE's financial structure is linked to the discharge of functions recognised under the foreign trade regime. Though not independently determinative of Article 12, this is a relevant circumstance in the cumulative assessment of CLE's institutional character and public nexus.

86. On the other hand, CLE relies on the 2016 amended Memorandum and Articles of Association, the OM dated 10th November, 1997 and the Ministry's letter dated 21st July, 2017. Its submission is that these documents describe CLE as an autonomous industry body and not as a Government organisation. The Court has considered that submission. The 1997 Office Memorandum and the Ministry correspondence do indicate administrative autonomy in certain internal matters, especially in relation to creation of posts and recruitment within budgetary discipline. But autonomy in day-to-day administration does not, by itself, negate public character. Many public bodies function with operational autonomy. The real question is not whether CLE enjoys any autonomy, but whether the cumulative record discloses financial, functional and administrative control of the kind relevant under Article 12, and in any event, whether CLE performs public duties sufficient to attract Article 226.



87. The later statement that CLE is “not a Government organisation” is therefore not conclusive. Constitutional status is a matter of legal characterisation. It does not turn on a departmental description. If the origin, functions, governing instruments, entrusted role and actual working of a body satisfy the constitutional tests, a Ministry letter cannot place it beyond scrutiny. Nor does CLE become an ordinary private body merely because its entire establishment expenditure is not met from Government funds, or because elected industry representatives participate in its day-to-day management. Those factors must be weighed, but they do not displace the cumulative effect of CLE’s public functions and the Government-control features reflected in the record.

88. At the same time, CLE’s autonomy argument cannot be brushed aside. The material does show that CLE is incorporated under the Companies Act, that a substantial part of its membership is drawn from industry, that its daily affairs are handled through the Committee of Administration, and that its employees are stated to be governed by CLE’s Standing Orders rather than DoPT rules. These are relevant considerations. They are the reason why the Court cannot adopt a broad, undifferentiated proposition that every Export Promotion Council is “State”. They do not, however, answer the present case. The question remains whether, despite these features, the cumulative record concerning CLE discloses a public character and Government control sufficient to satisfy Article 12, or at least amenability under Article 226.

89. Even apart from the institutional position of CLE, the present case does not arise from a routine internal service dispute confined to CLE’s office. The impugned disciplinary action is founded substantially on alleged



acts performed by the Petitioner while serving as a Secretary at Central Waqf Council, a statutory body. It also rests on communications from public authorities, deputation and repatriation through public bodies, and earlier proceedings recorded by this Court in the connected writ petition. Even apart from CLE's institutional status, these facts supply a distinct public law element to the controversy.

90. CLE's objection that the dispute is, in substance, a service matter must therefore be examined with precision. The general rule is well settled. Writ jurisdiction is not ordinarily invoked to enforce a private contract of service. Where the employer is not "State" and the service conditions have no statutory force, Article 226 does not become a substitute for a civil suit, industrial remedy, or any other remedy available in private law. *Ramakrishna Mission and K.K. Saksena* preserve this important boundary between public law and private law.

91. The present case, however, does not fit that description. Once CLE is held, on the cumulative record, to be an authority or instrumentality of the State, its employment decisions cannot be placed beyond Article 14 merely because the service conditions are found in Standing Orders. A State instrumentality cannot act arbitrarily in matters of employment. The source of the service rule may bear upon the nature and extent of relief, but it does not exclude constitutional scrutiny where the action is alleged to be arbitrary, *mala fide*, jurisdictionally defective or procedurally unfair.

92. Even if the matter were tested on the narrower footing of Article 226, the petition would still be maintainable. The impugned charge-sheet and suspension do not arise from a closed private employment arrangement. Articles I to V relate to the Petitioner's tenure as Secretary, Central Waqf



Council, a statutory body under the Waqf Act. The charge-sheet proceeds on material and communications emanating from public authorities. Articles VI and VII arise from the Petitioner's repatriation from NBT, the subsequent refusal by CLE to permit physical joining, and the salary arrangement recorded by this Court. These features take the impugned action beyond an ordinary master-servant dispute and give it a clear public law setting.

93. This conclusion is consistent with *Ramakrishna Mission*. In that case, the Supreme Court found that the hospital run by the Mission was a voluntary service institution. No monopoly status had been conferred upon it by law. Medical services were being provided both by State institutions and private bodies. The employee there sought, in substance, enforcement of service rules in a private employment setting. CLE stands on a different footing. At least in the field of leather export registration, it performs an entrusted function within the foreign trade regime. The present controversy is also not confined to an internal service grievance. It is interwoven with public deputations, a statutory office, communications from Government/public authorities, and service arrangements recorded by this Court.

94. Nor does this conclusion declare all Export Promotion Councils to be "State". Each Council must be tested on its own documents, functions and record. *Darshan Singh, Raj Rajeshwar Dadhich and Jitarani* show that export-promotion activity, limited Government oversight, grant-in-aid, or the presence of Government nominees may not, by themselves, suffice. The present finding rests on the cumulative record concerning CLE. That record includes its entrusted compulsory registration role in the leather export sector, the Madras Division Bench judgment concerning CLE itself, the



Government-control clauses in its governing documents, the appointment of the Petitioner as Executive Director by the Central Government, and the public law setting in which the impugned disciplinary action arose.

95. The Court therefore rejects the submission that incorporation under Section 25 of the Companies Act is conclusive. Corporate form is relevant, but it is not decisive. A public function does not lose its character merely because it is entrusted to a company limited by guarantee. Equally, a company does not become “State” merely because it is recognised or regulated by Government. The constitutional enquiry looks past form to substance. It asks where effective authority lies, what function the body performs, how that function is controlled, and what consequences flow from its decisions.

96. On a cumulative assessment of the material, this Court holds that CLE answers the description of an authority or instrumentality of the State within Article 12 of the Constitution.

97. In any event, and independently of the Article 12 finding, CLE is amenable to writ jurisdiction under Article 226 where the action impugned bears a public law character. The present action does. The Petitioner is not merely seeking enforcement of an ordinary private contract of service. He challenges a charge-sheet and suspension founded upon his tenure in a statutory body, communications from public authorities, deputation and repatriation through Government-linked institutions, and orders passed by this Court concerning his joining and salary position. The dispute therefore carries a public law character sufficient to sustain the writ petition.

98. The objection that the petition is not maintainable because the Petitioner is governed by CLE Standing Orders is also rejected. The



Standing Orders may be relevant when the Court examines the validity of the charge-sheet and suspension. They do not bar the maintainability of the writ once CLE is found to be an authority under Article 12 and, in any event, once the impugned action is found to carry a public law element.

99. Issues (i), (ii) and (iii) are accordingly answered in favour of the Petitioner. CLE is amenable to writ jurisdiction. On the material placed before the Court, CLE is an authority/instrumentality of the State within Article 12. Even otherwise, the present petition is maintainable under Article 226 because the impugned disciplinary action bears sufficient public law character. The Court shall therefore proceed to examine the legality of the charge-sheet and the suspension order on merits.

Merits

100. Having held that the writ petition is maintainable, the Court now turns to the validity of the charge-sheet dated 1st March, 2019, the disciplinary proceedings initiated pursuant thereto, and the suspension order dated 15th April, 2019.

101. Before examining the record, it is necessary to state the limits of judicial review at the stage of a charge-sheet. Ordinarily, a writ court does not interdict disciplinary proceedings at their inception. A charge-sheet is not quashed merely because the employee disputes the facts, offers an explanation, or contends that the allegations are ultimately unsustainable. The truth of the charge, the credibility of the material and the weight of the defence are matters ordinarily left to the disciplinary authority and the inquiry officer. This principle has been reiterated in *Union of India v.*



Kunisetty Satyanarayana,²⁷ *Union of India v. Upendra Singh*,²⁸ and *Secretary, Ministry of Defence v. Prabhash Chandra Mirdha*.²⁹

102. However, the rule is not absolute. A writ court may interfere at the threshold where the charge-sheet is issued by an authority lacking jurisdiction, where the proceeding is *mala fide*, where the allegations even if taken at face value do not amount to misconduct, where the action rests on no material, or where the authority proceeds under dictation or without independent application of mind. Interference is also warranted where the process is so fundamentally unfair that allowing it to continue would itself become oppressive. Restraint at the charge-sheet stage is a rule of prudence. It is not a command to overlook jurisdictional error, manifest unfairness or abuse of process.

103. The present case must be tested against that standard. The Petitioner questions the foundation and fairness of the process itself. His case is that CLE acted on communications relating to his tenure in a statutory body without first verifying whether those communications emanated from, or had the approval of, the competent authority in CWC. He submits that CLE had already decided to proceed with an inquiry before meaningfully considering his reply. He also complains of denial of material documents necessary for his defence.

104. The Petitioner's challenge to Articles VI and VII stands on a separate footing. According to him, those charges are contradicted by CLE's own stand before this Court, particularly its refusal to permit physical joining and its later treatment of salary payment as joining or deemed joining. The

²⁷ (2006) 12 SCC 28

²⁸ (1994) 3 SCC 357



suspension order is assailed on the further ground that it records no independent assessment of necessity and proceeds only on a mechanical recital that the charges are serious and grave.

105. The charges fall into two distinct groups. Articles I to V relate to the Petitioner's tenure as Secretary, Central Waqf Council. Articles VI and VII relate to the events after his repatriation from National Book Trust and his communications with CLE. The first group raises questions of authority, source material and fairness. The second group is tested directly against CLE's own conduct before this Court.

Articles I-V concerning tenure as Secretary, CWC

106. The challenge to Articles I to V turns, in the first instance, on the settled legal character of deputation. Deputation does not result in the transfer of an employee's substantive appointment to the borrowing organisation; it only places his services, for a specified period and purpose, at the disposal of another authority. The employee continues to retain his lien and substantive relationship with the parent organisation, a principle authoritatively recognised in *State of Punjab v. Inder Singh*.³⁰ It follows that CLE did not divest itself of disciplinary control over the Petitioner merely by reason of his serving on deputation as Secretary, Central Waqf Council.

107. This conclusion answers only the question of power. It does not resolve how that power was exercised in the facts of the present case. Articles I to V do not concern CLE's internal functioning; they arise from acts attributed to the Petitioner during his tenure as Secretary, Central Waqf

²⁹ (2012) 11 SCC 565

³⁰ (1997) 8 SCC 372



Council, a statutory body constituted under the Waqf Act. Any inquiry into those charges must therefore be informed by the institutional and statutory framework within which the acts were performed. CLE was entitled to examine whether the Petitioner's conduct during deputation attracted consequences under its Standing Orders, but it could not do so divorced from the context in which that conduct occurred. The source of the complaint, the authority from which the material emanated, the statutory position held by the Petitioner, any approval or ratification within CWC, and the particular Standing Orders said to be breached, all bear directly on the legitimacy of the inquiry.

108. This aspect assumes particular significance in light of the nature of the Petitioner's appointment. He was not serving in a casual or informal capacity, but held the statutory office of Secretary, Central Waqf Council, under the Waqf Act and the applicable Rules. His appointment, and the extensions that followed, were processed through the Ministry of Minority Affairs and the Chairperson of the Council.

109. From the outset, the Petitioner has maintained that the communications from CWC, on which CLE founded its action, did not emanate from the competent authority. According to him, that authority was the Union Minister for Minority Affairs in his capacity as ex-officio Chairperson of the Council. He further contends that several acts later characterised as irregular had, in fact, been approved, processed, or otherwise dealt with within the institutional framework of CWC. On that basis, he asserts that CLE framed the charges without first obtaining or examining the relevant approval notes, decisions of the competent authority, and the complete audit record.



110. These objections cannot be dismissed as extraneous or irrelevant. Although they do not, at this stage, justify quashing Articles I to V, they are directly material to the fairness and legality of the inquiry. If the acts in question were approved, ratified, or otherwise dealt with within CWC, that circumstance may bear significantly on whether misconduct is made out under the Standing Orders of CLE. Likewise, if the communications relied upon do not reflect the position of the competent authority within CWC, that issue must be examined before any adverse conclusion is reached.

111. The Petitioner's request for documents must be viewed in this context. He sought, *inter alia*, records reflecting approval by the Union Minister/Chairperson, documents bearing on CLE's authority to initiate the proceedings, records concerning repatriation and assumption of charge, and material relevant to the alleged financial irregularities. By order dated 24th April, 2019, the Inquiry Officer rejected several of these requests on the ground that they were either irrelevant or in the nature of a fishing inquiry.

112. Ordinarily, in disciplinary proceedings, an employee cannot demand production of documents on a speculative basis, nor is the Inquiry Officer required to permit a roving inquiry. The present case, however, stands on a different footing. Articles I to V are substantially founded on records of a separate statutory body. Where CLE seeks to rely on audit material, correspondence, or complaints emanating from CWC, the Petitioner must be given access to such material as is reasonably necessary to test its authority, completeness, and context. Documents bearing on approval, ratification, resolution of audit objections, the competence of the originating authority, or otherwise relevant to the defence cannot be withheld merely because they form part of CWC records or because their production may render the



inquiry more elaborate.

113. The Court is not persuaded that the mere receipt of material from CWC or the Department of Commerce is, by itself, insufficient to justify initiation of disciplinary proceedings. To hold otherwise would set the threshold unduly high at this stage. Whether the material relied upon is complete and accurate, whether relevant approvals or explanations exist, and whether the acts alleged amount to misconduct under the Standing Orders, are matters that must be examined in the course of the inquiry.

114. The Court refrains, at this stage, from expressing any conclusive view on the merits of Articles I to V. The record shows that the inquiry had already advanced to the stage of defence evidence before it was stayed. In these circumstances, it would be inappropriate to interdict the proceedings solely because the Petitioner disputes the authority, completeness, or correctness of the material received from CWC. The proper course is to allow the inquiry to continue, while ensuring that the Petitioner's objections are duly examined.

115. The plea of pre-determination and non-application of mind has also been considered. The sequence of events does raise some concern as to whether the Petitioner's objections were adequately examined before the proceedings were initiated. That concern, however, is not sufficient, on the material presently available, to sustain a definitive finding of *mala fides* or pre-determination so as to justify quashing the charges at this stage. The more appropriate course is to permit the inquiry to continue, subject to the safeguards indicated below.

116. Accordingly, the inquiry shall continue in respect of Articles I to V from the stage at which it stood stayed. If any relied-upon document, or any



document reasonably necessary for an effective defence, has not been furnished, or has earlier been declined, the Petitioner may submit a fresh request within two weeks from the date of this judgment. The Inquiry Officer shall consider such request in accordance with law and the applicable service rules, and shall not reject it merely because the document pertains to CWC, provided it bears a demonstrable nexus to the charge or to the Petitioner's defence. The Petitioner shall be afforded adequate opportunity to respond to any additional documents furnished and to take all consequential steps in accordance with law for the purposes of his defence.

117. If any such request is declined in whole or in part, the Inquiry Officer shall record brief reasons indicating why the document is considered irrelevant, privileged, or otherwise not liable to be produced, so that the disciplinary authority may, at the appropriate stage, assess whether any prejudice has been caused to the Petitioner. It is clarified that non-supply of a particular document shall not, by itself, vitiate the proceedings unless the Petitioner is able to demonstrate that such non-supply has resulted in denial of a reasonable opportunity of defence or has caused grave prejudice, in which event it will be open to him to take all permissible pleas before the disciplinary authority and, if necessary, in further challenge to the final order.

118. Before passing any final order, the disciplinary authority shall independently consider and record specific findings on the Petitioner's objections concerning the competence of the source of the CWC material, the existence or absence of approval or ratification by the competent authority within CWC, the completeness of the audit record, and whether the acts alleged, even if established, constitute misconduct under the Standing



Orders of CLE. Any order adverse to the Petitioner shall contain reasoned findings on each of these aspects.

Articles VI and VII concerning non-joining, agitation and alleged discourtesy

119. Articles VI and VII stand on a different footing. Article VI alleges that, instead of joining CLE after repatriation from NBT, the Petitioner agitated against the repatriation and caused embarrassment to CLE. Article VII alleges impolite, discourteous and insubordinate conduct through letters/emails dated 7th September, 2018 and during the meeting dated 11th September, 2018.

120. These charges cannot be examined apart from CLE's own conduct. The Petitioner was repatriated by NBT on 29th May, 2018. He approached CLE for joining. CLE did not permit physical joining. By order dated 20th November, 2018 in W.P.(C) 6602/2018, CLE was impleaded precisely because the Petitioner complained that, after repatriation, he had tried to join his parent organisation but was not allowed to do so.

121. On 18th December, 2018, CLE appeared before this Court and stated, on instructions, that it was not ready to give joining to the Petitioner, but would pay salary from 9th July, 2018 till further orders. The Court recorded that statement. A later instruction given by CLE to its counsel in April, 2026 also records CLE's understanding that salary released pursuant to the Court's order was considered as the Petitioner's joining in the Council and that he was thereafter placed under suspension with effect from 15th April, 2019.

122. This sequence is decisive. CLE could not refuse physical joining, pay salary pursuant to a Court-recorded arrangement, later treat that payment as



joining or deemed joining, and yet maintain a charge on the premise that the Petitioner had failed to join after repatriation. The position is internally inconsistent. The Petitioner cannot be charged for not doing what CLE itself did not permit him to do. Nor can an employer first create the uncertainty and then treat the employee's response to it as misconduct.

123. The same reasoning bears directly on Article VII. The communication dated 7th September, 2018 was written in the setting of non-posting, non-release of salary, and continuing uncertainty after repatriation. CLE may well have found its tone unpleasant or inappropriate. It may be argued that senior officers are expected to maintain discipline and restraint even when aggrieved. However, disciplinary law does not treat every sharp, anxious, or distressed representation as misconduct. Context matters. A communication written by an employee seeking posting and salary, after being kept out of work despite reporting back, cannot be assessed as though it were an unprovoked act of insubordination.

124. The Petitioner's protest arose from CLE's refusal to permit joining, the non-release of salary, and the absence of a posting after repatriation. Before converting that protest into a charge of grave misconduct, CLE was required to confront its own role in creating the situation from which the protest emerged. It did not do so.

125. Articles VI and VII rest on a factual and legal premise that cannot be reconciled either with CLE's recorded stand before this Court or with the basic logic of service law. Permitting the inquiry to proceed on these articles would serve no legitimate disciplinary purpose. It would instead allow CLE to convert the consequence of its own refusal to accept joining into an allegation of misconduct against the Petitioner.



126. For these reasons, Articles VI and VII of the charge-sheet are held to be unsustainable and are quashed.

Suspension order dated 15th April, 2019

127. The suspension order dated 15th April, 2019 records only that disciplinary proceedings were pending and that the charges were serious and grave. It then places the Petitioner under suspension with immediate effect under Clause 12(b)(i) of the Standing Orders and grants subsistence allowance under Clause 12(b)(iii).

128. The Court is conscious that suspension pending inquiry is ordinarily an administrative measure. Courts do not interfere with such orders merely because another view is possible, or because the employee disputes the charges. The employer must have a fair degree of latitude in deciding whether the presence of the employee may prejudice the inquiry, affect discipline, or interfere with records or witnesses. That restraint, however, does not mean that an order of suspension is immune from scrutiny. The Court may interfere where the order is mechanical, where it bears no relation to the purpose of suspension, where relevant circumstances have not been considered, or where the suspension becomes punitive in substance.

129. Suspension is not a punishment in form, but it carries serious civil consequences. It removes an employee from work, reduces pay, affects reputation, and may, by passage of time, operate with a severity close to penalty. The power must therefore be exercised for a legitimate purpose. Such purpose may include protecting the inquiry, preventing interference with records or witnesses, maintaining discipline in a sensitive post, or preserving institutional interest. The mere issuance of a charge-sheet does not, by itself, justify suspension.



130. In *State of Orissa v. Bimal Kumar Mohanty*,³¹ the Supreme Court held that suspension should not be resorted to as an administrative routine. The authority must consider the gravity of the alleged misconduct, the nature of evidence, the circumstances of the case, and whether suspension is necessary in public interest or to facilitate inquiry. In *Ajay Kumar Choudhary v. Union of India*,³² the Supreme Court expressed concern over prolonged suspensions and emphasised that suspension cannot be allowed to become punitive through delay. *O.P. Gupta v. Union of India*,³³ also recognises the oppressive effect of continued suspension without timely conclusion.

131. Tested on these principles, the suspension order is unsustainable. It contains no reason beyond the recital that charges are serious and grave. The order does not explain how the Petitioner's continuance would prejudice the inquiry, whether he retained control over relevant records, whether he was in a position to influence witnesses from CWC or NBT, or whether he occupied any post from which the proceedings could be obstructed.

132. These circumstances go to the root of the justification for suspension. CLE had not permitted the Petitioner to physically join, and he was not functioning from its office. The records relevant to Articles I to V were substantially with CWC, the Ministry, or other public authorities. Articles VI and VII likewise arose from correspondence and events already forming part of the record. In this factual setting, the suspension order discloses no reason why suspension was necessary, as opposed to allowing the inquiry to proceed while regulating the Petitioner's position through an appropriate

³¹ (1994) 4 SCC 126

³² (2015) 7 SCC 291



posting arrangement or other lawful administrative control.

133. The chronology of events reinforces the conclusion. The Petitioner was repatriated by NBT in May, 2018. CLE did not permit physical joining. In December, 2018, this Court recorded CLE's statement that it would pay salary from 9th July, 2018 till further orders. The charge-sheet was issued on 1st March, 2019. The suspension followed on 15th April, 2019. By then, the events forming the basis of the charges were already matters of record. CLE did not identify any live operational risk which required the Petitioner to be kept out of service.

134. The subsequent passage of time is also material. The Petitioner has remained under suspension for years while the proceedings have not reached finality. Even allowing for the pendency of the present writ petition and interim orders passed therein, the continuation of suspension cannot be justified by a bare reference to the pendency of disciplinary proceedings. Suspension must remain connected to necessity. Once that link is absent, the order becomes punitive in effect.

135. Articles VI and VII have already been found unsustainable. As regards Articles I to V, the inquiry has been permitted to continue subject to safeguards concerning documents, source material, approvals within CWC and procedural fairness. The mere continuance of inquiry on those articles does not justify sustaining a suspension order which discloses no assessment of necessity. The order is not being set aside because the Court has returned any finding on the truth of the allegations in Articles I to V, but because CLE failed to demonstrate why suspension was necessary in the circumstances of the case, particularly when the Petitioner had not been

³³ (1987) 4 SCC 328



permitted to physically join and the relevant records substantially lay with public authorities.

136. The Court therefore holds that the suspension order dated 15th April, 2019 cannot be sustained. The Petitioner shall be entitled to consequential benefits flowing from this finding, subject to the final outcome of the inquiry on Articles I to V. Nothing in this judgment shall preclude CLE from proceeding with the inquiry on Articles I to V in accordance with law and the directions issued herein.

137. CLE shall, within four weeks, pass an appropriate order regulating the Petitioner's service position consequent upon revocation of suspension, including posting, assignment of duties, or any other lawful administrative arrangement consistent with this judgment and the pendency of inquiry.

Relief

138. For the foregoing reasons, the charge-sheet dated 1st March, 2019 is not quashed in its entirety. However, Articles VI and VII are set aside, being inconsistent with CLE's own position before this Court and with its subsequent treatment of salary payment as joining, or as deemed joining.

139. The disciplinary proceedings shall continue only in respect of Articles I to V, and from the stage at which they stood stayed, subject to the safeguards and directions contained in paragraphs 116 to 118 above. The proceedings shall be concluded as expeditiously as possible, and preferably within six months from the date of this judgment. If the Petitioner superannuates before conclusion of the proceedings, CLE may continue them if permissible under the applicable service rules and law.

140. The suspension order dated 15th April, 2019 is set aside. Consequently, CLE shall compute and release the differential salary and



admissible allowances for the period during which the Petitioner was paid only subsistence allowance, after due adjustment of the allowance already paid. The computation and release shall be effected, in accordance with law and CLE's applicable service conditions, within six weeks from the date of this judgment.

141. The release of the aforesaid amount shall not be construed as any expression on the merits of Articles I to V. If, upon conclusion of the disciplinary proceedings, the Petitioner is found guilty of any of the surviving charges, it shall remain open to CLE to pass such consequential order as may be permissible under the applicable service conditions and law, including for adjustment or recovery, after affording the Petitioner an opportunity of hearing.

142. The Petitioner shall be treated as having joined, or as deemed to have joined, the services of CLE with effect from 9th July, 2018. For all service purposes, including continuity of service, there shall be no break attributable to CLE's refusal to permit physical joining.

143. The question of salary for the period from 29th May, 2018 to 9th July, 2018 is linked to the Petitioner's repatriation from NBT and to the interim order passed in W.P.(C) 6602/2018. That issue is being dealt with in the judgment pronounced today in the said writ petition and is not decided here.

144. The writ petition is partly allowed in the above terms. Pending applications, if any, stand disposed of.

SANJEEV NARULA, J

MAY 29, 2026/ab