



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.342 OF 2025

EDC Limited
Through its Manager (Personnel),
Shri Ajay U. Shet,
Major of age, in service
Having office at EDC House,
1st Floor, Dr. Atmaram Borkar Road, ... PETITIONER
P. B. No. 275, Panaji - Goa.

VERSUS

1. Goa Commission for Scheduled
Castes
& Scheduled Tribes,
Through its Chairperson,
Shram Shakti Bhavan, Gr. Floor,
Patto, Panaji - Goa.

2. Ms. Mohini G. Kerkar,
Major of age, in service RESPONDENTS
R/o H. No. 1249, Apewal, Priol,
Mardol - Goa.

Mr. Vishnuprasad Lawande with Mr.. Parimal Redkar, Ms. Smita
Gawas and Mr. Atul Sadre, Advocates for the Petitioner.

Mr. Gaurang Panandiker, Advocate for the Respondent No.1.

Mr. Nilesh Shiroadkar, Advocate under Legal Aid Scheme for the
Respondent No.2.

CORAM:- VALMIKI MENEZES, J.

DATED :- 20th August, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Heard learned Counsel for the parties.
3. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.
4. This petition takes exception to an order dated 23.04.2024 of the Goa Commission to Scheduled Castes and Scheduled Tribes. The order purports to pass recommendations in terms of Section 11 of the Goa Commission for Scheduled Castes and Scheduled Tribes Act, 2010 (the Act, for short). The question that arises for determination in this petition is whether the impugned order has been passed within the bounds of the jurisdiction of the Commission under Section 11 of the Act.
5. The Respondent No.2 filed a complaint dated 11.02.2020 to the Commission complaining that, she, being from the Scheduled Caste Category, had been consistently bypassed for promotion to the post of Deputy General Manager; the Complaint further averred that the Petitioner appointed a Department Promotion Committee to consider the cases of candidates in its employment, other than Scheduled Castes and Scheduled Tribes, whose names were recommended for the promotion to the post of the Deputy General Manager in the establishment. The complaint further seeks that her

name be recommended by the Commission by an appropriate direction to the Petitioner to constitute a Review Departmental Promotional Committee and to consider the name of the Respondent No.2 in the reserved category and to recommend her name for promotion to the post of Deputy General Manager.

6. The Commission, after issuing notice to the Respondent No.2, called upon the Respondent No.2 to file her reply. Apart from answering the allegations made in the complaint, the Petitioner raised a preliminary objection as to the jurisdiction of the Commission, to the effect that the Complaint was a service dispute, and the Commission lacked the jurisdiction to make any recommendations in the nature sought in the Complaint.

7. The Commission has passed the impugned order making the following recommendations:

RECOMMENDATION

The Commission recommends that the Respondent to take immediate steps to finalize and circulate the seniority list for the post of Manager with all its incumbent as on 20/06/2017 strictly as per the seniority rules.

Further, the Respondent is also recommended to convey the review-Departmental Promotional Committee of the meeting dated 20/06/2017 and place the proper seniority list before the Departmental

Promotional Committee and the grievance of the applicant, so that the Departmental Promotional Committee to take deemed fit decision to resolve the grievances of the applicant without an discrimination as the applicant belongs to ST community.

The Action Taken Report of this recommendation shall be submitted to this Commission within a period of Three month from the receipt of this recommendation.

8. The main contention raised in the arguments advanced by Shri V.A. Lawande for the Petitioner are as follows:

A. that the powers vested in the Commission under Section 11 do not permit the Commission to enter into the merits of the controversy between the parties, which in this case was whether the Respondent No.2 had made out the case for being promoted by the Departmental Promotional Committee;

B. He further contends that the Commission does not have any jurisdiction to pass recommendations in the nature that it has, by directing the Petitioner to constitute a Review Departmental Promotional Committee of the meeting dated 20.06.2017 or direction to place the proper seniority list before the review Departmental Promotional Committee for

considering the name of the Respondent No.2 for promotion.

C. It was further submitted that the direction in the form of recommendation given to the Petitioner that the Departmental Promotional Committee shall take a decision to resolve the grievance of the Respondent No.2 without discrimination, on the basis of a finding that the Respondent No.2 has been deprived of a right to promotion by the Departmental Promotional Committee, was beyond the jurisdiction vested in the Commission under Section 11.

9. Reliance has been placed on the following judgements:

i. ***National Seed Corporation Ltd vs. National Commission for SC & ST and Anr*** [2013 SCC OnLine Del 2229]

ii. ***The Mysore Education Society and Anr vs. Sri Babu P. And Anr*** [In Writ Petition No.17808 of 2024 (GM-RES) of Karnataka High Court]

iii. ***State Bank of India vs. Karnataka State Commission and Anr.*** [Writ Petition No.10347 of 2023 (S-RES) of Karnataka High Court]

10. Mr. Shirodkar, learned Counsel for the Respondent No.2 opposed the petition contending following:

A. that the Commission has not entered into the merits of the dispute and has only granted recommendation, which is not binding on the Petitioner. He contends that if the Petitioner does not follow the recommendation, it is open to the Respondent No.2 to approach the Government of Goa to enforce the recommendation.

B. It was contended that the Commission, under Section 10 has the power to conduct an inquiry into the allegations in the Complaint and may arrive at a conclusion on the findings based on such inquiry, on the basis of which the recommendation can be made. Reference is made to paragraph 10 of the impugned order which records that the conduct of the Petitioner has been such as to violate the rights of the Respondent No.2 under the Scheduled Castes and Scheduled Tribes Atrocity Act and all that the Commission has done is to exercise the duty cast upon it under Article 338A of the Constitution of India.

11. Reliance has been placed on the following judgments:

- i. *Dhempe College of Arts and Science vs. State of Goa and others* [Writ Petition No. 653 of 2022 (F)]
- ii. *Assistant Registrar (Academic) PG, Goa University, Taleigao Goa and Anr vs. Shri Saprem Shirvoikar and Anr* [Writ Petition No. 563 of 2023]

12. Perusal of the complaint would clearly show that what was sought from the Commission was the decision that the Petitioner had in fact, acted arbitrarily and discriminatory on the basis that the name of the Respondent No. 2 was not included amongst the candidates within the zone of consideration for promotion at the Departmental Promotional Committee. Consequently, according to the complaint, her name was not considered at all by the Departmental Promotional Committee, when she was entitled to be considered, going by her seniority. The complaint also raises a dispute to the maintenance of the seniority list amongst the persons who could be considered for the promotion for the post of Deputy General Manager.

13. The challenge is thrown in the complaint to the seniority list, saying that such a list was never maintained by the Petitioner, and if maintained, considering that the Respondent No.2 was a Scheduled Caste, she would have been eligible for promotion and consideration by the Departmental Promotional Committee when it was held on 20.06.2017. The complaint requests directions to the Petitioner to constitute a review Departmental Promotional Committee after seniority list is prepared, with inclusion of the name of the

Respondent No.2 therein, and further directions to the Petitioner that the Departmental Promotional Committee should recommend the name of the Respondent No.2 for promotion.

14. The contents of the complaint, partakes of the flavour of seeking directions from a writ Court in a challenge to the non-consideration of the Petitioner to the post of Departmental Promotional Committee. The averments clearly throw a challenge to the promotions done by the Petitioner on the basis of recommendation of the Departmental Promotional Committee, on the ground that a seniority list was never maintained, and if the same is maintained, the Departmental Promotional Committee earlier constituted would have to consider the name of the Respondent No.2. The allegation is that this approach of the Petitioner of discriminating against the Respondent no.2 was based on her caste and therefore called for recommendation.

15. What the Commission has done in its Order was to examine the record, and to conclude that the Respondent No.2 has been wronged due to her caste and the promotion which was wrongly granted to one Bipin Makwana, was clearly based upon caste. The Commission has then given recommendations which are literally in the nature of directions to the Petitioner to constitute a fresh Departmental Promotional Committee after preparing a seniority list which includes the name of the Respondent No.2, and a further direction to the Departmental Promotional Committee to consider the name of the Respondent No.2 and recommend her for promotion to the post of Deputy General Manager. These directions are way beyond the jurisdiction vested in the Commission under Section 11.

16. In **National Seed Corporation Ltd.** (supra), the Supreme Court considered the provisions of Article 338 and the powers vested in a Commission for Scheduled Castes and Scheduled Tribes, and has held that though such Commissions appointed pursuant to the provisions of Article 338 have the power of a Civil Court for summoning documents, witnesses and the like, they are not vested with powers of Civil Court or a Writ Court to adjudicate and decide disputes between the parties and to pronounce orders. The Supreme Court has further held that such powers have not been conferred by Article 338 of the Constitution of India on the Commission. Relevant portion of the judgment are quoted below:

“41. No doubt, the Commission has been given the procedural powers of a Civil Court but the substantive powers of a Civil Court to adjudicate and decide disputes between the parties and to pronounce orders of final or interim nature have not been conferred by Article 338 under the Constitution of the Commission.

42. This Court in the case of Gulmarg Restaurant v. Delhi Development Authority 119 (2005) DLT 648 has laid down as under:

"29. It may be noticed that the appellant had even approached the National Commission for Scheduled Caste and Scheduled Tribes and directions were issued on 02.08.1997. These directions were, however, issued in a pending disputed matter. In any case within the Constitutional Scheme of Article 338 of the Constitution of India, the observations of such a Commission can only be recommendatory in nature.

The directions passed by the said Commission seek to transfer the property in favor of the appellant at a price of Rs. 12,42,700/-, can hardly be acceptable as either the auction bid was rightly rejected or wrongly rejected. It would not proper for any other authority to determine the price. However, we are not required to deal any further with this issue since those are only recommendatory in nature."

(Emphasis Supplied)

46. The Supreme Court of India in Collector v. Ajit Jogi, (2011) 10 SCC 357 has laid down as under:

"17. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to Scheduled Castes and Scheduled Tribes by ensuring: (i) anti-discrimination, (ii) affirmative action by way of reservation and empowerment, and (iii) redressal of grievances. The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or the State Government requiring effective

implementation of the safeguards and measures for the protection and welfare and socio-economic development of the Scheduled Tribes. This power to enquire into "deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in Madhuri Patil v. Commr., Tribal Development [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] directed constitution of scrutiny committees.

22. It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first Respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false.

If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to

ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case."

48. The Respondent No. 2 has not even preferred any proceedings impugning the action of the Petitioners in accepting the application of Respondent No. 2 under the Voluntary Retirement Scheme.

49. Since the National Commission for Schedule Caste and Schedule Tribe is not a Court or a Tribunal and the orders of the Commission are merely directory in nature, the Respondent No. 2 could not have approached the Commission for the redressal of his grievance. The remedy lay elsewhere.

50. The fact that Respondent No. 2 was unsuccessful in getting appropriate relief from either the High Court or the Industrial Tribunal, the Respondent No. 2 was precluded from approaching the Commission for seeking redressal of his grievance.

51. The National Commission for Schedule Caste and Schedule Tribe clearly did not have the power to issue a mandate to the Petitioners to either re-instate the Respondent No. 2 back into service or to conduct an enquiry into the circumstances under which the Respondent No. 2 was discharged from the services of the

Petitioner by alleged misuse of provisions of Voluntary Retirement Scheme, which clearly was beyond the Constitutional scheme of the powers conferred on the said Commission by Article 338 of the Constitution of India.”

17. In **Mysore Education Society**(supra), the Karnataka High Court considered the case where the complaint is one which is similar to the complaint which is the subject matter of this petition, the reliefs sought were in a service dispute. The complaint in that case has been reproduced /quoted in the judgment and what has been sought herein were directions in a service dispute. The Karnataka High Court, on going through the complaint, and considering the judgment in **All India Indian Overseas Bank SC and ST Employees’ Welfare Association V/s. Union of India** [(1996) 6 SCC 606] has held as under:

“17. It is further germane to refer to a later judgment of the Apex Court in the case of COLLECTOR v. AJIT JOGI, which reads as follows:

"17. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to Scheduled Castes and Scheduled Tribes by ensuring : (i) anti-discrimination, (ii) affirmative action by way of reservation and empowerment, and (iii) redressal of grievances. The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide

*upon the validity of the caste certificate. Having regard to sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or the State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio- economic development of the Scheduled Tribes. This power to enquire into "deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in *Madhuri Patil v. Commr., Tribal Development* [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] directed constitution of scrutiny committees.*

22. It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were

unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case." (Emphasis supplied)

In the light of the mandate permitted to the Commission, by the Constitution of India and its interpretation by the Apex Court in the afore-quoted judgments, what would unmistakably emerge is, the absence of jurisdiction of the Commission in

entertaining a service dispute, of the kind in the case at hand, between an employer and an employee.

18. Though there is no order passed by the Commission directing a particular act to be done, the very proceeding has created ripples on the Institution. There is neither atrocity nor abuses that are hurled against the first respondent. It is a canard presented by the employee against the employer before the Commission.

19. The first respondent seeks leave of two years; it is granted; his appointment is saved; he is taken back; since the vacancy had already been filled and is transferred four kilometers away to another Institution of the same Society, in terms of the conditions of employment which had been signed by the first respondent, with eyes wide open. With the circumstances being thus, the Commission ought not to have entertained the complaint, which on the face of it, is a misuse of the provisions of the Act, projecting abuse and imaginary atrocity. As observed hereinabove, a palpable service dispute, is projected as an atrocity dispute.”

18. There is no doubt that the language used in the operative part of the impugned order is in the nature of recommendation to the Petitioner. A closer look however, of the operative part would leave no doubt that though the language deployed seems to be recommendatory in nature, there are clear directions in the order to

the Petitioner to constitute a review Departmental Promotional Committee and to prepare a seniority list and recommend the name of Respondent No.2 for promotion. These directions have been given after the Commission concluded in paragraph 10 that the Respondent No. 2 has been wrongfully denied a promotion. Moreover, this finding has been given in the absence of any hearing to the other candidate who was promoted (Bipin Makwana), which in any case, the Commission could not have ventured into.

19. The powers vested in the Commission are to, after holding an inquiry, record its conclusion as to whether any atrocity has been committed and to make recommendation to right such a wrong. The Commission, in the present case, has entered into the merits of the service disputes and literally held that it was Respondent No.2 who ought to have been promoted in the post of Deputy General Manager instead of the person actually being promoted on the recommendation of the Departmental Promotion Committee. It further goes on to direct the Review Departmental Promotion Committee and to recommend the name of the Respondent No.2 to the post of Deputy General Manager. These directions are clearly beyond the scope of the jurisdiction vested in the Commission under Section 11 of the Act and applying the case of a person of the Scheduled Castes and Scheduled Tribes in *All India Indian Overseas Bank SC and ST Employees' Welfare Association*(supra).

20. The impugned order, therefore, stands quashed and set aside and it is held that the Commission has acted beyond the power vested in it under section 11. The commission has no jurisdiction to inquire into the complaint dated 11.02.2024, since the same is the pure service dispute which may be agitated by Respondent No.2

before the appropriate forum and not before the Commission. It is always open to the Respondent No.2 to exercise her right and avail of such remedies as may be provided in law.

21. Rule is made absolute in terms of prayer clause (a). No costs.

VALMIKI MENEZES, J.