

IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3929/2014

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12th January, 2015

**COUNCIL FOR ADVANCEMENT OF PEOPLE'S ACTION & RURAL
TECHNOLOGY (CAPART)**

..... Petitioner

Through Mr.S.K.Rungta, Sr.Advocate with
Mr.Prashant Singh and Ms.Heena Dua,
Advocates.

versus

NATIONAL COMMISSION FOR SCHEDULED CASTES AND ANR.

..... Respondents

Through Mr.Ruchir Mishra, Advocate for UOI.
Ms.Jyoti Singh, Sr.Advocate with
Mr.Padma Kumar, Ms.Tinu Bajwa and
Mr.Sameer Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 226 of the Constitution of India is filed by the employer –Council for Advancement of People's Action and Rural Technology (CAPART) impugning certain communications to it and its officers by the respondent no.1/Commission being the National Commission for Scheduled Castes. The prayers made in this writ petition read as under:-

“ In view of the above it is most respectfully prayed that this Hon'ble

Court may be pleased to:-

A. Allow this petition;

B. Issue a writ of certiorari or any other appropriate writ order or direction thereby calling for the records relating to the proceedings initiated by respondent Commission on particularly proceeding dt. 5.2.13, 7.4.14, 19.5.14 & 9.6.14 on various representations of respondent no.2 (now under suspension) particularly representations dt.10.5.11, 21.2.14, 23.4.14, 25.4.14 & 19.5.14 examine the same and quash it by declaring that respondent no.1 does not have jurisdiction or power to entertain such complaint and interfere in the service matters.

C. Issue a writ of prohibition or any other appropriate writ order or direction thereby restraining the respondent no.1 from summoning the officers of petitioner organization on such representations of respondent no.2 and from interfering in the management and control of the affairs of petitioner particularly in the administrative matters relating to its employees in any manner whatsoever.

D. Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case.”

2. It is the common case of all the parties, and which could not have been otherwise, that, parties are bound by the ratio of the judgment of the Supreme Court in the case of *All India Indian Overseas Bank SC and ST Employees’ Welfare Association and Others Vs. Union of India and Others (1996) 6 SCC 606*, and which judgment has been recently followed by the Supreme Court in the case of *Bank of Patiala & Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*, and the ratio of the aforesaid two cases is that the Commission which acts as per the limited particular powers by which it is constituted has no powers which are provided to issue directions

or injunctions or compliance orders with respect to a particular employer/employee i.e the power prescribed is only to investigate and enquire into matters within the jurisdiction of the commission and as specified under Article 338 of the Constitution of India.

3. In view of the ratio of the aforesaid two judgments of the Supreme Court, counsel who appears for respondent no.1/Commission states that the Commission is not going to pass any direction or injunction or compliance order which will in any manner violate the ratio of the aforesaid two judgments of the Supreme Court, and it is stated that the respondent no.1/Commission will only investigate and enquire into the complaints which are within its jurisdiction under Article 338 of the Constitution of India and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the 'Rules 1995').

4. Once that is so, and both the parties agree that no directions or injunction or compliance orders can be passed by the Commission, to the extent that the respondent no.1/Commission can make investigation and enquiries within the bounds of Article 338 of the Constitution of India, these powers cannot be challenged.

5. However an issue remains as to whether the employer/petitioner can

take disciplinary actions against an employee such as the respondent no.2 or any other action under the service rules, and whether the said aspect can be parallelly enquired by the respondent no.1/Commission. Learned counsel for the respondent no.1/Commission concedes that the jurisdiction of an employer under the service rules and service law with respect to taking an action or giving or not giving promotion or giving or not giving any monetary emoluments etc. would be within the jurisdiction only of the employer, and which aspect will be and can be questioned only before the Central Administrative Tribunal since the employer/petitioner is covered under the Central Administrative Tribunal Act, 1985. Therefore, while preserving the statutory and legal rights of the respondent no.1/Commission to enquire into and investigate into the affairs which are strictly within the provisions of Article 338 of the Constitution of India and Rules 1995, it is made clear that the respondent no.1/Commission will not exercise its function in such a way which will in any manner cause overlapping of its functions with the functions which the petitioner is entitled to carry on under service law with respect to the respondent no.2 or any other employee of the petitioner. The order of observing so is for ensuring that two parallel proceedings cannot go on with respect to any departmental enquiries etc or any other action which the employer is entitled to under the

service rules /service law against the respondent no.2 or any other employee for that matter.

6. In view of the above, this writ petition is disposed of clarifying the scope of operation/enquiry/investigation etc etc. of the petitioner/employer and the respondent no.1/Commission as stated above.

7. The writ petition is disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JANUARY 12, 2015
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