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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1944/2016

RAMESH CHANDER SHARMA Petitioner

Through Mr. Manu Nayar with Ms. Meenakshi
Chopra, Advocates

versus

**NATIONAL HUMAN RIGHTS COMMISSION
& ANR**

..... Respondents

Through Ms. Prabhsahay Kaur, Advocate for
R-2/MCD.

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Date of Decision: 08th March, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 4th July, 2015 passed by respondent no. 1-NHRC wherein it was held that petitioner's complaint is a service matter and therefore, it cannot be entertained as per Regulation 9(viii) of the N.H.R.C. (Procedure) Regulations, 1997.

2. It has been averred in the present writ petition that a false FIR was registered against the petitioner by respondent no. 2-MCD for outraging the modesty of an indoor female patient and the petitioner was suspended from

his post as Ayurvedic Compounder vide order dated 3rd April, 1973. Learned counsel for petitioner states that not only the petitioner was acquitted by the criminal Court, but the Labour Court also found in favour of the petitioner on the basis of appraisal of evidence and not on any technical ground.

3. Learned counsel for the petitioner further states that the Supreme Court dismissed the petitioner's Civil Appeal without giving any reasons and the same constitutes violation of petitioner's human rights. In support of his submission, he relies upon judgment of the Apex Court in **Ramdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das & Ors., Review Petition (C) No. 1378/2009 in W.P.(C) 457/2005** wherein it has been held as under:-

“52. Keeping those broad principles in our mind if we look at Section 12(j) of the 1993 Act, we find that it confers on NHRC “such other functions as it may consider necessary for the promotion of human rights.” It is not necessary that each and every case relating to the violation of human rights will fit squarely within the four corners of section 12 of the 1993 Act, for invoking the jurisdiction of the NHRC. One must accept that human rights are not like edicts inscribed on a rock. They are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom. They admit of a certain degree of fluidity. Categories of human rights, being of infinite variety, are never really closed. That is why the residuary clause in sub-section (j) has been so widely worded to take care of situations not covered by sub-sections (a) to (i) of Section 12 of the 1993 Act. The jurisdiction of NHRC thus stands enlarged by section 12(j) of the 1993 Act, to take necessary action for the protection of human rights. Such action would include inquiring into cases where a party has been denied the protection of any law to which he is entitled, whether by a private party, a public institution, the government or even the Courts of law. We are of the opinion that if a person is entitled to benefit under a particular law, and benefits under

that law have been denied to him, it will amount to a violation of his human rights.

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57. The assumption in the judgment under review that there can be no violation of a person's human right by a judgment of this Court is possibly not correct. This Court in exercise of its appellate jurisdiction has to deal with many judgments of High Courts and Tribunals in which the High Courts or the Tribunals, on an erroneous perception of facts and law, have rendered decisions in breach of human rights of the parties and this Court corrects such errors in those judgments."

4. Learned counsel for respondent no.2-MCD points out that acquittal by the criminal court was primarily on the ground that complainant had expired before her evidence had been recorded. She further states that in view of the Labour Court's award having been set aside by learned Single Judge and affirmed by the Division Bench and the Supreme Court, the petitioner could not have approached the respondent-NHRC.

5. Having heard the parties and having perused the paper book this Court is of the view that grounds in the present writ petition primarily challenge the orders of learned Single Judge, the Division Bench and the Supreme Court. This Court is of the opinion that petitioner's intent in approaching NHRC was to go behind the binding judgments of learned Single Judge, the Division Bench and the Supreme Court and that too after the Supreme Court had dismissed the petitioner's Civil Appeal, Review Petition and Curative Petition.

6. This Court is also of the view that the judgment in **Ramdeo Chauhan @ Rajnath Chauhan** (supra) relied upon by the petitioner is inapplicable to the facts of the present case as the accused in the said case was held entitled

for commutation of death sentence since he was a minor and entitled to protection under Juvenile Justice (Care and Protection of Children) Act, 2000.

7. In the opinion of this Court, the present petition before the NHRC was not maintainable. In fact, present writ petition amounts to re-litigation and is an attempt to reopen the judgment of this Court as well as the Apex Court – which have attained finality. Since the present writ petition constitutes abuse of process of law, the same is dismissed with costs of Rs. 25,000/- to be paid to respondent no. 2 within one week.

MARCH 08, 2016

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MANMOHAN, J

