* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 14, 2016
Judgment delivered on : September 19, 2016

\+ W.P.(C) 6579/2014

STATE BANK OF INDIA ..... Petitioner

Through: Mr.Arvind Nigam, Sr. Adv. with Mr.Rajiv Kapur, Adv.

versus

THE NATIONAL COMMISSION FOR SCHEDULED CASTES THR SECRETARY & ANR ..... Respondent

Through: Mr.Jaswinder Singh, Adv. for R-1
Mr.Jagdish, Adv. for R-2
Mr.Ruchir Mishra, Adv. with Mr., Sanjiv K.Saxena, Mr.Ramneek Mishra and Mukesh Tiwari, Advs. for R-3 (UOI)

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition by the State Bank of India, is to the recommendation/order of the respondent no. 1, forwarded vide letter dated May 13, 2014 recommending the petitioner Bank to consider withdrawal of compulsory retirement of respondent No.2 and initiate *de novo* enquiry to identify the HR failure, which lead to filing of the complaint.

2. The facts as noted from the writ petition are, the respondent No.2 joined the petitioner Bank as Clerk-cum-Cashier on July 20, 1978 and was promoted to JMGS-I on August 01, 1988. It is the case of the petitioner Bank that during the tenure of the respondent No.2 with the petitioner Bank, he committed various acts of misconduct like attending office in a drunken state frequently, misbehaving with the staff, frequently absenting from work, making withdrawals without maintaining sufficient balance in his bank account etc. due to which, the petitioner Bank was constrained to initiate disciplinary action against the respondent No.2. Vide letter dated March 30, 2001, the respondent No.2 was suspended. The respondent No.2 gave his reply dated May 31, 2001, wherein he admitted his lapses. Pursuant thereto, the Disciplinary Authority passed an Order of withholding one increment of pay for two years against him.

3. On March 26, 2002, the respondent No.2 was caught in a drunken state at Bande Branch of the petitioner Bank and he left the branch at around 12.30 pm without any sanction from the authority, taking along with him cash keys of the branch. He was suspended vide order dated August 12, 2002. Subsequently, the respondent No.2 was served with the charge sheet on September 30, 2002 and was given 10 days time to file his reply. The

respondent No.2 submitted his reply and denied the charges. Not satisfied with the reply, the Disciplinary Authority initiated departmental enquiry against respondent No.2. The Enquiry Officer after completion of enquiry submitted his report dated June 13, 2003, wherein the charges were proved and was imposed the penalty of '*compulsory retirement'* vide order dated October 6, 2003. Being aggrieved by the order dated October 6, 2003 the respondent No.2 filed a departmental appeal, which was rejected by the Appellate Authority on March 19, 2004. On January 19, 2005, a Writ Petition No.243/2005 was filed by the respondent No.2 which was dismissed as withdrawn on November 15, 2011 with liberty to approach the petitioner Bank. Pursuant thereto, respondent No.2 filed representation dated December 10, 2011 seeking withdrawal of the order of '*compulsory retirement'* and to grant him benefits. The petitioner Bank, on May 28, 2012, replied to the representation of the respondent No.2 apprising him that the order of penalty has attained finality. Pursuant thereto, the respondent No.2 through Association filed a complaint/representation on August 19, 2013 before the Commission (AP, MP, Chattisgarh) respondent No.1. On September 30, 2013, the respondent No.1 forwarded the representation made by the respondent No.2 to the petitioner. The petitioner replied to the same vide its letter dated October 19, 2013.

4. It is the case of the petitioner, that in its reply it had clarified that; (i) the circular on which the respondent no.2 relied upon is only directory in nature; (ii) if the punishment of compulsory retirement is imposed and if the officer has not completed 25 years of pensionable service or 20 years of pensionable service and attained the age of 50 years, he is not eligible to receive pension. Further, the circular referred by the respondent No.2 was issued in case of voluntary retirement and it is not applicable in the case where, disciplinary proceeding has been initiated and punishment has been imposed. It appears that, a further letter dated February 21, 2014 was sent by respondent No.1 advising the petitioner Bank to withdraw the compulsory retirement of respondent No.2. The petitioner Bank submitted its reply dated March 15, 2014. It is also noted that on April 30, 2014 the petitioner Bank through the Chief General Manager reconsidered the decision of compulsory retirement by taking into consideration various facts and circumstances, inasmuch as due process was followed in conduct of the proceedings and appeal. It was also stated that the proceedings are quasi judicial in nature and the orders passed by the Appointing Authority and Appellate Authority after due application of mind, have attained finality. It is also noted, that the

respondent No.1 Commission issued the impugned order/recommendation dated May 13, 2014 and once again directed the petitioner Bank to reconsider the punishment of compulsory retirement, which has been impugned by the petitioner Bank in these proceedings.

5. I note, during the pendency of proceedings, the Ministry of Law was impleaded as a party respondent No.3. The respondent No.1, Commission has filed a short affidavit. The relevant paras of the short affidavit are reproduced as under:-

> *"3. I say that in the present case the answering respondent No.1 (National Commission for Scheduled Castes) has acted within the scope of its constitutionally derived powers under Article 338 of the Constitution of India. The Commission vide its recommendation dated 13.5.2014 has recommended that the petitioner bank should consider withdrawal of compulsory retirement with respect to the respondent No.2 as the latter is a victim of discrimination and harassment and order for a 'de-novo' enquiry to identify the HR failure which led to the complaint. Accordingly, the Commission has acted within the scope of its authority as enshrined in the Constitution of India.*
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> *4. I say that the Respondent No.2 has submitted a complaint to the State Office of the Commission regarding illegal compulsory retirement from the services and caste based harassment. It is submitted that the complaint was considered by the Commission in terms of the powers conferred under Article 138(5)(b) of the Constitution of India. The recommendations passed by the Commission are based on the averments and allegations made in the complaint dated 19.8.2013, as well as, the report of the petitioner Bank, the*

enquiry conducted by the Director State Office National Commission for Scheduled Castes and the discussions held in the Commission on 18.3.2014 and 5.5.2014.

5. I say that the petitioner Bank did not controvert any of the caste based allegations made in the complaint and the same amounts to the acceptance of those allegations.

6. I say that as per the mandate of Article 338 of the Constitution of India the Commission under, the Commission has inquired, investigated the matter and issued its recommendations. The petitioner Bank instead of considering the recommendation of the National Commission for Scheduled Castes, has filed the present writ petition, without availing the remedy of approaching the Commission for a review of its recommendations in case, it was not possible for the bank to consider withdrawal of the compulsory retirement of the respondent No.2 Sh. M. Raju. The present writ petition is thus premature and without any cause of action."

6. The respondent No.2, in his counter-affidavit has taken preliminary objection that the petitioner has not approached the Court with clean hands and lacks *bona fide*. It is also stated, that the petitioner has misrepresented, concealed and fabricated the documents. It is the case of the respondent No.2 that the charge sheet dated September 30, 2002 is tampered, fabricated document, which is not even as per the Commission's record and the respondent No.2 has prayed for the dismissal of the writ petition.

7. On merit, it is contended that the respondent No.2 had rightly approached the respondent No.1 for redressing his grievances, which were

caste based, pertaining to his service in the petitioner Bank which were violative of Section 43(2) of the State Bank of India Act, 1955. It is stated that by filing the present petition, the petitioner Bank is harassing the respondent No.2. It is stated that the Bank had represented before the High Court of Chhatisgarh, Bilaspur to consider his case favourably. He relies upon third proviso to paragraph 19(1) of the State Bank of India (Determination of Terms & Conditions of Service) Order, 1979, which provides that it will not be in order to inflict the penalty of compulsory retirement unless an officer has completed the required pensionable service i.e. 25 years of service or 20 years pensionable service with attainment of 50 years of age. Any dilution or amendment, if any in the abovementioned order should be declared *ultra vires* of the Pension Rules or the Order of 1979. The respondent No.2 has relied upon a communication dated November 12, 2002 of the Corporate Section of the petitioner Bank to contend, no amendment/corrections have been made after June 2002. He would state, that the statement of allegations and articles of charge issued by the petitioner to the respondent No.2 were in utter disregard of the Service Rules and Order. It is his case that the order of compulsory retirement dated October 6, 2003 signed by the General Manager (D & PB), who was not the appointing authority of the respondent No.2 is arbitrary *mala fide* and unreasonable being disproportionate to the charges which are of general nature and violates Article 14 of the Constitution of India, because other officers, who were similarly situated and who were guilty of the same charges, as framed against the respondent No.2 were not proceeded and penalized and that the Rules have been selectively, differently, dissimilarly applied to the similarly situated officers of the Bank and also the respondent No.2 has been negatively discriminated by the petitioner Bank to the violation of Section 43(2) of the State Bank of India Act.

8. It is his stand, that even the Appellate Authority i.e. Chief General Manager, who inhumanly declined the appeal of the respondent No.2 acted with pre-conceit and prejudiced mind and who is not fit to be the Appellate Authority being insensitive to the request of the respondent No.2, whose emergent plea of one day casual leave on March 26, 2002 because his mother was on death bed was declined. The Branch Manager of the branch, who refused to take delivery of the cash / safe keys from the respondent No. 2 should have also been proceeded against and punished. It is his case that he was proceeded against, while the Branch Manager was protected. According to him, he went to see his old and ailing mother in lunch hours for

which he was compulsorily retired in violation of the Leave Rules. He would justify the impugned order/recommendation dated May 13, 2014 of the Commission. It is the case of the respondent No.2 that a dispute between two state parties cannot be agitated in the writ petition under Articles 226 and 227 of the Constitution of India and it is under Article 131, the Supreme Court, can decide such an issue. He would rely upon the judgment of ***State of Karnataka v. Union of India AIR 1978 SC 68***.

9. It is his stand, that in such dispute no other party shall be a party and in any case, he states, that dispute between the State and State's own undertaking should be settled by negotiations and are not entertainable by any Court. He would rely upon the judgment in the case of ***Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board, Direct Taxes and another AIR 2004 SC 2434.*** At the most, the case may be referred to the Chief Justice of India for constituting Constitution Bench and to issue necessary interim orders. He would also refer to the judgment of the Supreme Court in the case of ***State of Tamilnadu v. State of Kerala (2010) 12 SCC 399.*** It is his stand that even alternatively, a preliminary issue need to be framed as contemplated in the ***King v. Electricity Commissioner 1924 (1) KB 171***. It is the stand of the respondent No.2 that the following issues

arise for consideration of this Court:-

(i) Whether the National Commission for Scheduled Castes which is the creation of the Constitution, is an inferior Tribunal or Authority to the Authority of the High Court of Delhi, which is the creation of High Court Act, 1861 amended from time to time?

(ii) Whether National Commission for Scheduled Castes acted in excess of its legal authority while recommending to the State Bank of India that it should consider the withdrawal of compulsory retirement of Mr. M. Raju, the respondent No.2 herein, who has inappropriately been made the necessary party instead of making all the Members belonging to the Scheduled Castes whose rights shall be directly effected, are made the necessary parties?

10. According to him, as the above issues involve interpretation of statutes, the matter be referred to the Chief Justice of India for constitution a Constitution Bench in view of the law laid down in ***State of Tamilnadu vs. State of Kerala (2010) 12 SCC 399.*** The respondent No.2's stand is also that any order would be in violation of principles of natural justice as any order shall be adverse to the Members belonging to the Scheduled Castes behind their back and any order so made, could not be an effective one. The State Bank of India, SC, ST Employees Welfare Association, Durg, which

forwarded the representation of Mr. M. Raju for the National Commission for Scheduled Castes should be impleaded as a necessary party. He would rely on Clause 5 of Article 338 to highlight the duty of the Commission.

11. It is his stand that the enquiry conducted against him was sham. It is his case that the officers belonging to the Scheduled Castes like the respondent No.2 are victimized on false and frivolous grounds. But when the same grounds exist against officers belonging to the dominant and privileged castes they were deliberately left shallow by the conductors of the Management of the petitioner Bank. He also states, the penalty of compulsory retirement imposed, is disproportionate to the charges framed and proved against him. He would rely upon the judgment in the case of ***Ranjeet Thakur v. Union of India 1988 SCC L&S (1).*** He would refer to Articles 16(4)(A), 16(4)(B) and Article 335 of the Constitution of India. According to him, it is a case where he, being an officer belonging to a Scheduled Caste, has been crushed economically, apart from social negative discrimination. It is the stand of the respondent No.2, the petitioner Bank has not disclosed as to what cause of action has arisen so also the violation of its fundamental rights which prompted the filing of the present petition. It is his stand, the so-called admission has been taken under coercion and

compulsion and a *de novo* enquiry was must before inflicting on him the penalty of withholding one increment of pay for two years without cumulative effect.

12. Further, it is the stand of the respondent No.2 that the writ petition No.243 of 2005 before the High Court at Chhattisgarh, Bilaspur was withdrawn on the false promise of the petitioner Bank that the decision of compulsory retirement shall be reconsidered in view of the letter of Corporate Section dated April 15, 1987. He also states that the order of compulsory retirement is based on no material and irrelevant record and in that regard he would rely upon the judgment in the case of ***Union of India v. J.N. Sinha AIR 1971 SC 40***. He also relies upon the judgment of Supreme Court in the case of ***S.R. Venkatraman v. Union of India 1978 LIC 1461***. It is also the stand that the order also violates constitutional provisions in view of the law laid down in ***Y.G. Raju v. Railway Board SLR 1983 (1) A.P 686.*** He also rely upon ***State of Punjab Vs. Amar Singh 2005 (3) SLR P&H 704***. It is his stand that the Court can examine the plea of mala fides in view of the law laid down in ***Pratap Singh v. State of Punjab AIR 1964 SC 72, Mohd. Ibrahim vs. State of A.P. AIR 1970 SC 1004.*** He states that the order of the Commission needs to be upheld.

13. Respondent no.2 has also filed his written submissions as directed in terms of order dated July 14, 2016, even though beyond the period stipulated in the order as one is dated August 26, 2016 and the other is dated September 7, 2016. In the submissions filed on August 26, 2016 the stand of the respondent no.2 is that respondent no. 1 Commission has in the impugned communication dated May 13, 2014 very importantly observed and recommended that Bank should consider the withdrawal of compulsory retirement as respondent no.2 has been a victim of discrimination and harassment and order a de-novo enquiry to indentify the HR failure. Respondent no. 2 has also stated that the Regional Office at Jagdalpur (Chattisgarh) on July 3, 2002 had substituted / deputed Mr. F.R. Gayakwad, Deputy Manager of the petitioner Bank to conduct an enquiry into the allegation, that the Branch Manager Mr. D.W. Patil of Bande Branch not taking the delivery of the cash keys from him (respondent no.2), who applied for one day casual leave when his mother was seriously ill and was on her death-bed. According to respondent no. 2, the Officer submitted his report to the Controlling Officer that the contention of the Branch Manager that Officer Sh. Raju, was under alcohol intoxication is not possible to be confirmed in the absence of any documentary evidence, like doctor's report,

and if in view of the Branch Manager, Sh. Raju was under the influence of intoxication then in the interest of Bank, the Branch should have taken the custody of the keys of the Branch, but he did not do so. It is his submission that the report clearly certifies that the Branch Manager has failed in his duty when he refused to take delivery of the cash keys from him and it is his case that he was victimized by retiring him prematurely against the service rules and regulations and the action is primarily relates to his caste which is recognized as Scheduled Caste. The rules and regulations were selectively, differently and dissimilarly applied to the similarly situated Officers, i.e., Sh. M. Raju, Assistant Manager, Bande Branch, Chattisgarh and Sh. D.W. Patil, Branch Manager, Bande Branch, Chattisgarh. Respondent no. 2 states that charge framed against him mentioned that on March 26, 2002 he appeared on work under influence of liquor and was handed over to the Madhya Pradesh Police, who at 12.30 pm on March 26, 2002 referred him to the Government Doctor D.K Sinha, Assistant Surgeon, Primary Health Centre, Bande, Kanker, Madhya Pradesh, who medically examined him and submitted his report that *"the person has consumed liquor, but he is not under influence of alcohol intoxication"*. He has annexed the said report dated March 26, 2002 along with his submissions. According to respondent no. 2 the petitioner Bank manufactured and fabricated the charge no. 2 and concluded that on March 26, 2002 from 12.30 PM after taking the keys of the cash branch, he unauthorizedly remained absent, whereas the fact of the matter is that the Manager, State Bank of India, Bande Branch wrote to the Police at Bande that Sh. Raju, Assistant Manager is under the influence of alcohol intoxication in the Bank and it has resulted in interruption in Bank's work and requested to get him medically examined and apprised the result. Accordingly, he was medically examined in police custody by Government Doctor from 12.30 onwards and the petitioner Bank charged that he remained absent from duty from 12.30 PM onwards on March 26, 2002, whereas the petitioner Bank itself handed over him to the police during that period of time. He would rely on Section 8 (b) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to contend that if group of persons committed an offence against any member of the Scheduled Caste and if it is proved that the offence committed to was a sequel to any existing dispute regarding any matter, then the presumption is drawn in favour of the member of the Scheduled Caste and Scheduled Tribe that he or she has been victimized due to his or her caste. Similarly, he would rely upon the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 new Rules made therein to contend that same has been constituted as law relating to Scheduled Castes, who have suffered disabilities and deprivation for many centuries and are still slanted through the social hatred of untouchability which interfere with the social development of the Scheduled Castes. It is his stand that the aforesaid beneficial legislation has been enacted in tune with the preamble to the Universal Declaration on the Rights of Indigenous people, 1988 with Article 8 of U.N. Declaration on the Right to Development, 1986 and principles of law contained in the International Law have been interwoven like golden thread through the length and breadth of the Constitution of India. Hence to implement the law relating to the Scheduled Castes, the National Commission for the Scheduled Castes has been empowered by the Constituent Assembly of India wherein on November 25, 1949, Dr. B.R. Ambedkar emphasized for social development of the Scheduled Castes. Hence, the National Commission has the jurisdiction to direct the petitioner Bank, who cannot in a self-styled manner be aggrieved by the issuance of direction to the petitioner Bank, because the petitioner Bank has got no vested interest in injustice and illegality which has been created by the petitioner Bank by prematurely retiring him against its own rules regarding the premature retirement of its Officers including him, respondent no.2. He would rely upon the duties laid down in Article 338 (5) (i) and (8) of the Constitution of India. It is his submission that the petitioner Bank has violated Section 43 (2) of State Bank of India Act, 1955 and failed to fulfil its social obligation under the said Act which should be reported to the Reserve Bank of India to cancel the licence as happened in the case ***Udit Narayan Malpaharia v. Additional Member, Board of Revenue (Bihar) (Supra) AIR 1963 SC 786.*** He reiterated that the Writ Petition filed by him was made to be withdrawn by making false promise before the Court that the Bank will re-consider the compulsory retirement. He states that his compulsory retirement is mala fide. He would rely upon the judgment of the Division Bench of this Court in Writ Petition 6796/2013 where the order of cut in pension was set aside. He would rely upon the judgment of the Supreme Court in ***Takhetray Shivdattray Mankand v. State of Gujarat AIR 1970 SC 143*** to contend that the taking away the benefit of pension which was earned by him by the passage of time and before reaching the age of 50 years coupled with 20 years of service or before respondent no.2 completed 25 years of service in invalid and ineffective. He states that the order of compulsory retirement dated October 6, 2003 and

March 19, 2004 are liable to be set aside and hence the benefits and payments accruing to him need to be paid including the pension.

14. In his further submission filed on September 7, 2016 in substance it is his case that a penalty of compulsory retirement can be awarded to an Officer in terms of Bank's circular dated April 15, 1987 which was of the Corporate Section in reiteration of the Codified Circular Instructions – Settlement of Terminal Benefits for Provident Fund, Gratuity, Pension and Family Pension by PPG Department, Corporate Centre, Mumbai on June 30, 2002. The compulsory retirement can be awarded to an Officer on fulfillment of two conditions, in as much as, the Officer has completed required pensionable service, i.e., 25 years or 20 years of pensionable service with attainment of age of 50 years. It is his case that on November 1, 2003 the date of his compulsory retirement he had put in 24 years 9 months and 11 days (not completed 25 years) of service and was of 48 years 5 months 6 days of age (not completed 50 years) and hence it is his case that the penalty of compulsory retirement could not have been imposed.

15. The respondent no.3, Ministry of Law has also filed its affidavit wherein while referring Article 338 (5) and Article 338 (8) of the Constitution of India and the judgments of the Supreme Court in ***All India***

Indian Overseas Bank SC and ST Employees' Welfare Association and Ors (supra); Union of India & Anr. v. National Commission for Scheduled Castes and Anr. (Supra); Indian Institute of Technology v. National Commission for Scheduled Castes and Scheduled Tribes and Anr. 2004 (3) DLT 155; Karnataka Antibiotic and Anr. (Supra) has stated that the powers of the Commission are only recommendatory in nature and cannot be equated with decrees, orders, judgments passed by the Courts. Moreover, the powers of the Commission are limited to those provided under Article 338 and power to pass judgments, orders and decree etc. have not been dealt under Article 338 of the Constitution of India. Therefore, under Article 338, the Commission has not been empowered to pass recommendation in the nature of judgments.

16. Mr. Arvind Nigam, learned Sr. Counsel for the petitioner would submit that the recommendation / order passed by the Commission is contrary to the facts on record and the Commission has acted beyond the jurisdiction of Article 338 of the Constitution of India. According to him the Commission has jurisdiction to only make an enquiry and not investigate into the specific complaints with respect to the departmental enquiry or the order of penalty passed by the Disciplinary Authority / Appellate Authority.

The Commission has no jurisdiction over the service matter of any institution or Bank. The limited jurisdiction of the Commission under Article 338 of the Constitution of India is to make recommendations but cannot issue any directions to any authority. He would submit that the Commission has gone beyond the jurisdiction duly specified in clause 5 of the Article 338 of the Constitution of India as by way of the impugned order it could not have directed the petitioner Bank to reconsider the order of 'compulsory retirement'. He states that the matter which has been decided by the competent Court of jurisdiction on a Writ Petition filed by the respondent no.2, the Commission has no power to adjudicate, to decide, order, interfere with the decision of the competent authority. The Commission is not alternative to the hierarchical judicial system as envisaged under the Constitution of India. He would also state that under Rule 7.4 of the rules, the Commission has no jurisdiction to go into the complaint. Mr. Nigam has also vehemently argued that respondent no. 2 has failed to establish as to how he has been a victim of discrimination and harassment being a Scheduled Caste employee in order to invoke a jurisdiction of the Commission, since the question of caste-based harassment has not been dealt by the commission in its impugned order, thus the recommendation made by the Commission is beyond its jurisdiction. The matter which does not involve violation of reservation policies and allied matters are not expected to be enquired by the Commission and the emphasis is on the enquiring into the complaints which relate to deprivation of rights and safeguards made available only to the members of the Scheduled Castes and not in the case where disciplinary authority imposed punishment after holding departmental enquiry. He would rely upon the following judgments:

> ***Union of India v. National Commission for Scheduled Cates 2014 SCC Online Del 3324***
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> ***Karnataka Antibiotics and Anr. V. National commission SC and ST, ILR 2008 KAR 3305***
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> ***Professor Ramsh Chandra v. University of Delhi and Anr. ILR 2007 II Delhi 593.***
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> ***All India Indian Overseas Bank SC and ST Employees' Welfare Association and Anr. v. Union of India and Anr. 1996 (6) SCC 606***

17. Mr. Jagdish, learned counsel appearing for respondent no. 2 would reiterate the stand taken by the respondent no. 2 in its counter-affidavit and written submissions, a reference of which has already been made above. Similarly, Mr. Jaswinder Singh would support the impugned order passed by the Commission. He on the direction of the Court filed a copy of the English

Translation of the complaint (s) dated August 19, 2013 which is taken on record. Mr. Ruchir Mishra would reiterate the stand of the Ministry of Law in its affidavit.

18. Having heard the learned Counsel for the parties, and perusing the written submissions so filed, the only issue needs to be decided in this case is whether in view of the notification dated March 25, 2009 as gazetted on June 15, 2009 issued by the Central Government, the complaint of the respondent no.2 regarding his compulsory retirement, was maintainable and the recommendation of the Commission is justifiable. To answer the aforesaid question, it is necessary to reproduce Rule 7.4.1 of the Rules notified on March 25, 2009 as gazetted on June 15, 2009. The same is reproduced as under:

> *"7.4.1 The following aspect may be kept in mind while filing complaints before the Commission-*
> *(a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.*
> *(b) The complainants should disclose his full identity and give his full address and should sign the representation.*
> *(c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.*

(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules of Reservation.

(e) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).

(f) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.

(g) The cases of Administrative nature like transfer/posting/grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.

(h) No action will be taken on the matters where there is no mention of violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation of Rules of Reservation. Hence the matters where there is no mention of violation of above Rules need not be referred to the Commission as complaints."

19. I may state here that the aforesaid rules as notified are statutory in nature. There is no dispute on the mandate of Article 338 (5) and 338 (8) of the Constitution. The rules referred to above contemplates, the exercise of power under Article 338 (5) and 338 (8) shall be only if the complaint /

representation refers to deprivation of rights and violation of safeguards of Scheduled Castes in terms of the instructions issued by the Central Government, PSU, State Government or Bank. The rule also makes it clear that no action shall be taken in the matters which are subjudice; cases pending in the court or cases in which the Court has already given its final verdict.

20. In the case in hand, there is no dispute that the respondent no. 2 had filed a Writ Petition before the High Court of Judicature at Bilaspur being Writ Petition No. 243/2003 on January 19, 2005. The said Writ Petition was withdrawn by the counsel for the respondent no.2 with liberty to approach the petitioner Bank apprising it of the Circular (P-9) issued by the Bank. The writ petition was dismissed as withdrawn on November 15, 2011 by giving opportunity as prayed for. It appears that respondent no.2 made a representation on December 10, 2011. I may note here that neither in the Writ Petition filed by the respondent no. 2 before the High Court of Judicature at Bilaspur nor in the representation dated December 10, 2011, any caste-based allegations have been made by the respondent no.2. The representation dated December 10, 2011 was disposed of by the petitioner Bank on May 28, 2012. It is thereafter only on August 19, 2013, the General

Secretary, SBI SC/ST Employees Welfare Association (Durg) made a representation to the National Commission for Scheduled Castes of AP, MP and Chattisgarh region based in Hyderabad. It appears that the National Commission for Scheduled Castes having jurisdiction of the States of AP, MP and Chattisgarh forwarded the representation dated August 19, 2013 to the Commission in Delhi. In the meantime, the Bank on October 19, 2013 submitted reply to the Commission at Hyderabad on the complaint of the Association. It also appears that respondent no.2 made a further representation to the National Commission for Scheduled Castes to which reply was submitted by the petitioner Bank on March 15, 2014. Vide its order dated March 31, 2014 respondent no.1 Commission directed the petitioner Bank to reconsider the withdrawal of the compulsory retirement. On April 30, 2014, the Chief General Manager reconsidered the decision of the compulsory retirement of the respondent no.2 and was of the view that the orders passed by the Appellate Authority and the Disciplinary Authority for compulsory retirement are within rule 67 (h) of the SBIOSR. According to the Chief General Manager same is based only on the outcome of an enquiry duly conducted by the petitioner Bank following the principles of natural justice and there is no evidence of harassment or discrimination on any ground. Despite above, through the impugned order, the Commission has once again directed the petitioner Bank to reconsider the punishment of compulsory retirement.

21. It is noted that once the respondent no.2 has invoked the jurisdiction of the High Court under Article 226 of the Constitution of India and withdrew the Writ Petition with liberty to approach the petitioner and the petitioner on consideration of the representation dated December 10, 2011 had issued order dated May 28, 2012 rejecting the same, respondent no.2 was within his right to approach the High Court against the said rejection. Having not done, and the order dated November 15, 2011 having attained finality and also having acted upon by respondent no.2, the complaint dated August 19, 2013 of the State Bank of India SC/ST Employees Welfare Association could not have been considered by the Commission in view of Rule 7.4.1 as noted above. That apart even in the representation dated August 19, 2013 the caste based allegations (as noted from the English translation) are *(i) with regard to the aforesaid subject it is hereby stated that on the arrival of Hon'ble P.L. Punia Ji, Chairman, National Scheduled Caste Commission at Raipur, Chattisgarh, the request is made to initiate justifiable proceedings on presenting the representation with regard to the*

compulsory retirement under the malicious / caste-based malafide proceedings by the then Assistant General Manager (at present retired) Sh. D.R. Aggarwal, Area-4, Bastar along with Sh. M. Raju, Assistant Manager (compulsory retirement) (ii) This is one unique case of its own in which on the basis of the caste malice while considering the circumstantial evidence on initiating ex-parte proceedings with the intention to teach a lesson to the employees / officers of the scheduled caste the proceedings are initiated. Even though it is noted that for the first time a stand has been taken by the respondent no.2 that the order of compulsory retirement is primarily for the reason that he belongs to the Scheduled Caste, in any case, it is not the conclusion of the Commission that the penalty imposed on the petitioner was for the reasons that respondent no.2 belonged to scheduled caste. The impugned order reveals, that except the respondent no.2 has been a victim of discrimination and harassment which anyway would not suggest that it is because he belongs to a caste, which is scheduled caste. In any case, the Commission had already vide its order dated March 31, 2014 directed the petitioner Bank through the Chief General Manager to re-consider the decision of the compulsory retirement by taking into consideration various facts and circumstances. The Chief General Manager had vide his order dated April 30, 2014 reconsidered the penalty of compulsory retirement, there was no occasion for the Commission to again reiterate its recommendation. The order dated April 30, 2014 should have put at rest the issue of penalty.

22. The submission made on behalf of the respondent no.2 that the petitioner Bank could not have challenged the order of the National Commission in this petition as the National Commission for Scheduled Caste being a creation of Constitution of India and the present dispute between the Bank and the Commission being between two State parties cannot be agitated under Article 226 and 227 of the Constitution of India is concerned, the same is not tenable. The parties are not States as contemplated under Article 131 of the Constitution of India. Article 131 refers to the States as specified in the First Schedule to the Constitution. So Article 131 of the Constitution of India has no applicability when the Bank has challenged the order / recommendation given by the Commission. That apart it is settled position of law that Article 226, which relates to the power of the High Courts to issue, to any person or authority, directions, orders or writs within their jurisdiction for enforcement of fundamental rights and in case where the breach of rights and judicial review being basic feature of the

Constitution, a writ petition filed by the Bank challenging the order of the Commission shall be maintainable and cannot be rejected on the ground that Commission has been constituted under the provisions of Article 338 of the Constitution of India.

23. In so far as the judgment of the ***State of Karnataka v. Union of India*** *(supra)* relied upon by the learned counsel for the respondent is concerned, that too has no applicability as that was a Suit filed by the State of Karnataka against the Central Government challenging the order dated May 23, 1977 issued by the Central Government constituting a Commission of Enquiry under Section 3 of the Commissions of Enquiry Act, 1952 which Suit was held to be maintainable under Article 131 of the Constitution of India. Similarly in so far as the reliance placed on the judgment of ***MTNL (supra)*** is concerned, the same was with regard to the maintainability of the SLP filed before the Supreme Court in view of the judgment of the Supreme Court in ***Oil and Natural Gas Commission v. Collector of Central Excise 2004 6 SCC 437*** wherein the Supreme Court held that any dispute between the Government and the Departments and / or between Government Department and Public Sector Undertakings, the matter should be referred to high powered Committee established by the Government pursuant to its

order dated September 11, 1991. It may be stated here that the directions of the Supreme Court in ***Oil and Natural Gas Company (supra)*** have been recalled by the Supreme Court in ***2011 (184) ECR 193 (SC)/MANU/SC/0130/2011 Electronics Corporation of India Ltd v. Union of India (UOI) and Ors.***

24. In any case, this is not an issue of such nature which can be referred to high-powered Committee as the parties herein are not two Government Departments and / or not a Government Department and a Public Sector Undertaking. The impugned order passed by the Commission is in exercise of its power under Article 338 of the Constitution of India and is not such an issue which can be deliberated upon and settled between the parties. In so far as the judgment of the Supreme Court in the case of ***State of Tamil Nadu (supra),*** it is noted that the same was filed under Article 131 read with Article 262 of the Constitution of India. The same has no relevancy. Similarly, the reliance placed by respondent no.2 on the judgment of ***Ranjeet Thakur (supra)*** in support of his contention on the penalty of compulsory retirement being disproportionate is concerned, suffice to state that the same should have been agitated by the respondent no.2 before the High Court. Instead of doing that, respondent no.2 withdrew his Writ Petition. He has

not approached the High Court thereafter. The scope of Commission under Article 338 is very limited and it would entertain complaints where there are allegations of violations / atrocities related to caste and the judgment in this writ petition has no applicability. Similarly the case of ***Union of India v. Col. J.N. Sinha*** *(supra)* has no applicability when this Court is considering the legality of order passed by the National Commission for Scheduled Caste. In so far as the judgment in the case of ***S.R. Venkataraman (supra)*** is concerned, suffice to state the plea that there was no material before the competent authority to order compulsory retirement and irrelevant record, the same cannot be subject matter of the present proceedings and should have been agitated by the petitioner in appropriate forum and the same would not help the case of the respondent no.2 in the proceedings arising from the order passed by the National Commission for Scheduled Caste. Similarly, the cases of ***Y. Ganga Raju (supra), State of Punjab v. Amar Singh (supra) and Pratap Singh v. State of Punjab (supra)*** have no applicability in these proceedings.

25. In view of my discussion above, it must be held that the Commission had lacked inherent jurisdiction to entertain the complaint both on the ground that the respondent no.2 had filed a writ petition before the High

Court which was withdrawn and also the fact that there are no allegations in the complaint relatable to cases which can be decided by the Commission and also an issue with regard to the legality of the disciplinary proceedings initiated against the respondent no.2, which culminated in penalty of compulsory retirement needs to be decided by a judicial forum, whose orders would not be recommendatory, but shall have a binding effect on the parties *inter se*. Even otherwise when the earlier order / recommendation dated March 31, 2014 has been acted upon, there was no occasion for the Commission to reiterate the Bank to reconsider the whole issue. Accordingly, the order dated May 13, 2014, even though, in the nature of recommendation, could not have been passed and is liable to be set aside, I accordingly, set aside the aforesaid order. The writ petition is allowed. There shall be no order as to costs.

V. KAMESWAR RAO, J

SEPTEMBER 19, 2016
ak/jg