

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3836 of 2015

=====

1. The Bihar State Food And Civil Supplies Corporation Patna through Managing Director Bihar State Food and Civil Supplies Corporation 5th Floor, Sone Bhawan, Patna.

.... Petitioner/s

Versus

1. The Dy. Secretary Bihar Human Right Commission. 9 Bailey Road, Patna.
2. Nirmal Kumar Sinha, son of not known Resident of Plot no. A/310, (West of Central Park) A.G. Colony , P.O. Ashiana Nagar, District- Patna.
3. The Jharkhand State Food and Civil Supplies Corporation, Ranchi.
4. The District Manager, State Food and Civil Supplies Corporation Giridih.
5. The U.O.I. through the Joint Secretary, Ministry of Home Affairs, Govt. of India, New Delhi
6. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
7. The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Ranchi

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv.
For JSFC : Mr. Dhruva Mukherjee, Sr. Adv.
For the State of Jharkhand : Mr. Satyavrat Verma, Adv.
For Respondent No.2 : Mr. Dhananjay Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 17-04-2017

Heard Mr. Shailendra Kumar Singh, learned Advocate appearing for the petitioner the Bihar State Food and Civil Supplies Corporation (for short 'BSFC), Mr. Satyavrat Verma, learned Advocate appearing for the State of Jharkhand, Mr. Dhruva Mukherjee, learned Senior Advocate appearing for the Jharkhand State Food and Civil Supplies Corporation (for short 'JSFC') and Mr. Dhananjay Kumar, learned Advocate appearing for the respondent no.2.



2. The present writ application has been filed challenging the order dated 16.12.2014 passed by the Hon'ble Chairperson, Bihar Human Rights Commission, Patna (for short 'the Commission') whereby Bihar State Food and Civil Supplies Corporation (for short 'BSFC') has been directed to pay all the dues of respondent no. 2 Nirmal Kumar Sinha immediately, preferably within a period of one month along with interest of 10 per cent on the amount due to the petitioner.

3. Mr. Shailendra Kumar Singh, learned Advocate for BSFC submitted that the Commission lacked the jurisdiction to adjudicate and its order is not binding on the petitioner BSFC. He submitted that after bifurcation of the erstwhile State of Bihar and creation of successor State of Bihar and Jharkhand, the liability to pay the emoluments and retiral dues to respondent no. 2 was not upon BSFC rather the same was upon the State of Jharkhand as respondent no.2 retired from the post of Assistant Manager, BSFC, Giridih, Jharkhand on attaining the age of superannuation on 31.08.2008. He submitted that the Commission failed to appreciate the facts giving rise to the controversy and an erroneous order has been passed by it. He submitted that after division of assets and liabilities between BSFC and JSFC, the State of Jharkhand issued a notification vide Memo No. 389 dated 04.02.2016 whereby it has been clarified that the employees of BSFC, who were working within the territorial



jurisdiction of the State of Jharkhand after 14.11.2000, would be paid their retiral benefits by JSFC. In that view of the matter, his contention is that so far as the retiral benefits of the respondent no.2 are concerned, the State of Jharkhand and JSFC are liable to make due payment to the respondent no.2 Nirmal Kumar Sinha.

4. Mr. Satyavrat Verma, learned Advocate appearing for the State of Jharkhand also submitted that the Commission lacked the jurisdiction to adjudicate a matter and issue a direction to BSFC. He submitted that in case of violation of human rights or negligence in the prevention of violation of human rights or abatement thereof by a public servant, the Commission may have recommended to the concerned Government or the Corporation to make payment of compensation or damages to the complainant or to the victim or to the members of his family but under no circumstance the Commission could have passed an order to be enforced on its own.

5. On the other hand, Mr. Dhruv Mukherjee, learned Senior Advocate appearing for JSFC submitted that it is true that the Commission does not possess the power to issue direction but on the facts and in the circumstances of the case this Court may treat the directions issued by the Commission as recommendation made to BSFC. He submitted that the dispute with regard to the extent of territorial jurisdiction of BSFC carrying its business activities has been resolved with the intervention of Government of India, in the



Ministry of Home Affairs in exercise of power conferred upon it under Section 65(1) & (2) of the Bihar Reorganization Act, 2000, but the modalities of division of assets and liabilities of the Corporation could not be finalized prior to 2009. He submitted that the Government of Jharkhand framed its own State Food and Civil Supplies Corporation known as Jharkhand State Food and Civil Supplies Corporation (for short 'JSFC') vide Resolution No. 1004, dated 06.06.2009 whereafter JSFC was registered under the Companies Act, 1956 by the Registrar of Companies, Bihar and Jharkhand, Patna vide Certificate of Incorporation dated 18.06.2010. He submitted that JSFC became operational from 01.02.2011 and prior to this date all the functions of State Food Corporation were performed by BSFC, which was handling all the food grains allotted by the Government of India to the State of Jharkhand under the Targeted Public Distribution System and other welfare schemes. The Jharkhand Government did not have any administrative control over BSFC. Mr. Mukherjee submitted that the Government of Jharkhand took over the fixed assets in the form of 187 godowns of BSFC in the territory of Jharkhand and the services of 352 employees vide Government of Jharkhand Resolution No. 223 dated 31.01.2011. He submitted that all the district units in the State of Jharkhand were under the administrative control of BSFC, Patna till 31.01.2011. The Managing Director, BSFC used to order transfer of profit/funds of



various district units of the State of Jharkhand to the Head Office of BSFC at Patna. Such orders were issued in the register of the respective district units even without any knowledge of the Government of Jharkhand. He submitted that since the respondent no. 2 retired from service on 31.08.2008 i.e. before the formation of JSFC, at no stage, respondent no. 2 was an employee of JSFC. Hence, the payment of retirement benefits and other dues as claimed by respondent no. 2 before the Commission was not against JSFC. He contended that on the facts presented before the Commission, the Commission had rightly directed BSFC to pay all the dues (pre-retirement and post-retirement) to the respondent no.2. However, in view of the subsequent resolution of the State of Jharkhand vide aforesaid Memo no. 389 dated 04.02.2016, he conceded that the liability to pay all the post retiral benefits to the respondent no.2 would be upon JSFC. He stated that he has instructions that JSFC is willing to pay the post retiral dues of the respondent no.2.

6. Mr. Dhananjay Kumar, learned Advocate appearing for the respondent no. 2, however, submitted that pursuant to the notice issued by the Commission, the petitioner appeared before the Commission and contested the case on merits and when the order went against it then only the lack of jurisdiction of the Commission to adjudicate and issue directions are being questioned. He submitted that once the petitioner submitted itself to the jurisdiction of the



Commission, it would not be open for it to question the competence of the Commission to decide a case. He submitted that so far as the validity of the order under challenge is concerned, since the respondent no. 2 retired from service in the year 2008 from the district of Giridih while he was working as Assistant Manager of BSFC under the control of the State of Bihar no illegality can be found with the order. He submitted that on the date of retirement of respondent no.2, the entire functions with liabilities of the Giridih district unit were under the control of BSFC. Even the then Managing Director, BSFC vide Letter No. 4903 dated 13.06.2008 had directed all the District Managers, State Food Corporation, Bihar and Jharkhand to pay retiral dues to the retired employees within a period of one month. He submitted that BSFC paid the death-cum-retiral dues of late Manoj Nath Tiwary, Head Assistant, Late Rajendra Prasad, Assistant Accountant and Sheikh Allaiddin, Accountant, who worked at Giridih after 2000 and so far as the case of Sheikh Allaiddin is concerned, he had retired just one month before the retirement of the respondent no.2. He submitted that in any view of the matter, since the respondent no.2 had served BSFC for a sufficiently long period and retired from service way back in 2008, he is entitled to receive all his dues.

7. I have heard learned Advocates appearing for the parties and carefully perused the record.



8. The admitted facts of the case are as under :-

(a) While serving as Assistant Manager, BSFC, Giridih, Jharkhand, the respondent no. 2, retired on 31.08.2008.

(b) Prior to coming into force of Bihar State Reorganization Act, 2000, the area of activity of BSFC was within the entire erstwhile State of Bihar.

(c) After creation of successor State of Bihar and Jharkhand, certain controversies arose with regard to territorial jurisdiction of the Corporation which was resolved with the intervention of Government of India in the Ministry of Home Affairs.

(d) Vide its order dated 13.09.2004 in exercise of power conferred upon it under Section 65(1) & (2) of the Bihar Reorganization Act, 2000, a decision was taken to divide the shares of BSFC between the State of Bihar and Jharkhand.

(e) After deciding the modalities of division of assets and liabilities of BSFC between JSFC and BSFC, the Government of Jharkhand formed its own State Food & Civil Supplies Corporation known as JSFC on 06.06.2009.

(f) The State of Jharkhand vide Memo No. 389 dated 04.02.2016 resolved to pay the post-retiral benefits to the employees who were posted in the State of Jharkhand on or after 14.11.2000 and JSFC was directed to pay the retiral benefits to all those employees who were not paid their retiral benefits.

9. Having recorded the aforesaid admitted facts, now let me



consider the first objection raised by the petitioner as to whether the Commission was having any jurisdiction to adjudicate and direct BSFC to make payment of due emoluments and retiral benefits to the petitioner with interest.

10. In order to determine the aforesaid issue, at this stage, it would be relevant to look to the provisions of the Protection of Human Rights Act, 1993 (for short 'the Act'), an Act of the Parliament, which provides for establishment of the National Human Rights Commission at the national level and State Human Rights Commissions at the State level. According to Section 21(1) of the Act, a State Government may constitute a body to be known as the State Human Rights Commission.

11. In the State of Bihar, the Commission was established on 3rd January, 2000 vide Notification No. 207. It became functional on 25th January, 2008 with appointment of chairperson and supporting members of the Commission. The Commission is an autonomous high power human rights watch body which derives its authority from the Act.

12. Section 2(1)(c)(d) and (n) define Commission, human rights and State Commission respectively, which read as under :-

“Section 2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(c) **“Commission”** means the National Human Rights Commission under section 3;

(d) **“human rights”** means the rights relating



to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India;

(n) “**State Commission**” means a State Human Rights Commission constituted under section 21.”

13. Section 12 of the Act prescribes the functions of the Commission which includes among other things, power to inquire *suo motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of a Court into a complaint of violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant. It reads as under :-

“Section 12. Functions of the Commission.-The Commission shall perform all or any of the following functions, namely:-

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of –

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(d) review the safeguards provided by or



under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.”

14. Section 13 of the Act provides that a Commission while inquiring into complaints made under the Act shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particulars the matters enumerated thereunder. It reads as under :-

“Section 13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;



- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission



shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under subsection (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.”

15. Section 14 of the Act authorizes the Commission for conducting any investigation following an inquiry to utilize the service of any official or investigation agency of the Central Government or any State Government with concurrence of the Central Government or the State Government. It reads as under:-

“Section 14. Investigation-

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under subsection (1) may,



subject to the direction and control of the Commission:-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.”

16. Section 16 mandates that in case the Commission considers it necessary to inquire into conduct of any person, it shall give the person a reasonable opportunity of being heard. It reads as under :-

“Section 16. Persons likely to be prejudicially affected to be heard- If, at any stage of the inquiry, the Commission:-

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the



inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.”

17. Section 17 deals with inquiry into complaints received by the Commission which reads as under :-

“Section 17. Inquiry into complaints-The Commission while inquiring into the complaints of violations of human rights may—

(i) call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it:-

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.”

18. Section 18 of the Act authorizes the Commission after completion of investigation and on completion of investigation of inquiry to make necessary recommendations to the appropriate Government with regard to the violations of human rights by a public servant. It reads as under :-

“Section 18. Steps during and after inquiry.-



The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned



Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”

19. Section 29 of the Act stipulates that the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 of the Act shall be applicable to a State Commission subject to certain modifications. It reads as under:-

“29. Application of certain provisions relating to National Human Rights Commission to State Commissions.- The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

- “(a) references to “Commission” shall be construed as references to “State Commission”;
- (b) in section 10, in sub-section (3), for the word “Secretary General”, the word “Secretary” shall be substituted;
- (c) in section 12, clause (f) shall be omitted;
- (d) in section 17, in clause (i), the words “Central Government or any” shall be omitted;”

20. Thus, from a reading of the aforesaid provisions, it would be evident that the Commission is no doubt entrusted with a very important function of protecting human rights, but Section 18 of the Act authorizes it only to recommend for payment of compensation or damages to concerned Government or authority where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof. Provision of Section 18(a) corroborates to the



function of the Commission specified in Section 12(a). The Commission is entitled to approach the Supreme Court or the High Court for such directions, orders, or writs as that Court may deem necessary. Under Clause (c) of Section 18, the Commission can recommend to the concerned Government or authority for grant of any such relief to the victim or the members of his family. Further, under Clause (e) of Section 18, the Commission is required to send a copy of its inquiry report together with its recommendation to the concerned Government or the authority and the concerned Government or authority shall, within a period of one month or such further time as may be allowed forward its recommendations on the report including the action taken or proposed to be taken thereon, to the Commission.

21. Thus, from a reading of the provisions of Act, it would be evident that the Commission is a body which is also empowered to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit necessary. However, the Commission itself has not been vested with the authority to issue directions, orders or writs.

22. In *Rajesh Das Vs. Tamil Nadu State Human Rights Commission [2010 (5) CTC 589]*, decided on 28.08.2010, the Madras High Court examined whether Human Rights Commission have power of adjudication in the sense of passing an order which can be



enforced on its own. In the said case correctness of recommendations made by the Tamil Nadu State Human Rights Commission recommending the Government to pay compensation and to recover the amount from the errant public servants was challenged. The High Court held that the Human Rights Commission has got no power either to order for payment of compensation or to issue any other order. The power, in simple terms, is only to make appropriate recommendations to the Government. The said recommendations cannot be enacted to an executable order at all. The Commission is neither a Judicial authority nor a quasi judicial authority to adjudicate upon the disputed facts. The Madras High Court also opined on the obligation of the Government on whether or not the compensation paid could be recovered from public servants, and whether such challenges to a Commission recommendations were premature. It held as under :-

“(i) What is made under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission is only a recommendation and it is neither an order nor an adjudication.

(ii) Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government.

(iii) But, the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution within a reasonable time.



(iv) In the event of the Government tentatively deciding to accept the recommendation of the State Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission.

(v) Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant(s) nor the respondent (s) in the human rights cases can challenge the recommendation of the commission as it would be premature except in exceptional circumstances.

(vi) On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by police which will culminate in a final report under Section 173 of the Code of Criminal Procedure.

(vii) On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate disciplinary proceeding against him under the relevant service rules, if it so empowers the Government.”

23. In *N.C. Dhoundial Vs. Union Of India & Ors [(2004) 2 SCC 579]*, examining the ambit and scope of the jurisdiction of the National Human Rights Commission, the Supreme Court observed in paragraph 14 as under :-

“14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very



important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.”

24. *In Jatt Ram Vs. Punjab State Human Rights Commission & Anr. [(2005) 141 PLR 297]*, a Division Bench of the Punjab and Haryana High Court after elaborately discussing the different provisions of the Act also categorically held that the State Human Rights Commission in exercise of the power under the Act have no power to issue directions.

25. Having considered different provisions of the Act and the decision of the **Supreme Court** in *N.C. Dhoundial* (Supra), this Court finds itself in complete agreement with the ratio laid down by the **Madras High Court** and the **Punjab and Haryana High Court**



in the decisions noted above. The Court is of the considered view that in the present case the Commission had no power either to direct the petitioner to pay the due emoluments or retiral benefits to the respondent no.2 or to direct it to pay interest over the due amount. If on completion of inquiry, it had come to any finding, it could have made recommendations to BSFC and it was for BSFC to act upon such recommendations.

26. Hence, the objection of the petitioner regarding lack of jurisdiction of the Commission to adjudicate and to issue direction to the petitioner is upheld.

27. However, the next important issue before this Court would be as to whether to allow this writ application only on the point of lack of jurisdiction of the Commission to issue direction to BSFC or to proceed ahead and decide the main issue raised by the respondent no.2 before the Commission.

28. On the facts and in the circumstances of the case, since the parties have made elaborate arguments on merits of the case also and the issue involves denial of an individual's right to receive retirement benefits for long as a result of which his livelihood is adversely being affected resulting into untold misery, starvation and poverty, it would not be proper for this Court to close the case at this stage and shut its eyes from the challenges being faced by the respondent no.2 in order to push him into the state of darkness and



uncertainty for an indefinite period.

29. Hence, in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, I propose to proceed ahead with the matter in order to decide the claim of the respondent no.2 raised before the Commission.

30. The claim of the petitioner before the Commission was that he has not been paid salary in accordance with the revised grades, pension and other pensionary benefits.

31. In the background of the facts stated above, in the dispute between two States over division of assets and liabilities the respondent no.2 is the victim. His entire life time savings like pension and other benefits which were to be paid on the date of retirement have been withheld for no fault on his part for over eight years have been withheld for no fault on his part for over eight years. The pension and other retiral benefits may be the only source of his livelihood and means of survival. There is no doubt about it that non-payment of the same for such a long time must have caused devastating effect on the life of the petitioner and his family members.

32. It is an admitted fact that the petitioner retired on 31st August, 2008 and till that time JSFC was not in existence. It is also an admitted fact that JSFC came into existence vide Resolution dated 06.06.2009 and became operational from 01.02.2011. The petitioner



has also not disputed the stand of the State of Jharkhand that bifurcation of the assets and liabilities of BSFC was made in the year 2011 and a number of persons, who retired in the year 2008 and one month earlier to the respondent no.2 have been paid the entire payable dues including retiral dues by BSFC and not by JSFC.

33. Here I must record that fortunately the stand of JSFC has been quite fair and pragmatic. When Mr. Dhruv Mukherjee, learned Senior Advocate appearing on behalf of JSFC was confronted with the recent resolution which came into existence only after the Commission passed the order as contained in Memo No. 389 dated 04.02.2016 issued under the signature of the Secretary to the Government whereby a decision was taken by the State of Jharkhand to pay the post-retiral dues to the employees of BSFC who remained posted in the State of Jharkhand from 14.11.2000 upto 2010 will be paid their post-retiral dues by JSFC, he fairly conceded that in view of the aforesaid decision of the State of Jharkhand, the respondent no.2 would be entitled to receive his post retiral benefits from JSFC. He also took instruction from JSFC in this regard and based on the instructions received, he submitted that JSFC is ready to pay the post retiral dues of the respondent no.2. However, he submitted that so far as other claims of the respondent no.2, such as, difference amount against 5th pay revision commission, difference amount against 6th pay revision commission, arrear of salary etc. are concerned, JSFC is



not liable to pay those amounts.

34. As there remains no dispute with respect to the post-retiral dues and JSFC has owned up the responsibility to pay the post retiral dues, the only controversy remains with regard to the liability to pay the admissible pre-retirement dues of the respondent no.2 including the difference amount against 5th and 6th pay revision commission recommendations. In this regard, looking at the admitted facts that several employees, who retired in the year 2008 and one month earlier to respondent no.2, have been paid the entire payable dues including the retiral dues by BSFC and not by JSFC, there is no reason as to why BSFC would not pay the pre-retirement dues of the respondent no.2 including the difference amount pursuant to pay revision commission recommendations. I am also of the view that for no fault on the part of the respondent no.2 there has been considerable delay of more than eight years in payment of the emoluments and other pensionary benefits, the respondent no.2 is entitled to receive interest at the rate of 8 per cent per annum over all his dues.

35. On the facts and in the circumstances of the case, in the opinion of this Court, the ends of justice would meet if I pass the order on following terms :-

- (a) BSFC shall pay all the admissible pre-retirement dues of the respondent no.2 including difference amount against 5th and 6th pay revision commission recommendations, if



any, in tune with the payments made to other employees along with interest at the rate of 8% per annum from the due date till the date of actual payment within three months from the date of receipt/production of a copy of this order.

- (b) JSFC is directed to make payment of all the admissible post-retiral dues of the respondent no.2 along with interest at the rate of 8% per annum within a period of three months from the date of receipt/production of a copy of the order.
- (c) In case JSFC and/or BSFC fail(s) to pay the amount within the period stipulated hereinabove, they/it shall also be liable to pay cost of Rs.50,000/- (Rupees fifty thousand) to the respondent no.2 and the employer(s) will be at liberty to recover the amount from the officer(s) responsible for causing the delay in payment.

36. Ordered accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	19-04-2017
Transmission Date	

