

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.11726 OF 2009

ORDER:

The State Bank of India (SBI), Administrative Unit, Visakhapatnam, represented by its Assistant General Manager (Admn.), is the petitioner.

The petitioner prays for writ of Certiorari to call for the records leading up to and inclusive of proceedings Rc.No.S4/1898/VSP/2008 dated 26.03.2009 of 1<sup>st</sup> respondent and quash the proceedings 26.03.2009 as without jurisdiction and unconstitutional.

The circumstances relevant for disposing of the writ petition are briefly stated thus:

One M.Raj Kishore was working as Senior Assistant in SBI Gajuwaka Branch, Visakhapatnam. On 19.04.2002, the petitioner-Bank issued show cause notice to M.Raj Kishore and the charges framed against him read as follows:

- i. He had lodged for collection a cheque No.591299 dt.15.10.1999 for Rs.9,580/- favouring Shri Kotti Vijaya Kumar drawn by M/s Peerless General Finance & Investment Company Limited on Union Bank of India, Vijayawada crossed 'Account Payee Only' into Savings Bank Account No.01190030435 of his wife Smt.K.Usha Kumari. In this connection he had prepared in his own hand writing the relative pay-in-slip dated 08.11.1999, tendered along with the above mentioned cheque for credit into SB Account No.01190030435 even though it had no endorsement in favour of Smt.K.Usha Kumari. The proceeds of the cheque were credited into the said SB Account No.01190030435 on 12.11.1999 which was subsequently withdrawn.

- ii. It is alleged that he had abetted fraudulent conversion of a third party cheque into his wife's account without the knowledge of the payee.

On 08.11.2007, the petitioner passed an order imposing the punishment of reduction in scale of pay by one stage for a period of one year in terms of paragraph 6 (e) of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen. M.Raj Kishore filed appeal against the order imposing punishment. The appeal was rejected vide order dated 03.03.2008. The employee allowed the order imposing punishment to become final.

The 2<sup>nd</sup> respondent, who is the wife of M.Raj Kishore, filed a representation before 1<sup>st</sup> respondent complaining against the imposition of punishment of reduction in scale of pay by one stage on M.Raj Kishore. The complaint filed before 1<sup>st</sup> respondent refers to alleged harassment meted out to M.Raj Kishore in Gajuwaka Branch by petitioner Bank. The petitioner denies discrimination and further explains the circumstances leading to disciplinary action against M.Raj Kishore, Senior Assistant, as per Rules. It is stated that the competent authority on being satisfied with the record on alleged misconduct imposed the punishment as per the extant procedure. The order imposing punishment has become final etc. The 1<sup>st</sup> respondent-Commission had taken on file the representation of 2<sup>nd</sup> respondent and assigned Rc.No.S4/1898/VSP/2008. The 1<sup>st</sup> respondent basing on the office observations recorded by the Chairman issued the following directions to petitioner:

“After above observations the Commission feels that there is only a miscarriage of justice against the petitioner’s husband and punishment imposed is nothing but harassment and disproportionate and not commensurate with the principles of natural justice. The Bank authorities may be directed.

1. The petitioner’s husband may be exonerated from charges and restore the increment withheld by the Bank authorities.
2. The salary and allowances for the suspension period shall be paid to the petitioner’s husband as he is not found guilty.

The Secretary of this Commission is requested to take necessary action in the matter”.

As directed by the Chairman of 1<sup>st</sup> respondent-Commission, the Secretary, through the communication impugned in the writ petition, called upon the petitioner-Bank to exonerate the charges, restore pay to M.Raj Kishore and directed payment of salary and allowances for the suspension period, as he was not found guilty by 1<sup>st</sup> respondent-Commission. Hence, the writ petition.

The petitioner challenges the observations of the Chairman of 1<sup>st</sup> respondent and also the communication dated 26.03.2009 on the ground that the 1<sup>st</sup> respondent does not have any power or jurisdiction to entertain a petition filed by 2<sup>nd</sup> respondent in respect of a grievance relating to service matter of an employee of petitioner Bank and pass the orders impugned in the writ petition. The 1<sup>st</sup> respondent-Commission does not have jurisdiction to interfere with the disciplinary proceedings even under Article 338 of the Constitution of India or as per the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes Act, 2003

(for short, 'Act 9 of 2003'). It is further contended that the Commission is not empowered either by functions, duty or jurisdiction under Act 9 of 2003 to set aside the disciplinary proceedings initiated and concluded under the Memorandum of Settlement on Disciplinary Action Procedure for Workmen. Therefore, the directions issued by 1<sup>st</sup> respondent vide letter dated 26.03.2009 are *per se* illegal and without jurisdiction. It is further contended that the 1<sup>st</sup> respondent without properly appreciating either the explanation or the material placed by the petitioner Bank has come to an erroneous conclusion on the findings recorded by the disciplinary authority and, therefore, the proceedings impugned in the writ petition are liable to be set aside.

This Court, on 17.06.2009, granted interim suspension of the proceedings impugned in the writ petition. The 1<sup>st</sup> respondent filed counter affidavit. The circumstances referred to above are not disputed or denied in the counter affidavit filed on behalf of 1<sup>st</sup> respondent. It is stated that on 15.03.2008, the Commission vide letter No.S4/1898/VSP/2008 requested the District Collector, Visakhapatnam and the Chief General Manager, SBI to examine the issue brought to its notice by 2<sup>nd</sup> respondent and furnish the action taken report to 1<sup>st</sup> respondent. On 25.06.2008, the petitioner submitted the remarks. The Chairman of the Commission since was not satisfied, the Commission desired to know the facts by verifying the records personally. Therefore, the Assistant General Manager, SBI Visakhapatnam was directed to personally remain present on 03.12.2008 at 11.00 A.M., together with records. It is stated that records were produced and inspected by the Chairman and the

order already excerpted above has been passed. On the question of jurisdiction, it is stated that Act No.9 of 2003 was enacted to safeguard various constitutional and statutory provisions and rights provided for Scheduled Castes and Scheduled Tribes in the State. The Commission, it is stated, has power under Section 12 (a) (ii), (iii) and (g) of Act 9 of 2003. Therefore, it is contended that the 1<sup>st</sup> respondent has jurisdiction to entertain and the order is well within the power of 1<sup>st</sup> respondent.

The counsel appearing for the parties have substantially reiterated the very same averments and contentions in the respective pleadings. On the basis of averments and contentions advanced by the counsel, the following question arises for consideration:

Whether the 1<sup>st</sup> respondent has power and jurisdiction to issue directions through proceedings Rc.No.S4/1898/VSP/ 2008 dated 26.03.2009?

Briefly reiterated, one M.Raj Kishore was the employee of petitioner-Bank. It is not in dispute that the employee is governed by the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. The petitioner Bank issued show cause notice dated 10.04.2002, received explanation and thereafter in accordance with the procedure, imposed the punishment of reduction in scale of pay by one stage for a period of one year. M.Raj Kishore challenged the order imposing punishment by filing appeal before appellate authority. The appeal filed by M.Raj Kishore was dismissed and the employee has allowed

the order imposing punishment to become final. Thereafter, the 2<sup>nd</sup> respondent, being the wife of M.Raj Kishore, filed a petition or representation before 1<sup>st</sup> respondent complaining harassment under the Act. The 1<sup>st</sup> respondent, while examining the complaint, looks into the record, merits or otherwise of the charge sheet, explanation, the findings recorded by disciplinary authority and the appellate authority and concludes that the depth of irregularity has not been found by the Commission and no irregularity is made out on the part of M.Raj Kishore and he is not involved in the processing of cheques sent for collection. What at best can be said on the misconduct is that a case of employee preparing the credit voucher in a routine manner. At this juncture, it is made clear that having regard to the legal objection raised by the petitioner Bank against the findings of the 1<sup>st</sup> respondent-Commission or the impugned communication dated 26.03.2009, the merits or otherwise of the findings recorded by the 1<sup>st</sup> respondent are not examined. But the challenge to impugned proceedings is considered from the perspective whether the 1<sup>st</sup> respondent has jurisdiction or acted in the matter without jurisdiction.

The 1<sup>st</sup> respondent refers to preamble of Act 9 of 2003 and Section 12 and contends that the 1<sup>st</sup> respondent has jurisdiction to entertain the complaint against imposition of punishment at the instance of 2<sup>nd</sup> respondent. The statement of objects and reasons and also the preamble are excerpted for appreciation and also immediate reference.

**THE ANDHRA PRADESH STATE COMMISSION FOR  
SCHEDULED CASTES AND SCHEDULED TRIBES ACT, 2003**

**STATEMENT OF OBJECTS AND REASONS**

The Government have appointed Sri Justice Dr.K.Punnaiah, Retired Judge of Andhra Pradesh High Court as Single Member commission of enquiry to enquire into the practice of unsociability against Scheduled Castes and Scheduled Tribes and incidence of atrocities against Scheduled Castes and Scheduled Tribes and suggest measures for eradication of untouchability and prevention of such atrocities against Scheduled Castes and Scheduled Tribes.

The Commission after examining numerous petitions presented by the Scheduled Cates and Scheduled Tribes has made certain suggestions and also measures to be taken for eradication of untouchability and prevention of atrocities against Scheduled Cates and Scheduled Tribes and to achieve the goal, it has recommended to constitute an independent Commission some what on the lines of the Andhra Pradesh State Minorities Commission Act, 1998 (A.P. Act 31 of 1998) to perform the duties of the Commission as conferred under clause (5) of Article 338 of the Constitution of India by giving a statutory status under specific Legislation.

Accordingly, the State Government after careful examination of the said recommendations made by the Single Member Commission of enquiry have decided to make a Legislation for constituting the Andhra Pradesh State Commission for Scheduled Cates and Scheduled Tribes.

This Bill seeks to give effect to the above decision.

Appended to L.A Bill 50 of 2001.

Reserved by the Governor on the 11<sup>th</sup> April, 2003 for the consideration and assent of the President received the assent of the President on the 25<sup>th</sup> May, 2003 published on the 3<sup>rd</sup> June, 2003 in the Andhra Pradesh Gazette Part IV-B (Ext.)

**Act No.9 of 2003**

An act to provide for the establishment of Andhra Pradesh State Commission for Scheduled Cates and Scheduled Tribes to safeguard the interests of the Scheduled Cates and Scheduled Tribes in the State and for matters connected therewith and incidental thereto:

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Fifty-fourth Year of the Republic of India”.

Likewise, Section 12 of the Act relied on by the 1<sup>st</sup> respondent reads thus:

**Functions of the Commission:** - The Commission shall perform the following functions, namely:-

- (a) inquire, suo motu or on a petition presented to it by a victim or by any person on his behalf, into complaint of,-
  - (i) violation of any rights provided in the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Scheduled Cates and Scheduled Tribes (Prevention of Atrocities) Act, 1989) Central Act 33 of 1989) and rules thereon or abetment thereof;
  - (ii) negligence in the Prevention of such violation, by a public servant;
  - (iii) inquire and recommend to the concerned disciplinary authority to initiate disciplinary action in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of the Scheduled Cates and Scheduled Tribes.
- (b) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Cates and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (c) to evaluate the working of various safeguards and civil rights accruing to a person as stipulated in the Protection of Civil Rights Act, 1955 and the Scheduled Cates and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the protection of Scheduled Cates and Scheduled Tribes and in laws and regulations and any other orders passed by the Union and State Governments, to investigate and monitor all matters relating to safeguards provided for the

Scheduled Cates and Scheduled Tribes under the Constitution or under any other law;

- (d) to make recommendations with a view to ensure effective implementation and enforcement of all safeguards under Protection of Civil Rights Act, 1955 and the Scheduled Cates and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and other laws and the rules,
- (e) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the Scheduled Cates and Scheduled Tribes;
- (f) to look into specific complaints regarding deprivation of rights and safeguards in the interest of the Scheduled Cates and Scheduled Tribes;
- (g) to enquire into any unfair practice take decision thereon and recommend to the Government the action to be taken in that matter;
- (h) to spread literacy among various sections of society regarding the Protection of Civil Rights Act, 1955 and the Scheduled Cates and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to promote awareness of the safeguards available for the protection of these rights through publications the media, seminars and other available means;
- (i) to conduct studies, research and analysis on the question of avoidance of discrimination against Scheduled Cates and Scheduled Tribes;
- (j) to suggest appropriate legal and welfare measures in respect of Scheduled Cates and Scheduled Tribes to be undertaken by the Government;
- (k) to inquire into any unfair practice;-
  - (i) on receiving a written complaint from Scheduled Caste and Scheduled Tribe women alleging that she has been subjected to any unfair practice or on a similar complaint from her mother or father or sister or brother or from any organization;

- (ii) to cause investigations or inquiries to be made by the Commissioner of Social Welfare on issues of importance concerning Scheduled Castes and Scheduled Tribes particularly SC/ST women and issues concerning unfair practice and to report thereon to the government on the corrective measures to be taken;
- (l) the monitoring of the working of laws in force concerning Scheduled Castes and Scheduled Tribes women with a view to identifying the areas where the enforcement of laws is not adequately effective or has not been streamlined and recommending executive or legislative measures to be taken;
- (m) to invite one or more prominent persons to participate in the meetings of the Commission to advise on such matters as may be necessary;
- (n) to encourage the efforts of non-governmental organizations and institutions working in the field of human rights and for the upliftment and betterment of Scheduled Castes and Scheduled Tribes.
- (o) to make periodical reports at prescribed intervals to the government;
- (p) to exercise such other powers and perform such other functions as may be conferred or enjoined upon it by this Act or the Rules made thereunder; and
- (q) the recommendations of National Commission for Scheduled Castes and Scheduled Tribes will prevail in case of conflicting recommendations on the same issue by the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Scheduled Castes and Scheduled Tribes.”

The statement of objects and reasons refer to appointment of Single Member Commission of an enquiry by Hon'ble Sri Justice K.Punnaiah, a Retired Judge of A.P, High Court to enquire into the practice of untouchability against the Scheduled Castes and Scheduled Tribes and enquire into incidence of atrocities against

the Scheduled Castes and Scheduled Tribes; suggest measures for eradication of untouchability and prevention of such atrocities against Scheduled Castes and Scheduled Tribes. It is in this background, the Single Member Commission has submitted its enquiry report and the recommendations were accepted resulting in enactment of Act 9 of 2003. The Act intends to establish the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes to safeguard the interests of Scheduled Castes and Scheduled Tribes in the State and for matters therewith and incidental thereto. The scheme of the Act is such that up to Section 10, the Act refers to constitution, meetings of the Commission, composition of the commission, term of office and conditions of service of Chairman and Members, appointment of officers and other employees of the Commission, salaries and allowances, vacancies etc., not invalidate proceedings of the Commission, procedure to be regulated by the Commission. Section 11 deals with powers of the Commission and provides that the Commission while performing the functions under Section 12 shall have the powers of a Civil Court trying a suit and in particular, in respect of the following matters namely:-

- “(i) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any Court or office;

- (v) issuing Commissions for the examination of witnesses or documents; and
- (vi) any other matter which may be prescribed.

Now coming to functions, the emphasis is on Section 12 (a) (ii) and (iii) and (g). Sub-section or clauses reads thus:

- (a) inquire, suo motu or on a petition presented to it by a victim or by any person on his behalf, into complaint of,-
    - (i) xxxxxxxx
    - (ii) negligence in the prevention of such violation, by a public servant;
    - (iii) inquire and recommend to the concerned disciplinary authority to initiate disciplinary action in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of the Scheduled Cates and Scheduled Tribes.
- xxxxxxx  
xxxxxxx  
xxxxxxx  
xxxxxxx  
xxxxxxx  
xxxxxxx
- (g) to enquire into any unfair practice take decision thereon and recommend to the Government the action to be taken in that matter;

This Court by applying the rule of interpretation i.e., plain reading of a section and assigning to the section the literal meaning intended to be conveyed by the Section is of the view that it relates to functions of the Commission and does not deal with sitting in appeal of any of the decisions taken by petitioner under the applicable disciplinary rules. The Commission in the considered view of this Court is having advisory function or jurisdiction and not

adjudicatory authority or jurisdiction. The Commission cannot sit as a Court of appeal against the orders of the petitioner-Bank passed under disciplinary rules, merely on the ground that the 2<sup>nd</sup> respondent's husband is stated to have suffered harassment at the hands of branch of petitioner Bank.

The disciplinary proceedings are initiated against any employee to enquire into alleged acts of misconduct. The discipline and its enforcement are considered as prerogatives of the management. This prerogative or the concept of disciplining the employee is inherent in very relationship between the Master and the Servant. Therefore, discipline is a management function and the Master can punish its Servant in different ways depending on the nature of misconduct alleged, enquired into and proved against Servant. Though it is treated as prerogative or right, still with the rights guaranteed under the Constitution, Industrial Standing Orders, Disciplinary Rules etc, the employer cannot punish the employee for an alleged act of misconduct without proving the misconduct and without giving the employee a reasonable opportunity to defend himself in a proper domestic enquiry. The standing orders in an Industrial Establishment provide for such opportunity through the departmental enquiries. In the case on hand, the procedure for conducting the disciplinary enquiry is regulated by the Memorandum of Settlement on Disciplinary Action Procedure for Workmen. It is contextual to refer that through a catena of precedents and principles of law, the Courts have evolved the conduct of domestic enquiries, norms to be followed namely, Constitution, natural and legal norms and also imposed

restraints on holding of enquiries and the enforcing of discipline in a few cases.

Where the enquiry leads to proving the guilt of an employee, the employee is not without remedies and stated illustratively, can move under the Industrial Disputes Act or remedy under Article 226 of the Constitution of India, as the case may be. The above discussion is merely stated to emphasize that the management has prerogative to initiate disciplinary proceedings, the prerogative is conditioned by procedural safeguards, rights, natural rights etc., and an aggrieved employee will have to work out remedies as provided for by law.

Juxtaposing the case on hand with the above discussion, this Court is of the view that M.Raj Kishore allowed punishment to become final and 2<sup>nd</sup> respondent takes up the challenge before 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent even while entertaining the representation of 2<sup>nd</sup> respondent ought to have considered its functions and jurisdictional limitations. Act 9 of 2003 is silent on any power with the power resembling to the one exercising in this writ petition is conferred on 1<sup>st</sup> respondent.

The *jurisdiction* and *authority* presuppose and mean according to Webster Dictionary, Blacks Law dictionary and the Law Lexicon as -

Webster Dictionary

*Jurisdiction* – the power, right, or authority to interpret, apply, and declare the law.

*Authority* - a power to act esp. over others that derives from status, position or office

### Blacks Law dictionary

*Jurisdiction* – a government's general power to exercise authority over all persons and things within its territory.

*Authority* - The right or permission to act legally on another's behalf.

### Law Lexicon

*Jurisdiction* – power to hear and determine a case.

*Authority* - a person or persons, or a body, exercising power of command.

The Hon'ble Supreme in *OFFICIAL TRUSTEE, WEST BENGAL v. SACHINDRA NATH CHATTERJEE*<sup>1</sup> had referred to *HIRDAY NATH ROY v. RAMCHANDRA BARNA SARMA*<sup>2</sup> in explaining what are the facets and aspects of the jurisdiction and paragraph 13 thereof reads thus:

"What is meant by jurisdiction? This question is answered by Mukherjee, Acting C. J. speaking for the Full Bench of the Calcutta High Court in *Hirday Nath Roy v. Ramachandra Barna Sarma*. (I.L.R. LXVIII Cal. 138). At page 146 of the report the learned judge explained what exactly is meant by jurisdiction. We can do no better than to quote his words:

" In the order of Reference to a Full Bench in the case of *Sukhlal v. Tara Chand* ([1905] I.L.R. 33 Cal.68) it was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it', in other words, by jurisdiction is meant the authority which a "Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision". An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact', 'the authority by which the judicial officer take cognizance of and

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<sup>1</sup> (AIR 1969 SC 823)

<sup>2</sup> (ILR 48 Cal. 138)

'decide causes'; 'the authority to hear and decide a legal controversy', 'the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them;' 'the power to hear, determine and pronounce judgment on the issues before the Court'; 'the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect'; 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution'. (emphasis herein supplied).

Proceeding further the learned judge observed "This jurisdiction of the Court may be qualified or restricted by - a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that, jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction itself, is sometimes a question of great nicety, as is illustrated by the decisions reviewed in the order of

reference in Sukhlal v. Tara Chand (1905] I.L.R.33 Cal.68.) and [Khosh Mahomed v. Nazir Mahomed](#) (1905) I.L.R.33 Cal.352) see also the observation of Lord Parker in [Raghunath, v. Sundar Das](#) (1914) I.L.R.42 Cal.72). We must not thus overlook the cardinal position that in order that jurisdiction may be exercised, there must be a case legally before the Court and a hearing as well as a determination. A judgment pronounced by a court without jurisdiction is void, subject to the well-known reservation that, when the jurisdiction of a Court is challenged, the Court is competent to determine the question of jurisdiction, though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it: Rashmoni v. Gunada Sundari Dasi. (20 Cal LJ 218) (emphasis herein supplied).

To the same effect is the ratio laid down by Apex Court in BUDHIA SWAIN V. GOPINATH DEB<sup>3</sup> and paragraph 9 reads thus:

“..A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the **very** root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni Vs. Sri Kali Nath (AIR 1962 SC 199), it was held:-

"The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the

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<sup>3</sup> (1999) 4 SCC 396)

court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

In the light of the above discussion what is discerning in the exercise of jurisdiction of 1<sup>st</sup> respondent is, the 1<sup>st</sup> respondent being a Commission, by referring to its functions has ushered into the area of adjudication.

By juxtaposing the functions under Section 12 of Act 9 of 2003 within the literal or legal meaning of words 'jurisdiction or authority', this Court is satisfied to hold that the functions under Section 12 of Act 9 of 2003 can travel that far to confer jurisdiction on petitioner-Bank in the disciplinary matters. Let me further examine the claim of 1<sup>st</sup> respondent with the illustration viz., that the service or disciplinary rules are for employees as a class, but its applicability is not dependant on whether an employee is OC, OBC, SC or ST. If the logic of 1<sup>st</sup> respondent is accepted, then against the orders of punishment, for a change with status of employee. The role and function of 1<sup>st</sup> respondent is particularly advisory in nature and protect the constitutional rights of SC/ST, prevent practice of untouchability etc.

This Court finds it relevant to refer to ALL INDIA INDIAN OVERSEAS BANK SC AND ST EMPLOYEES WELFARE ASSOCIATION v. UNION BANK OF INDIA<sup>4</sup> for the proposition that even under Article 338 of the Constitution of India, the powers of Civil Court for summoning witness etc., can be inferred to have been granted in favour of Commission. The Commission does not have power to grant

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<sup>4</sup> (1996)6 SCC 606

injunctions, both temporary and permanent. In ALL INDIA INDIAN OVERSEAS BANK SC AND ST EMPLOYEES WELFARE ASSOCIATION's case, the Supreme Court held thus:

“All the procedural powers of a Civil Court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause 8 of Article 338 of the Constitution, The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated March 4, 1993”.

In the decisions referred to above, the Apex Court has declared that the Commission does not have power to issue injunction and from the same analogy, it can be concluded that a higher power of jurisdiction to decide a case is not vested with 1<sup>st</sup> respondent.

For the above reasons, this Court is of the view that the observations of Chairman of 1<sup>st</sup> respondent-Commission and the proceedings impugned in the writ petition are without jurisdiction and are liable to be set aside and are, accordingly, set aside.

The writ petition is allowed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

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S.V.BHATT, J

22<sup>nd</sup> September, 2017  
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