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

+ W.P.(C) 521/2018 & CM No. 2232/2018

MAHARAJA AGRASEN COLLEGE & ANR ..... Petitioners

Through: Mr Amit Khemka and Mr Rishi  
Sehgal, Advocates.

versus

NARENDRA KUMAR & ORS ..... Respondents

Through: Mr Aakash Naval, Advocate for R-1.  
Mr Anil Soni, CGSC with Mr  
Abhinav Tyagi, Advocates for R-  
2/NCSC.  
Mr Mohinder J. S. Rupal and Mr  
Prang Newmai, Advocates for  
University of Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

% **26.03.2019**

1. The petitioner has filed the present petition impugning the decision of the National Commission for Scheduled Castes (NCSC) dated 21.04.2016, whereby NCSC has recommended that *“the rosters of Maharaja Agrasen College should be re-casted as per Delhi University EC Resolution dated 28.09.2013 and the petitioner should be allowed to rejoin as Assistant Professor in the Department of Hindi as per the Ad-hoc appointments in the department dated 20.07.2015”*. NCSC has further directed that the Action Taken Report (ATR) be submitted to it within a period of 30 days of the said order.
2. Petitioner no.1 is one of the constituent colleges of University of Delhi. Respondent no.1 (who is a complainant before NCSC) was appointed

as a Junior Assistant-cum-Typist in petitioner no.1 college on 09.04.1996. The petitioner was, thereafter, appointed to the post of Assistant on 28.04.2005. Subsequently, on 29.02.2008, he was appointed to the post of the Senior Assistant.

3. On 26.02.2013, respondent no.1 was appointed in the Department of Hindi, against a vacancy reserved for SC candidates on an ad-hoc basis. On 03.06.2015, the Governing Body of petitioner no.1 college on the basis of the recommendations of the workload committee, reduced the vacant posts in the Department of Hindi, against which ad hoc appointments could be made.

4. In view of the above, two of the posts in the Hindi Department which were allocated to SC & ST candidates were withdrawn and adjusted in the end of the Roster.

5. Respondent no.1 is essentially, aggrieved by the said decision and the change in the roster. Initially, respondent no.1 filed representations to the Principal of petitioner no.1 college. However, since his grievance was not redressed, he filed a complaint before NCSC alleging discrimination against scheduled castes. It is in the said proceedings that NCSC has issued the impugned order.

6. The jurisdiction of NCSC is limited and is circumscribed by the provisions of Article 338 of the Constitution of India. The duties of the Commission are specified in sub-article 5 of Article 338 of the Constitution of India. The said Article is set out below:-

“(5) It shall be the duty of the Commission -

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes

and Scheduled Tribes under this 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;

- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.”

7. The controversy involved in the case is, *ex facie*, a service matter. It is now a settled position that the NCSC does not have the jurisdiction to adjudicate service matters. The Supreme Court in ***All India Indian Overseas Bank SC & ST Employees Welfare Association and Ors. v.***

***Union of India & Ors.: 1996 Supp(8) SCR 295*** had examined the powers of the NCSC and had held that although the NCSC has certain powers of a Court, it was not a Court and thus would not adjudicate disputes. The said view was also followed by the Coordinate Benches of this Court in ***Union of India v. National Commission for Scheduled Castes and Anr.: W.P.(C) 2390/2012*** decided on **28.05.2014** and ***Delhi Transport Corporation v. Manohar Lal and Anr.: W.P.(C) 1613/2013*** decided on **16.02.2016**. This court had also considered the powers of the National Commission for Scheduled Tribes under Article 338A of the Constitution of India, which is similarly worded as Article 338 of the Constitution of India.

8. The learned counsel for NCSC submits that the impugned order is only a recommendation and is not an order. The said contention is unpersuasive as the plain reading of the operative part of the impugned order indicates that the petitioner has been called upon to submit an action taken report. Clearly, NCSC is insisting on the implementation of its recommendations. Even, otherwise the tenor of the impugned order clearly indicates that it is an order although couched as a recommendation, it is in substance, an order.

9. In view of the above, the impugned order is set aside and the present petition is disposed of. The pending application is disposed of. It is however, clarified that this would not preclude respondent no.1 from availing his remedies before an appropriate forum.

**VIBHU BAKHRU, J**

**MARCH 26, 2019**  
**MK**