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

Date of Decision : 11.02.2020

+ **W.P.(C) 12490/2018 & CM No.48481/2018**

FRESENIUS KABI ONCOLOGY LTD.

..... Petitioner

Through: Mr.Raghavendra S. Srivatsa,
Mr.Venkita Subramaniam,
Mr.Rahat Bansal, Mr.Lekhi
Chand Bonsle & Mr.Meher
Prakash, Advs.

versus

**NATIONAL COMMISSION FOR SCHEDULED CASTES,
AND ORS.**

..... Respondents

Through: Mr.Arun Bhardwaj, AAG State
of Haryana.
Mr.Keshav Tiwari, Adv. for R-
4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the proceedings initiated by the respondent no. 1, National Commission for Scheduled Castes, on a complaint filed by the respondent no. 4.
2. It is the case of the petitioner that the respondent no. 4 joined the services of the petitioner on 01.07.2007 as a Junior Assistant and on 18.04.2011, he was promoted as Assistant Officer. In 2013, as the

petitioner Company was undergoing re-structuring of the department, an offer for voluntary resignation which included compensation, was made to the respondent no. 4. He accepted this offer and submitted his resignation on 09.12.2013. Thereafter, respondent no. 4 encashed the cheque of compensation which was for an amount of Rs. 5,35,000/-, in January 2014 itself.

3. The respondent no. 4, however, gave a representation to the Vice President secretariat and on such complaint, the dispute was inquired by the police as also by the Labour Department. Both the authorities closed such investigations. However, the respondent no. 1 by an order dated 22.05.2018, observed that the resignation appears to have been obtained from respondent no. 4 by playing fraud and under pressure by the petitioner. By the said order, the Commissioner of Police, Gurugram was directed to get the case re-examined. By a subsequent order/notice dated 24.10.2018, the respondent no. 1 directed the Labour Commissioner to ensure the presence of the Managing Director of the petitioner before the Commission on the next date of hearing. Aggrieved by the proceedings before the respondent no. 1, the petitioner filed the present petition.

4. The learned counsel for the petitioner submits that the respondent no. 1 would have no jurisdiction to entertain the complaint of the respondent no.4 under Article 338(5) of the Constitution of India. He places reliance on the Judgments of this Court in ***National Seed Corporation Ltd. vs. National Commission for SC & ST & Anr***, 201 (2013) DLT 74; ***Municipal Corporation of Delhi vs. Lal Chand***

& Ors., 204 (2013) DLT 118 and *Oriental Insurance Company Ltd. vs. Union of India & Ors.*, MANU/DE/2761/2018.

5. On the other hand, the learned counsel for the respondent no. 4 submits that the resignation of the respondent no. 4 was obtained by force and by putting illegal pressure. He submits that the respondent no. 4 had immediately complained about the same by writing an e-mail. He further submits that as the respondent no. 4 was the only Scheduled Caste candidate who was removed from the services by the petitioner, the complaint of the respondent no. 4 was maintainable before the Commission.

6. I have considered the submissions made by the learned counsels for the parties. The learned counsel for the respondent no. 4 has handed over a copy of the complaint filed by the respondent no. 4 before the respondent no. 1. Apart from mentioning in the subject matter of the complaint that he was a Scheduled Caste candidate, the entire complaint does not make any reference of any Constitutional or Statutory Rights of the respondent no. 4, as a Scheduled Caste being violated by the petitioner. Infact, the complaint is one of seeking resignation by exercising force. It does not even state that the resignation was sought only against the respondent no. 4 who happened to be a Scheduled Caste candidate. Infact, in the counter affidavit filed by the respondent no. 4 before this Court, the respondent no. 4 himself gives names of three more persons whose services were terminated by the petitioner during the period in question. However, they are not stated to be belonging to Scheduled Caste category.

7. In *Lal Chand & Ors.* (Supra), this Court has held that an enquiry in terms of sub Clause (b) of Clause 5 of Article 338 of the Constitution of India can be initiated by the Commission only where the complaint relates to specific incident of depriving a person of the rights conferred upon and safeguards provided for the persons, who as a class belong to Scheduled Castes. It is only such deprivation as a Scheduled Caste, which can be made a subject matter of such an enquiry by the Commission.

8. In *Oriental Insurance Company Ltd.* (Supra), this Court reiterated that a complaint relating to mere commercial disputes cannot be made the subject matter of inquiry before the Commissioner.

9. Similarly in *National Seed Corporation Ltd.* (Supra), this Court held that challenge to voluntary retirement scheme which does not have any challenge based on the specific rights and safeguards of the Scheduled Caste, cannot be made subject matter of inquiry by the Commission.

10. In view of the above well-settled principles of law, the exercise of jurisdiction by the respondent no. 1 on the complaint of the respondent no. 4 is clearly unsustainable.

11. In view of the above, the present petition is allowed and the complaint filed by the respondent no. 4 before the respondent no. 1 shall be deemed to have been closed as not maintainable. There shall be no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 11, 2020/rv