

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1490 of 2013**

- Chhattisgarh State Cooperative Marketing Federation Limited, Through its Secretary, Civil Lines, Raipur (C.G.), P.S. Civil Lines Raipur (C.G.), Tahsil and District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Schedule Caste Schedule Tribe Commission, Government of Chhattisgarh, 61, Jalvihar Colony, Raipur, PS Civil Lines, Raipur, Tahsil and District Raipur, Chhattisgarh
2. Shri Balram Saidaiha, S/o Shri Darbar Singh Saidaiha, R/o Village and Post Sakri, Kisan Rice Mill, Sakri, Tahsil and District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	Mr. Ashish Surana, Adv.
For Respondent-State	Mr. A. S. Kachhawaha, Adv.
For Respondent No.2	Mr. R. V. Rajwade, Adv.

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****03/09/2021**

1. Proceedings of this matter have been taken up through Video Conferencing.
2. The petitioner herein calls in question the legality, validity and the correctness of the

order dated 14.03.2013 (Annexure-P/1) passed by the respondent No.1, whereby the respondent No.1 has recommended and directed for promotion of respondent No.2 on the post of Field Assistant w.e.f. 07.07.2008.

3. Mr. Ashish Surana, learned counsel for the petitioner, would submit that the respondent No.1 has recommended and directed for promotion of respondent No.2 *ex post facto*, but it is only the recommendatory body in light of the decision rendered by this Court in the matter of Chhattisgarh State Power Generation Co. Ltd. Vs Chhattisgarh Rajya Anusuchit Jan Jati Ayog and another¹. In that view of the matter, the writ petition deserves to be allowed.
4. Mr. A. S. Kachhawaha and Mr. R. V. Rajwade, learned counsels for the respondents, would support the impugned orders.
5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

¹ 2017 SCC Online Chh 1135

6. The issue of power and jurisdiction of the Commission relating to service dispute has been considered and decided by this Court in the matter of Chhattisgarh State Power Generation Co. Ltd. (supra). In paras 10, 13, 14, 15, this Court held as under:-

"10. Following the principle of law enunciated in above-stated judgments rendered by Their Lordships of the Supreme Court, it is quite vivid that the function of the Chhattisgarh Rajya Anusuchit Janjati Ayog constituted under the Act of 1995 is advisory in nature. The power and jurisdiction to make enquiry and adjudication in regard to the rights of the Schedule Tribes have not been conferred to the State Commission by Act of 1995. Therefore, the Commission constituted under the Act of 1995 has no adjudicatory jurisdiction and as such State commission is not a tribunal exercising functions of judicial character or Civil Court and cannot determine rights of the Schedule Tribes. The State Commission can by virtue of functions entrusted to him by Section 9(1) of the Act can supervise and see that the protection granted to members of Scheduled Tribe under the Constitution of India or under any other law for the time being in force is actually extended to them and proper implementation and execution of programmes meant for them and also to make recommendation for the State Government for insertion of certain tribes/group of tribes in the Constitution (ST)

Order 1950 and further advice for representation of Scheduled Tribe in public function being only a body competent to make recommendation to the State Government as well as to make advise to the State Government.

13. After having noticed the principles of law flowing from the aforesaid decisions reverting back to the facts of the case, it is quite vivid that respondent No.2 has claimed correction / up-gradation of his ACR as well as promotion from retrospective effect and further claimed registration of criminal case against the officers of the petitioner Company under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including taking disciplinary action against them. None of the reliefs claimed by respondent No.2 relates to the protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force. It is not the case that reservation provided to the members of the Scheduled Tribes is not being afforded to them or that admission in a particular college in the reserved seat is not being given to them. The reliefs claimed are out and out pertaining to pure and simple service matter that could be considered and granted by the jurisdictional court. So far as the relief of registration of case against the officers of the petitioner Company under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, that can also be considered and granted by the jurisdictional criminal court on the application / complaint made competently in that behalf.

Therefore, none of those reliefs fall within the scope of Section 9(1) (a) of the Act, 1995 warranting cognizance to be taken by the respondent ST Aayog. Thus, the respondent Commission is absolutely unjustified in holding that under Section 9(1)(a) of the Act, 1995 such a relief, which respondent No.2 has claimed, can be granted.

14. As a fallout and consequence of aforesaid discussion, the order passed by the respondent Commission dated 13-4-2017 along with the proceeding of Misc. Case No.612/2017 is hereby quashed. It is held that the Commission has no jurisdiction to hear and make recommendations so far as the reliefs claimed in the application dated 6-1-2017 is concerned. Accordingly, respondent No.1 is restrained from going ahead with the matter.

15. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s)."

7. In view of the aforesaid principle of law laid down, the respondent No.1 has no jurisdiction to entertain the service dispute relating to promotion of respondent No.2, as such the impugned order (Annexure-P/1) is set aside. However, the respondent No.2 is at liberty to claim promotion on the post of Field Assistant in accordance with law and this order will not be a bar for respondent No.2 in claiming

promotion.

8. The writ petition is allowed. No order as to cost (s).

9. The vakalatnama filed on behalf of Mr. Ashish Surana be taken on record.

Sd/-

Sanjay K. Agrawal
Judge

Nirala