

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8170 OF 2022**

1. Union of India,)
Through the Secretary,)
Ministry of Defence, South Block,)
New Delhi – 110 001)

2. Director General Defence Estates))
Raksha Sampda Bhavan,)
Ullan Batar Road, Sport View,)
Delhi Cantonment,)
New Delhi – 110 001)

3. Chief Executive Officer,)
Deolali Cantonment Board,)
Deolai Camp, Tehsil and District Nashik)

..... Petitioners**VERSUS**

1. National Commission for Scheduled))
Castes)
5th Floor, Lok Nayak Bhawan,)
Khan Market, New Delhi – 110 003)

2. Smt.Chandraprabha Bhagwat Kedare))
R/o- Vaishanav Sankul-2, Adke Nagar,))
Anand Road, Deolali Camp,)
Dist. Nashik)

..... Respondents

Mr.Neeta V.Masurkar for the Petitioners.

Mr.Anil Jamsandekar, a/w. Ms.Archita Gharat for the Respondent no.2
 (Legal Aid).

CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.

DATE : 27TH JULY, 2022

ORAL JUDGMENT (Per R.D.Dhanuka, J):-

Rule. Mr.Jamsandekar, learned counsel for the respondent no.2 waives service. Learned counsel for the petitioners states that the respondent no.1 has been served. None appeared for the respondent no.1. Be that as it may, respondent no.1 is a formal party. Rule made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek declaration that the order dated 2nd March, 2022 and its observations dated 10th March, 2022 by the respondent no.1 Commission is null and void and cannot be acted upon. The petitioners also seek writ of certiorari for quashing and setting aside the impugned order dated 2nd March, 2022 and observations dated 10th March, 2022 passed by the respondent no.1.

3. It is the case of the petitioners that the respondent no.2 was appointed on 14th January, 1973 as a staff nurse in Cantonment Board Hospital, Deolali. The petitioner had initiated disciplinary action against the respondent no.2 which culminated into an action of

compulsory retirement from the services under Rule 11(2)(VI) of the CFSR, 1937. Various proceedings filed by the respondent no.2 against such disciplinary action initiated by the petitioners came to be rejected. The respondent no.2 withdrew the writ petition on 8th August, 2013. The respondent no.2 appears to have filed review petition before the respondent no.1 on 17th July, 2013 alleging injustice and harassment in service on the part of the petitioner.

4. On 10th March, 2022, in the Minutes of hearing, the respondent no.1 Commission recorded that the respondent no.2 had alleged that she was compulsorily retired without adopting due procedure. The respondent no.1 Commission observed that after going through the merits of the case injustice was incurred upon the Scheduled Caste employee and the punishment given on compulsorily retirement was draconian in nature. The respondent no.1 accordingly recommended the concerned authority to re-investigate the whole matter. The respondent no.2 had prayed for revocation, for setting aside the order of compulsory retirement and to consider her for service till retirement along with service benefits. The petitioner has impugned the said order/ recommendation made by the respondent no.1 Commission on the

ground of lack of jurisdiction of the respondent no.1 to interfere with the disciplinary action taken by the petitioners resulting in compulsory retirement of the respondent no.2.

5. Ms. Masurkar, learned counsel for the petitioners placed reliance on the judgment of this Court delivered on 25th October, 2021 in ***Writ Petition No. 5283 of 2018*** in case of ***Ms. Sadhana B.Bendbhar vs. State of Maharashtra and Others*** and submitted that in similar circumstances, this Court had quashed and set aside the order/recommendation made by the respondent no.1 Commission interfering with the decision of the employer in respect of the service condition of the petitioner therein in respect of the respondent no.5 therein who was the applicant before the respondent no.1 commission. She also placed reliance on the judgment of Delhi High Court in case of ***State Bank of India vs. The National Commission for Scheduled Castes & Ors.*** in ***Writ Petition (C) No. 3898 of 2016*** and other connected matters delivered on 19th September, 2016.

6. Mr.Jamsandekar, learned counsel for the respondent no.2 vehemently urged that the respondent no.2 has suffered gross injustice

because of the illegal disciplinary action taken by the petitioners against the respondent no.2 and thus the respondent no.1 was justified in recommending re-investigation in the matter resulting into compulsory retirement of the respondent no.2. He submits that in view of the gross injustice caused to respondent no.2 in the hands of the petitioners, this Court shall exercise extra ordinary powers by not interfering with the order passed by the respondent no.1.

7. It is not in dispute that against an order of her compulsory retirement, the respondent no.2 has exhausted all the legal remedies available to her and could not succeed. When the respondent no.2 could not succeed impugning order of compulsory retirement, the respondent no.2 filed an application before the respondent no.1 *inter alia* praying for setting aside the order of compulsory retirement and to consider her in service till retirement along with service benefits.

8. A perusal of the order/recommendation made by the respondent no.1 indicates that after observing that the compulsory retirement granted to the respondent no.2 who is Scheduled Caste employee is draconian in nature, the respondent no.1 ordered the concerned

authority to re-investigate the whole matter.

9. In our view the respondent no.1 Commission has no such jurisdiction to interfere with the decision already taken by the employer against the respondent no.2 after following procedure and granting compulsory retirement which action has been upheld in various proceedings filed by respondent no.2 and has attained finality. The respondent no.1 Commission cannot act as an appellate authority against an order passed by an employer taking disciplinary action against an employee by the employer.

10. This Court in case of *Ms.Sadhana B.Bendbhar* (supra) considered the facts where the respondent no.1 had recommended to appoint the respondent no.5 on a post though she was not senior-most and was not selected in the employment. This Court after adverting to the judgment of the Supreme Court in case of *Collector, Bilaspur vs. Ajit P.Jogi & Ors., AIR 2012 SC 44* and construing Article 338 (5) (b) of the Constitution of India, quashed and set aside the decision taken by the respondent no.1 Commission and holding that the said decision was totally without jurisdiction. The principles laid down by this Court

in the said judgment apply to the facts of this case. We do not propose to take any different view in the matter. Similar view is taken by the Delhi High Court in case of ***State Bank of India vs. The National Commission for Scheduled Castes & Ors.*** (supra) after adverting to the various provisions of law including Article 338(6) of the Constitution of India quashing and set aside the order/recommendation made by the respondent no.1 Commission by which the respondent no.1 had sought to interfere with the decision of the employer. The principles laid down by the Delhi High Court would apply to the facts of this case. We respectfully agree with the views expressed by the Delhi High Court.

11. In our view, it was within the powers of the employer to take disciplinary action against the employee and once having exercised such powers by the employer and such action having been upheld in all the proceedings filed by an employee, such employee cannot file such application before the respondent no.1 Commission to interfere with the action initiated by the employer in accordance with the service conditions and in accordance with law. The respondent no.1 Commission has totally acted without jurisdiction and in the teeth of

Article 338 (5) (b) of the Constitution of India. In our view the proceedings initiated by the respondent no.2 itself were totally without jurisdiction. Consequently the order passed by the respondent no.1 is totally without jurisdiction and deserves to be quashed and set aside.

12. We accordingly pass the following order :-

(a) Impugned order dated dated 2nd March, 2022 and its observations dated 10th March, 2022 made by the respondent no.1 Commission are quashed and set aside.

(b) The complaint filed by the respondent no.2 before the respondent no.1 is dismissed.

(c) Writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

(d) The parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]