

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15563 OF 2022

City And Industrial Development Corporation, Belapur,
New Mumbai. ...Petitioner
Versus
National Commission For Schedule Caste And Anr. ...Respondents

Shri.G.S. Hegde a/w.Ms.PM.Bhansali, for Petitioner (CIDCO).
Shri.Yashodeep Deshmukh a/w.Smt.Vaidehi Deshmukh i/b.Smt.Sonali Pawar,
for Respondent No.2.

**CORAM : R.D.DHANUKA &
M.M.SATHAYE, JJ.**

DATED : 20th DECEMBER, 2022

P.C. :

1. Rule. Shri.Deshmukh, learned counsel, waives service for the Respondent No.2. Respondent No.1 is a formal party. Respondent No.1 is served. Rule is made returnable forthwith.
2. By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of Certiorari for quashing and setting aside the order dated 23.06.2022 and Notice dated 22.11.2022 issued by Respondent No.1 in the Complaint dated 22.04.2022 filed by Respondent No.2 to the Petition.
3. It is the case of Respondent No.2 that he was working with the Petitioner initially as a Field Officer (Architect) and subsequently Associate

Architect and as Senior Architect. There was some dispute between the Petitioner and Respondent No.2 in respect of the promotion of Respondent No.2. Respondent No.2 filed writ petition before this Court bearing Writ Petition No.7731 of 2021, inter-alia praying for relief in respect of promotion not granted to Respondent No.2 by the Petitioner. On 01.07.2022, the Petitioner withdrawn the said writ petition after obtaining leave of this Court. The said writ petition was dismissed as withdrawn.

4. It appears that Respondent No.2, has already filed a complaint before Respondent No.1 Commission inter-alia prayed for order or direction against the Petitioner to grant promotion to Respondent No.2 to the post of Additional Chief Architect from the year 2020. According to Respondent No.2, his case was within zone of consideration, by way of grant of deem date of promotion with arrears of difference of pay scales. Respondent No.2 also prayed for order or direction to take action against the Petitioner, their subordinate officials, who had allegedly to have done alterations in the documents/corrections in the ACRs columns. Respondent No.2 also prayed for direction to reconsider his case for grant of promotion to the post of Additional Chief Architect.

5. The Petitioner responded to the said complaint before Respondent No.1 Commission on the ground of jurisdiction as well as merits. Respondent No.1 Commission passed an order annexed at page 45 of the petition

recommending that Respondent No.2 is senior to Mrs.Vidya Gotmare and be given promotion from the date of DPC i.e. 19.03.2021, and all the retirement benefits be given to him with retrospective effect. The Commission has also made observation that the action taken by the Petitioner needs to be treated as null and void. In the last paragraph of the said order, Respondent No.1 observed that the Commission found that there are number of corrections in the date of joining and in the ACRs. Therefore, for the corrections made in the crucial records, i.e. ACRs and DOJ, the concerned staff/officers are responsible, which is nothing but misconduct on the part of the Petitioner and liable for action. This order passed by Respondent No.1 Commission is impugned by the Petitioner in this petition.

6. Learned counsel for the Petitioner submitted that the Respondent No.2 had already filed writ petition for similar relief which was withdrawn. He submitted that Respondent No.1 did not have jurisdiction to pass any order for granting promotion to Respondent No.2 and other directions relating to the service matter. He relied upon the judgment of this Court delivered on 27.07.2022 in Writ Petition No.8170 of 2022 in case of **Union of India Vs. National Commission for Scheduled Castes and Anr.**

7. Shri.Deshmukh, learned counsel for the Respondent No.2, stated that prayer Clauses (b) & (c) of the complaint filed by his client, i.e. for challenging legality, propriety and validating the action on the part of the

Petitioner for not granting promotion to Respondent No.2 on the post of 'Additional Chief Architect' and for mandatory order and direction to grant promotion to Respondent No.2 to post of Additional Chief Architect are not within the purview of jurisdiction Respondent No.1 Commission. He, however, vehemently urged that insofar as prayer (d) to (f) of the said complaint dated 22.04.2022 are concerned i.e. relating to the alterations in the documents/corrections in ACRs columns and to reconsider the case of Respondent No.2 for grant of promotion to the post of Additional Chief Architect are within the purview of the powers and jurisdiction of Respondent No.1 Commission. In support of his submission, he relied on Madras High Court's Judgment in case of **Life Insurance Corporation of India Vs. National Commission for Scheduled Caste**, reported in *2022 SCC OnLine Mad 5249*, in particular paragraph Nos.13 to 15.

8. It is not in dispute that Respondent No.2 already filed writ petition before this Court for identical reliefs relating to promotion of Respondent No.2. Respondent No.2 withdrew the said writ petition before this Court on 01.07.2022. The complaint was already filed by Respondent No.2 before Respondent No.1 prior to date of withdrawal of the said writ petition.

9. Learned counsel for Respondent No.2 agreed that Respondent No.1 Commission did not have any power to consider the prayer for grant of promotion to Respondent No.2. Insofar as prayer Clauses (f) is concerned,

Respondent No.2 has prayed for order or direction to reconsider his case of Respondent No.2 for grant of promotion. This prayer itself is without jurisdiction. Insofar as prayer Clause (d) & (e) are concerned, in our view, since prayer for grant of promotion is without jurisdiction of Respondent No.1, any further directions to make corrections in the ACRs for the purpose of reconsidering the prayer for promotion of Respondent No.2 are also without jurisdiction.

10. We are not inclined to accept submission of the Shri.Deshmukh, learned counsel for Respondent No.2, that though Respondent No.1 Commission could not have granted promotion, Respondent No.1 Commission at the same time could have taken any action against the officers of the Commission or to give direction to correct the ACRs.

11. This Court in case of **Union of India & Anr. Vs. National Commission Schedule Castes** (supra) has considered identical issues and after adverting to earlier judgment of this Court, has held that it was within the power 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 Respondent No.1 Commission to interfere with the action initiated by the employer in accordance with service conditions and in accordance with law. Respondent No.1 Commission has totally acted

without jurisdiction and exceeding the powers under Article 338 of the Constitution of India.

12. This Court has also considered 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**, in which the order of Respondent No.1 recommending the employer to appoint the employee on the post though she was not seniormost and was not yet in the employment came to be set aside as beyond jurisdiction of Respondent No.1 Commission. Learned counsel appearing for Respondent No.2 could not dispute that the dispute relating to the employment, and more particularly promotion, could not have been entertained by Respondent No.1.

13. Insofar as judgment of Madras High Court in case **Life Insurance India** (supra) relied upon by learned counsel for Respondent No.2 is concerned, the said judgment does not assist the the case of Respondent No.2. On the contrary, the said judgment would assist the case of the Petitioner.

14. In our view, the dispute relating to service conditions of the Petitioner and Respondent No.2 would not be within jurisdiction of Respondent No.1 Commission. The entire order passed by Respondent No.1 Commission is without jurisdiction and thus, liable to be quashed and set aside. We accordingly pass following order:-

(a) Writ petition is allowed in terms of prayer

Clause (a). Rule is made absolute in the aforesaid terms.

No order as to costs.

(b). The Complaint filed by Respondent No.2
before the Respondent No.1 Commission is dismissed.

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

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)