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W.P.No.27385 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27385 of 2018
and
W.M.P.No.31891 of 2018

Life Insurance Corporation of India,
Rep.by its Zonal Manager,
Zonal Office,
153, Anna Salai, Chennai – 600 002.

...Petitioner

Vs.

1.The National Commission for Scheduled Caste
Rep.by its Director,
Shastri Bhavan, State Office,
Chennai – 600 006.

2.Ms.P.Vennila

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order made in Case No.13, File No.9/8/2017 Rep.CGU dated 26.07.2018 and as communicated by letter No.9/8/2017 Rep.CGU dated 03.09.2018 by the 1st respondent Commission and quash the same as being illegal, perverse, arbitrary and unjust.



W.P.No.27385 of 2018

For Petitioner : Mr.C.K.Chandrasekhar
For R1 : Mr.T.K.Thirumalaisamy
Central Government Standing Counsel
For R2 : Mr.G.Alex Bengigar

ORDER

The minutes of hearing held on 26.07.2018 before the National Commission for Scheduled Castes at Chennai, which was communicated through letter dated 3rd September 2018 is under challenge in the present writ petition.

2. The writ petitioner is Life Insurance Corporation of India. The petitioner states that the 2nd respondent employee is working as Assistant in the petitioner-Life Insurance Corporation of India. The 2nd respondent / Ms.P.Vennila was appointed at Chennai Divisional Office II on compassionate grounds due to the demise of her Mother Mrs.K.Sarbala. The 2nd respondent was posted at City Branch Office-XI, Chennai Divisional Office II. She has studied M.Sc., (Bioinformatics) and she had two elder sisters and got married and her younger brother was studying B.E., course during the relevant point of time. The appointment of the 2nd respondent was



W.P.No.27385 of 2018

confirmed on 01.01.2011. On 30.10.2014, she had made a request for transfer. Her request for transfer was considered and from 09.11.2017, she was working at City Branch Office – 28.

3. The second respondent belongs to Scheduled Caste Community. The petitioner issued a Notification dated 12.01.2017 for promotion to the cadre of Higher Grade Assistant. In the Notification, it was clearly stated that the places of vacancies in Chennai Centre are mofussil branches of Chennai Centre, Kancheepuram, Madurantakam, Chengalpattu, Tiruttani, Ponneri, Gummidipoondi and Thiruvallur are the Mofussil branches of Chennai Centre. During the process of promotion, the 2nd respondent got selected. She was offered a posting in promotion year 2016-17 at one of the Mofussil branches of Chennai Centre at Gummidipoondi and the 2nd respondent refused to join at Gummidipoondi. She insisted that she should be given posting within Chennai City since the request made by the 2nd respondent employee was found unreasonable. The petitioner Management had not acceded to the request.



W.P.No.27385 of 2018

4. The 2nd respondent approached the first respondent / National Commission for Scheduled Caste and submitted a complaint before the said Commission on the ground that she was discriminated since she belongs to Scheduled Caste community. The Commission issued notice to the writ petitioner/Management regarding the grievances advanced by the second respondent and directed them to appear and respond to the complaint. The second respondent filed her rejoinder. The petitioner/Corporation furnished all the details regarding the promotion granted to the 2nd respondent and the consequential posting order issued to her.

5. The first respondent / National Commission for Scheduled Caste recorded the outcome of the hearing held on 26.7.2018 as under:

“The Hon'ble Vice Chairman had resented on the absence of Zonal Manager, LIC of India, Chennai who was called for the hearing on 26.7.2018. As the Zonal Manager, LIC of India, Chennai was also called for hearing in another case on 27.7.2018, the Hon'ble Vice Chairman desired to hear the case on 27.7.2018 in the presence of the Zonal Manager. On 27.7.2018, the Zonal Manager and the petitioner had appeared for hearing. Both the petitioner and the



WEB COPY



W.P.No.27385 of 2018

Management explained their sides. The Hon'ble Vice Chairman directed that only Chairman & Managing Director of LIC has to be called for hearing the case in future. The Hon'ble Vice Chairman directed the Zonal Manager of LIC to submit list of employees promoted and transferred for the last 5 years. The Hon'ble Vice Chairman ordered the LIC to promote the petitioner and post her in Chennai itself."

6. The learned counsel for the petitioner mainly contended that the first respondent has no jurisdiction or power to issue direction in the matter of promotion and postings, which is the administrative prerogative of the petitioner/Corporation. In the event of such direction by the first respondent, the petitioner/Corporation may not be in a position to run the administration efficiently and in a smooth manner. Thus, the petitioner has constrained to move the present writ petition, questioning the validity of the directions issued by the first respondent in its minutes passed on 26.07.2018.

7. The learned counsel appearing on behalf of the first respondent made a submission that the first respondent/Commission is empowered to adjudicate the issues raised in the complaint under Article 338 of the



W.P.No.27385 of 2018

Constitution of India. Under Sub Clause 8, the Commission has all powers of a Civil Court trying a suit and therefore, the Commission is empowered to pass directions and orders based on the complaint, if any submitted by a member of Scheduled Caste Community. Thus, there is no infirmity as such.

8. Let us consider the scope of the powers conferred under Article 338 of the Constitution of India to the National Commission for Scheduled Castes.

9. Article 338, Sub Clause 8 of the Constitution of India, reads as under:

“338. National Commission for Scheduled Castes -

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :—

(a) summoning and enforcing the attendance



WEB COPY



W.P.No.27385 of 2018

of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.”

10. While investigating the matter under Sub Clause (a) and (b) of Clause 5 to Article 338, the Commission shall have all the powers of a Civil Court trying a suit and in particular in respect of the summoning and enforcing the attendance of any person etc., as stipulated in the provision. Thus, it is unambiguous that the Commission can exercise the powers of the Civil Court for the purpose of conducting an adjudication in an effective manner. Regarding the reliefs to be granted, the powers are to be confined and the Commission may not issue any direction, directing the Government



W.P.No.27385 of 2018

authorities or the Corporation authorities to grant promotion to a particular person or issue posting to a person in a particular Station or place, which all are governed under the Service conditions of an employee.

11. More specifically, National Commission is not empowered to issue any direction to transfer an employee in a particular post or place. Promotion is also a condition of service and all promotions are to be granted strictly in accordance with the Service rules in force. While considering promotion and for preparation of panel, the employer has to consider all the eligible persons, who all are aspiring to secure promotion in accordance with the rules in force and in the order of seniority. In the event of issuing any such direction to promote the employee based on a complaint, then the same would result in denial of promotional opportunity to all other eligible employees, who all are waiting for promotion including the other Scheduled Caste employees, who may be senior to the complainant in a particular case. Therefore, the Commission has to exercise restraint in service matters, more specifically, in the matters of promotion, transfer, postings etc.,



W.P.No.27385 of 2018

WEB COPY 12. Transfer is an incidental to service, more so, a condition of service.

Transfer being a condition of service, the employer is empowered to post an employee in a particular place in the interest of public administration. In the event of any such direction to transfer or post an employee in a particular post, the same will affect the normal public administration and further, it will result in infringement of the administrative powers, conferred on the employer. The National Commission is not expected to interfere with the routine administrative affairs of the Departments or the Corporation. If at all there is any irregularity, illegality or violation of service rules are identified, then the Commission may issue suitable recommendations to rectify the same. However, merely issuing a direction to post an employee or transfer an employee in a particular post or place would cause prejudice to the interest of the public administration, which is not contemplated under Article 338 of the Constitution of India.

13. The scope of Article 338 of the Constitution of India cannot be expanded for the purpose of interfering with the routine administrative



W.P.No.27385 of 2018

affairs of the employer, which all are governed under the Service Rules in force. While considering the complaint, if at all any violation of Service rules are identified or traced out by the Commission, the Commission may issue necessary recommendations to rectify the mistakes by following the rules in force, but would not issue any straight direction to post a person or promote a person in a particular place or cadre.

14. The very object is to ensure that the rights of the Scheduled Caste persons are protected. Thus, if any rights are infringed, then the Commission has to issue necessary directives to correct the mistakes in accordance with the rules by the employers. Contrarily, the Commission cannot act as an employer. A thin difference in this regard is to be scrupulously followed by the Commission, while adjudicating the complaint and while issuing directives.

15. Therefore, the Commission in such matters are expected to be cautious and while protecting the rights of the Scheduled Caste community people, they cannot interfere with the routine administration of the



W.P.No.27385 of 2018

Department or Corporation. Thus, the powers conferred under Article 338, Sub Clause 8 of the Constitution of India is for the purpose of adjudication of issues by exercising all the powers of a Civil Court, trying a suit. Therefore, the power of the Commission is to be exercised in the manner contemplated and the Commission shall not usurp the administrative powers conferred on the Government Departments and other Governmental organizations or institutions.

16. The independence of powers conferred on each organization is to be protected in consonance with the Constitutional provisions. One institution, interfering with the powers of other institution must be done strictly in accordance with the provisions of the Constitution and in service matters, the employers have got prerogative powers to regulate its own administration. Thus, in the event of identifying violation of right of a member of a Scheduled Caste Community, the Commission may ensure that the employer rectifies the mistakes or violations in the manner contemplated under the Rules, but the Commission may not issue any straight direction to transfer an employee or to promote an employee, which may result in



W.P.No.27385 of 2018

infringement of the rights of all other employees, who all are otherwise eligible for promotion in accordance with the rules.

17. Thus, in this regard, the Commission is expected to be more cautious in the interest of public administration. It is relevant to consider Article 335 of the Constitution of India, which ensures efficiency in public administration. Thus, the Government Departments and institutions are bound to maintain efficiency in public administration in the interest of public at large and in the event of any interference in a routine administrative affairs, they may not be in a position to run the administration smoothly.

18. Therefore, this Court is of the considered opinion that the direction issued in the present case by the Commission to promote the petitioner and post her in Chennai itself will amount to interference in the administrative prerogative of the petitioner organization, which is impermissible under Article 338 of the Constitution of India.

19. The learned counsel for the petitioner relied on the judgment of



W.P.No.27385 of 2018

the Hon'ble Supreme Court of India in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Association and others vs. Union of India others reported in (1996) 6 SCC 606*** and the relevant paragraphs are extracted hereunder:

“10. Interestingly, here, in clause (8) of Article 338, the words used are "the Commission shall... have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.

11. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter



W.P.No.27385 of 2018

dated 4-3-1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs.”

20. The learned counsel for the petitioner brought to the notice of this Court that the grievances of the 2nd respondent was already redressed and further, she got promotion and now serving at Tirutani.

21. Thus, the orders made in Case No.13, File No.9/8/2017 Rep.CGU dated 26.07.2018 and as communicated by letter No.9/8/2017 Rep.CGU dated 03.09.2018 by the 1st respondent Commission are quashed and the writ petition stands allowed. No costs.

28.10.2022

Index : Yes
Speaking order: Yes
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W.P.No.27385 of 2018

To
WEB COPY

1. The Director,
National Commission for Scheduled Caste
Shastri Bhavan, State Office,
Chennai – 600 006.



WEB COPY



W.P.No.27385 of 2018

S.M.SUBRAMANIAM, J.

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W.P.No.27385 of 2018

28.10.2022