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

% *Date of Decision: 16th December, 2022*

+ W.P.(C) 9129/2022 & C.M. APPL. 27474/2022, 30480/2022

GOVT OF NCT OF DELHI & ANR. Petitioners

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Laavanya
and Ms. Aliza Alam, Advocates.

versus

DR. P.K. RATHORE & ANR. Respondents

Through: Respondent No. 1-in-person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed assailing the orders dated 23.10.2019, 27.05.2020 and 04.04.2022, passed by the National Commission for Scheduled Caste (hereinafter referred to as the 'Commission') allegedly in contravention of Article 338 of the Constitution of India.

2. At the outset, Respondent No. 1, who appears in person, submits that he would be arguing the case himself and does not need assistance of a counsel.

3. Facts necessary and relevant for adjudication of the issue arising before this Court are that Respondent No. 1 (hereinafter referred to as the 'Respondent') was transferred on 30.01.2019 as Head of the Department of ENT, MAMC to Guru Teg Bahadur Hospital. The order was challenged by the Respondent before the Central Administrative Tribunal in O.A. No. 436/2019, on the ground that Government of NCT of Delhi had no power to pass the transfer order. The Tribunal issued notice but no stay was granted.

W.P.(C) 1934/2019 was filed by the Respondent, which was disposed of by this Court on 25.02.2019, granting interim stay. Finally, the O.A., was dismissed by the Tribunal and the review application was also rejected on 17.07.2019.

4. Writ petition being W.P.(C) 8981/2019 was filed by the Respondent assailing both the orders *inter alia* on the grounds that the transfer order was issued by GNCTD, which had no authority to issue the order, since the Respondent was a member of Central Health Services as also that the order was actuated by malice as Respondent had made complaints about financial irregularities at MAMC relating to certain purchases. The writ petition was dismissed by the Division Bench of this Court on 20.08.2019 and admittedly, the said order was not challenged by the Respondent.

5. After the dismissal of the writ petition, Respondent made a representation before Respondent No.2/Commission alleging discrimination and harassment on caste grounds. Summons dated 19.09.2019 were received from the Office of the Commission, directing the Principal Secretary to appear before the Commission on 09.10.2019, which was rescheduled to 22.10.2019. On 23.10.2019, an order was passed by the Commission observing that Respondent was facing harassment on account of frequent transfers and directing that he be placed in MAMC in six weeks. *Vide* letter dated 29.01.2020, the Commission was informed that Respondent had been transferred to GTBH due to administrative reasons and cannot be reverted.

6. Another notice dated 20.05.2020 was received from the Commission calling upon the officers of the Petitioners for hearing, along with relevant records on 26.05.2020. After the meeting, an order dated 27.05.2020 was forwarded to the Petitioners by the Commission recommending that Respondent be transferred to MAMC within 15

days maintaining his seniority and he should not be harassed on grounds of social origin. Action taken report was called for within three weeks.

7. On 04.07.2020, Petitioners passed an order transferring the Respondent to MAMC and he was also appointed as the Head of the Department of ENT. Yet another complaint was given by the Respondent on 25.08.2020 alleging supersession for the post of Medical Superintendent, Lok Nayak Hospital and a complaint was also filed before the Commission. Pursuant to the complaint, proceedings were held before the Commission and finally by order dated 04.04.2022, the Commission recommended that Respondent be considered for the post of Medical Director at Lok Nayak Hospital within two weeks and sought compliance within 21 days. Challenging the aforesaid orders, the present petition was filed by the Petitioners and *vide* order dated 02.06.2022, this Court had stayed the operation of the order dated 04.04.2022.

8. It is contended on behalf of the Petitioners that Respondent had availed the remedy available to him in law by challenging the transfer order before the Central Administrative Tribunal and this Court *albeit* unsuccessfully. Once the Courts of competent jurisdiction declined to interfere in the transfer orders the Commission had no power or jurisdiction to enquire into the complaints of the Respondent with regard to the transfer orders. As far as the question of his appointment as Medical Superintendent in LNJP Hospital or seniority is concerned, these issues purely fall in the regime of service matters and it is not open to the Commission to interfere much less recommend appointments.

9. The contention is that under Article 338(5) of the Constitution, firstly Commission can only make recommendations and has no

power to issue any directions to the Government to act in a particular manner as the recommendations are not binding and secondly, even recommendations cannot be made pertaining to service conditions of the employees working in the Government much less binding directions. The recommendations of the Commission in the present case are clearly contrary to the judgment of the Supreme Court in ***Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council, (1995) 2 SCC 479; All India Indian Overseas Bank SC & ST Employees' Welfare Association & Others v. Union of India & Ors. (1996) 6 SCC 606*** and judgment of this Court in ***Union of India & Anr. v. National Commission for Scheduled Caste & Anr.***, in W.P.(C) No. 2390/2012 dated 28.05.2014. Service matters pertaining to the Respondent fall within the jurisdiction of Central Administrative Tribunal and the Commission cannot usurp the power or jurisdiction it does not possess.

10. It is further contended that in any case, the post of Medical Superintendent or Director in the concerned Hospital are filled up as per Rules and Regulations and is a matter of policy/administrative decision of the Competent Authority, which cannot be interfered in by the Commission.

11. Dr. P.K. Rathore, *per contra*, submits that the transfer orders passed by the Petitioners were without jurisdiction and actuated by *malafides*. He further submits that he has been deprived of his appointment as Medical Superintendent, LNJP Hospital on account of the fact that he belongs to a particular caste and therefore, the Commission has rightly interfered observing that the Respondent is being victimised and harassed.

12. I have heard the learned counsel for the Petitioners and the Respondent, who appears in person.

13. The primordial question that arises for consideration in the present writ petition pertains to the jurisdiction of the Commission to interfere in service matters of an employee of the Government and to issue recommendations/directions in respect thereof.

14. There is no gainsaying that jurisdiction of the Commission is restricted and circumscribed by provisions of Article 338 of the Constitution. Sub-Article 5 of Article 338 prescribes the duties of the Commission, which are as follows:

“(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Commission or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such report recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.”

15. It is no longer *res integra* that the Commission lacks the jurisdiction to decide and adjudicate service matters. In ***All India Indian Overseas Bank SC & ST Employees’ Welfare Association & Others (supra)***, the Supreme Court held that the procedural powers of the Civil Court given to the Commission under Article 338(8) of the

Constitution are for limited purpose of investigating a matter/ complaint. However, the powers of the Civil Court for granting injunctions, temporary or permanent, do not inhere in the Commission and nor can such a power be inferred or derived from a reading of Article 338(8). Relevant para of the judgment is as follows:

“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.”

16. In ***Union of India and Anr. v. Ram Kishore Meena & Anr.***, in ***W.P.(C) 11601/2015***, decided on 11.01.2017, this Court was ceased of the controversy as to whether the National Commission for Scheduled Tribe has the jurisdiction to pass an order directing promotion to the post of LDC. Placing reliance on the judgment in ***All India Indian Overseas Bank SC & ST Employees’ Welfare Association & Others (supra)*** and a later judgment of the Supreme Court in ***State Bank of Patiala and Others v. Vinesh Kumar Bhasin, (2010) 4 SCC 368***, this Court held that the Commission had no power to issue directions pertaining to the promotion of the Respondent therein. A similar view has been taken by this Court in ***Union of India & Anr. v. National Commission for Scheduled Caste & Anr. (supra)***, wherein the Court held that the Commission under Article 338 is not an adjudicatory body which can issue binding directions and its reports are merely recommendatory and not alternative to the hierarchical judicial system.

17. In view of the aforesaid judgments, it is palpably clear that the Commission has no power or jurisdiction to recommend with respect to matters concerning transfer/appointment/seniority, which are *ex-facie* service matters. It is also clear from the tone and tenor of the impugned orders that the Petitioners have been directed to implement the recommendations and submit an action taken report and the intent is to bind the Petitioners, which is clearly against the judgments rendered by the Supreme Court and this Court, some of which have been alluded to in the earlier part of this judgment.

18. Therefore, the impugned orders cannot be sustained and are accordingly quashed and set aside and the writ petition is allowed.

19. It is, however, made clear that the dismissal of the writ petition shall not preclude the Respondent from availing other remedies which may be available to him in law in the appropriate Forum pertaining to service matters or from approaching the Commission for issues which fall within its domain and jurisdiction.

20. Writ petition is disposed of along with the pending applications in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 16, 2022/shivam