



\$~

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

Date of decision:- 27.07.2022

+ W.P.(C) 11031/2021 & CM APPL. 34013/2021
NATIONAL SMALL INDUSTRIES CORPORATION LTD.

..... Petitioner

Through: Mr.O.P.Gaggar, Adv. with
Mr.K.K.Aggarwal, DGM

versus

NATIONAL COMMISSION FOR SCHEDULED CASTES & ORS.

..... Respondents

Through: Mr.Tarun Gupta & Mr.Abhishek
Sharma, Advs. for R-2 & 3

REKHA PALLI, J (ORAL)

1. The petitioner, National Small Industries Corporation Ltd., has approached this Court being aggrieved by the order dated 23.08.2021 passed by the respondent no.1/ National Commission for Scheduled Castes whereby the said respondent has not only directed the petitioner to hold a review DPC, but has further directed that respondent no.2 and 3 be promoted to the post of General Manager (Senior Grade) with retrospective date and all consequential benefits.

2. Learned counsel for the petitioner submits that the respondent no.1 Commission has, while passing the impugned order, overstepped its jurisdiction and has issued directions to grant retrospective promotion to respondent no.2 and 3 with all consequential benefits. He submits that the Commission had no authority to issue such directions for which purpose he places reliance on Article 338(5) and (8) of the Constitution of India.

3. In support of his plea that the Commission had no power to issue such



directions which in fact fall within the ambit of the powers of an adjudicating authority, learned counsel for the petitioner places reliance on a decision of the Apex Court in '**All India Indian Overseas Bank SC And ST Employees' Welfare Association and Others vs. Union of India and Others 1996 Vol. 6 SCC 606**'.

4. A counter affidavit has been filed by the respondent no.3 opposing the petition by stating that the Commission was fully authorised to enquire and monitor the affairs of the petitioner and other such organisations and departments. However, after some arguments, learned counsel for the respondent nos.2 and 3 does not seriously dispute that the Commission is only a recommendatory body having no power to issue directions to any department or organisation in issues relating to act in a particular manner in respect of service benefits.

5. Before dealing with the rival submissions of the learned counsel for the parties, it would be apposite to note the relevant extracts of the impugned order passed by the Commission. The same read as under-

“ The Commission observed that, it is clearly established about the discrimination against Shri. A.B. Prabhu Raj and Shri Upender Kumar Kohli in the Promotion to the Cadre of General Manager Senior Grade in the DPC held on 23.09.2020.

In view of the above facts the Commission recommends that Review of DPC held on 23.09.2020 and issuance of Promotions order to Shri AB Prabhu Raj and Shri Upender Kumar Kohli to the Cadre of General Manager -Senior Grade with retrospective effective date and with all consequential benefits.”

6. At this stage, it may also be useful to refer to the decision of the Apex



Court in *All India Indian Overseas Bank SC And ST Employees' Welfare Association and Others (Supra)*, relied upon by the petitioner wherein it was held as under-

"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 C "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 in here in the Commission nor can such a power be d 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 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."

7. In the light of the aforesaid it is evident that the Commission can only make recommendations and not issue any directions of the nature as issued vide the impugned order. Merely because the Commission, for the purpose of carrying out investigations or enquiring into any complaint, has the powers of a Civil Court trying a suit and, therefore, is entitled to issue directions *inter alia* for enforcing the attendance of any person from any part of the country, receiving evidence on affidavits, cannot imply that the Commission is equivalent to a Civil Court or that it can like a Civil Court issue directions after deciding the *inter se* rights of the parties.



8. In the present case, the directions issued by the Commission for granting retrospective promotion to respondent no.2 and 3 were clearly beyond the powers of the Commission. I, therefore, have no hesitation in holding that the respondent no.1 Commission, had while issuing a direction that the respondent nos.2 and 3 be granted promotion from a retrospective date and be paid all consequential benefits, overstepped its jurisdiction.

9. Having said so, there is no doubt that the Commission has the jurisdiction to make recommendations and therefore, the writ petition is partly allowed by clarifying that the impugned order passed by the respondent no.1 will be treated only as a recommendation and not as any direction. In case the respondent no.2 and 3 have any surviving grievance, it will be open for them to approach a competent court/tribunal for redressal thereof.

10. The writ petition alongwith the pending application is, accordingly, disposed of in the aforesaid clarification.

JULY 27, 2022

kk

(REKHA PALLI)
JUDGE