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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-14859-2017
Reserved on: 23.07.2024
Pronounced on: 02.08.2024

ASHUTOSH SHARMA AND ORS.Petitioners

Versus

STATE OF PUNJAB & ANR.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. R.Kartikeya, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. I.P.S. Deol, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. Through the instant writ petition the petitioners herein pray for the quashing of the Punjab State Human Rights Commission (Group 'A') Service Rules, 2015; Punjab State Human Rights Commission (Group 'B') Service Rules, 2015 and Punjab State Human Rights Commission (Group 'C') Service Rules, 2015 (hereinafter after for short refer to as the Service Rules, 2015); especially Rule 4 therein, being ultra vires and in complete disregard to Section 27 of the Protection of Human Rights Act, 1993 (hereinafter for short called at the Act of 1993).
2. The relevant provision of the impugned Rules (supra) are extracted hereinafter.

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(Rule 4 of the Punjab State Human Rights Commission (Group 'A', 'B' and 'C') Service Rules, 2015).

“4. Appointing Authority:- Appointments to the service shall be made by the Government.”

Furthermore, the provisions of Sections 27 & 41 of the Act of 1993 extracted hereinafter.

27. Officers and other staff of the State Commission.-

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

41. Power of State Government to make rules.-

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the salaries and allowances and other terms and

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conditions of service of the Chairperson and Members under Section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of Section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House before that House.

Submissions of the learned counsel for the petitioners.

3. The learned counsel for the petitioners submit that Section 27 of the Act of 1993, provides that subject to Rules framed by the State Government, the State Commission may appoint such administrative, technical and scientific members, as it may consider necessary. Hence, for all intents and purposes, the principal legislation which empowers the State Government to frame the relevant statutory Rules when clarifies besides mandates, that the Appointing Authority would be the Commission. Resultantly, it is argued that Rule 4 of the Service Rules, 1995 framed by the State Government, thus is not in consonance with the power delegated to the State Government under Section 27 of the Act of 1993, therefore, Rule 4 therein requires to be quashed and set aside.

4. In support of the averments, the petitioners would rely upon the statutory Rules framed by the other State Governments for



their respective Commissions, which are strictly in consonance with Section 27 of the Act of 1993 and provide that the Appointing Authority shall be the Commission. The relevant Rules as framed therein are extracted hereinafter.

(Maharashtra State Human Rights Commission Rules, 2000)

13. Officers and other employees of State Commission
All officers and employees of the State Commission shall constitute the Maharashtra State Human Rights Commission Service.

xxxx xxxx

Selection of candidates for appointment to select categories or grades in the service shall be made by departmental promotion committee constituted by the State Commission.

xxxx xxxx

(Tamil Nadu State human Rights Commission Service Rules, 2005).

8. Appointing Authority -
(i) The Chairperson shall be the appointing authority in respect of the categories in Division I and Division II ;
(ii) The Secretary shall be the appointing authority in respect of the categories in Division III, provided that the selection shall be made by the Chairperson.

5. Furthermore, the learned counsel for the petitioners has relied upon a verdict passed by the Hon'ble Supreme Court in case titled as **ITW Signode India Ltd. Vs. CCE** reported in **(2004) 3 SCC 48**, wherein, it has expostulated that in case of a conflict between a substantive Act and delegated legislation, the former shall prevail inasmuch as, the delegated legislation must be read in the context of the primary/legislative Act and not vice versa.



impugned Rules is beyond the scope of delegation and is wholly untenable in the eyes of law.

(Reply/submissions of respondent No. 1)

7. In the year 2012, the issue with respect to non-framing of Rules in the above regard by the State of Punjab, came up for consideration before this Court in a Public Interest Litigation bearing CWP No. 24565-2012 titled as Dinesh Chadha Vs. State of Punjab and others. The present petitioners also preferred an application for being impleaded as respondents in the said writ petition, thus for assisting this Court and for making suggestions qua the framing of rules.

8. In compliance with the orders dated 10.10.2014 passed by this Court upon the said writ petition, the petitioners (respondents No.5-50 in the writ petition (supra) filed objections whereby they pointed out defects in the draft Service Rules for Punjab State Human Rights Commission (Group 'A', 'B' and 'C'). The said objections filed by the petitioners had already been considered and rejected by the State Government and the final draft Service Rules were placed on record before this Court on 02.02.2015.

9. Thereafter, this Court was pleased to pass order dated 17.08.2015 upon IOIN-CWP-24565 of 2012. The relevant part of the said order is extracted hereinafter.

“Learned Counsel for the respondents-State while referring to the affidavit of Harchand Singh, Under Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh, dated 02.02.2015 states that the objections raised by the employees have been

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considered and rejected and the matter shall be put up before the Council of Ministers for approval.

Mr. Gaurav Garg Dhuriwala, DAG Punjab, states that the decision on the Draft Service Rules will be taken within three months from today and the final rules will be notified.

In view of these facts, no further direction is required.”

10. That in compliance to the above orders, as passed by this Court, the State of Punjab took the decision on the draft service Rules which were later on notified on 14 October, 2015 vide Notification No.G.S.R.54/C.A.10/1994/Ss.41 and 27/2015. Since, the Rules were framed keeping in view the directions of this Court, therefore, the present petition is not maintainable and is liable to be dismissed.

11. In view of Section 27(2) of the Act of 1993, it was incumbent upon the State Government to first draft the Service Rules and then make the appointments as per requirement. The competency of the State Government to frame service Rules is specified in the Act itself and cannot be considered ultra vires of the Constitution.

12. The petitioners have mis-represented the facts of this case. It is clarified that 56 petitioners mentioned at Sr. No. 1-28, 30-34 and 36-58, mentioned in the memo of the parties are not employees of the Punjab State Human Rights Commission. They are the employees of the out-sourcing agency 'M/s Gretis India Pvt. Ltd., with whom the office of the Punjab State Human Rights Commission rather has an agreement for providing various secretarial and other support services. The remaining three petitioners at Sr. No. 29, 35 and 59 have been appointed by the Punjab State Human Rights Commission temporarily

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on contract basis, whose services can be dispensed with at any time without any notice. Out of these 3 employees, petitioner at Sr. No 35 is retired employee of Punjab and Haryana High Court appointed on contract basis in the Commission. 21 employees out of the 56 personnel provided by the out-sourcing firm mentioned in the memo of the parties are deployed against Group 'D' posts and not against Group 'A', 'B' and 'C' posts, as alleged; and no Rules have been notified by the Government for Group 'D' posts of the Commission.

Inference of this Court.

13. At the outset, since the Service Rules, 2015 have been framed in terms of the Orders passed by this Court upon CWP No. 24565-2012, thereby the impugned Rules, do have immense sanctity, whereby the petitioners *prima facie*, cannot make a challenge thereto.

14. Though, in terms of Sub Section (1) of Section 27 of the Act of 1993, thus a statutory obligation becomes cast on the State Government to make available to the Commission an officer not below the rank of a Secretary, who shall be the Secretary of the State Commission. Further, in terms of the said sub section, it also becomes obligatory upon the State Government to also provide such police, investigative staff and other such officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

15. Nonetheless, sub section (2) thereof but empowers the State Commission to appoint such other administrative, technical and scientific staff, as it may consider necessary but only if rules in the said regard are made by the State Government.

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16. Though in the said regard, the Service Rules, 2015 became framed by the Government of Punjab but thereins, inasmuch as, in Rule 4 thereof, the appointing authority has been stated to be the Government. Therefore the counsel for the petitioner has argued that therebys there is transgression caused to the mandate of sub section (2) of Section 27 of the Act of 1993. However, the said submission is rejected, as in Sub Section (2) of Section 27, as occurs in the parent Act, there is no mandatory obligation cast upon the State Government to imperatively thus frame rules rather empowering the State Commission to appoint such other administrative, technical and scientific staff. The import of the said sub section (2) of the Act of 1993, is that, it is well within the discretion of the State Government to either through framing Rules, thus delegate its functions to appoint the apposite staff qua the State Commission or to reserve the said power of appointment to itself.

17. Strength to the said inference becomes garnered from the factum that the statutory coinage '*as may be*' as exists in the said Sub Section (2), therebys the connotation to be assigned to the statutory coinage (supra) is none other than that the State Government, is solitarily vested with the discretion to frame rules and the said vested discretion may or may not be exercised by the State Government in favour of the Commission but rather may be declared to be exercisable only by the State Government. Therefore, the reservation of power of appointment by the State Government to itself through the makings of Rule 4 of the Service Rules, 2015, in respect of various posts in the

State Commission, rather does not violate the provisions of sub section (2) of Section 27 of the 'Act of 1993'.

Final Order of this Court.

18. In aftermath, this Court finds no merit in the writ petition and with the observation(s) aforesaid, the same is dismissed.
19. No order as to costs.
20. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

02.08.2024
kavneet singh

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No