

CWP-16755 of 2022

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-16755 of 2022
Reserved on: 01.12.2025
Pronounced on: 12.12.2025
Uploaded on: 12.12.2025

State of Punjab and another

.....Petitioners

Versus

Punjab State Commission for Scheduled Castes and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Swapan Shorey, DAG, Punjab,
for the petitioners.

None for respondent No.1.

Mr. Mandeep K. Saajan, Advocate, and
Mr. Vikram K. Bishnoi, Advocate,
for respondents No.2 and 3.

NAMIT KUMAR, J.

1. The State of Punjab through Additional Chief Secretary, Department of Finance, Punjab, and Director, Directorate of Treasuries and Accounts (T&A), Department of Finance, Punjab, has approached this Court by filing the instant petition under Articles 226/227 of the Constitution of India seeking a writ of *certiorari* for quashing the order dated 22.09.2021 (Annexure P-1), passed by the Punjab State Commission for Scheduled Castes (hereinafter referred to as 'the Commission') whereby the complaint filed by respondents No.2 and 3 has been accepted and it has been directed to promote them to the post of Senior Assistant against two of the three vacancies reserved for

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Scheduled Castes during the years 1998 to 2000 against 10% quota, with all consequential benefits and action taken report be submitted in this regard to the Commission by responsible officer by 06.10.2021 and also the order dated 17.11.2021 (Annexure P-2), passed by respondent No.1 whereby application filed by the petitioners for reviewing the order dated 22.09.2021 has been rejected.

2. Brief facts, as pleaded in the present petition, are that respondent No.2 – Amarnath and respondent No.3 – Urmila Devi were appointed under the Scheduled Castes category and joined the headquarters of the Department on 03.09.1993 as steno-typists at Jalandhar and Gurdaspur, respectively, under the Treasuries and Accounts Branch, Finance Department, Punjab. Their services are governed by the rules known as ‘The Punjab Finance (Treasuries & Accounts) Department (State Services Class-III) Rules, 1979’.

On 26.07.1999, to fill up the vacancies of Scheduled Castes quota for the post of Auditor from amongst the Clerks/Steno-typists, only Scheduled Caste employees i.e. Urmila Devi – respondent No.3, Amarnath – respondent No.2, Naseeb Singh and Surinder Singh were called for English type test. However, Amarnath and Urmila Devi could not clear the type test while other two junior employees i.e. Naseeb Singh and Surinder Singh passed the type test on the said date. Amarnath – respondent No.2 appeared for type test again on 14.07.2000 and again on 31.10.2001. Finally, he passed the type test on 31.10.2001. Thereafter, he was promoted as Auditor against the

vacant reserved post meant for Scheduled Castes category on

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05.12.2001. Similarly, Urmila Devi – respondent No.3 after failing once cleared the type test on 14.07.2000 and was also promoted as Auditor against the post meant for Scheduled Castes category on 23.10.2000. Both, respondents No.2 and 3 joined on the promoted post of Auditor voluntarily and without raising any protest. Besides these two persons, one senior employee i.e. Shashi Khera and two junior employees Sneha Lata and Bhupinder Kaur were also promoted as Auditors along with respondents No.2 and 3. On 28.04.2003, four posts of Stamp Auditors belonging to general category were surrendered by the Finance Department, resultantly, Shashi Khera, who was senior to respondents No.2 and 3, and Sneha Lata and Bhupinder Kaur, belonging to general category and who were junior to respondents No.2 and 3, were reverted back to their earlier post of Steno-typists, which was at a lower grade than the post of Auditor. Since respondents No.2 and 3 were promoted as Auditors against vacant seats of Scheduled Castes category, therefore, these posts were not abolished and thus, they were not reverted back to their earlier posts i.e. Steno-typist. Consequently, no grievance was raised by respondents No.2 and 3 nor they submitted any representation or request for their reversion to the earlier post of Steno-typist or for promotion as Senior Assistants. In the meanwhile, the Hon'ble Supreme Court in the cases of Saroj Rani and others (CA Nos. 11660-61 of 1995), Ravi Lamba and others (CA Nos. 3315-16 of 1997), Tarlok Singh and others (CA No. 1329 of 1999) versus State of Punjab

and others, passed an order dated 24.08.1999, regarding promotion to



the post of Senior Assistant as per Senior Assistant Grade Examination Rules, 1984, wherein the Hon'ble Supreme Court formulated a criteria/parameters for promotion to the post of Senior Assistant from the feeder channel in the following manner: -

- “I. Vacancies on the post of Senior Assistants prior to 21st January 1991 are to be filled by those employees who have passed the examination and exempted employees would have no claim.
- II. All vacancies after 21st January 1991 shall be filled by the employees (exempted and qualified) in ratio 70:30.”

In compliance to the said order of the Hon'ble Supreme Court, Department issued promotion orders dated 04.12.2000 *qua* eligible employees for promotion, from 21.01.1991 to 03.03.1998, in the ratio of 70:30 as directed. As per office records, 70% of exempted employee quota was filled by the employees who had completed more than 18 years of service at that particular time and rest 30% of qualified quota will be filled by those employees who have passed the Senior Assistant examination. It is further pleaded that no employee from Directorate of Treasuries and Accounts Department, was covered under the exempted employee category i.e. with more than 18 years of service nor any employee fall under qualified category i.e. qualified after passing the Assistant grade examination. Thus, as per the prescribed rules in this respect and after taking approval of the then Director of Treasuries and Accounts Branch, these posts were filled from the eligible officials of District Treasuries instead of Treasuries & Accounts Branch. Therefore, as per the records, 115 Senior Assistants were promoted and 23 were reverted and during this process, as per

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instructions, the vacancies of Scheduled Castes category on promoted posts were also filled. During 1998 to 2001, only once an order of promotion to the post of Senior Assistant was made. Further, this promotion was made by the Department in compliance to the order of the Hon'ble Supreme Court dated 24.08.1999. Thus, except promotion order dated 04.12.2000 no other promotion order from 1998 to 2000 has been made for promotion to the post of Senior Assistant in any category of Treasuries & Accounts Branch. It is further stated that during this period, private respondents were not eligible as they were not having 18 years of experience nor they had qualified departmental examination at that time. Thereafter, the promotions were made in the year 2004 in Directorate of Treasuries and Accounts for the post of Senior Assistant. During the promotions of 2004, Clerks/steno-typists working in Treasuries and Accounts Branch, Directorate of Treasuries and Accounts were promoted. Thus, some senior as well as junior employees (earlier who were/are Steno typist/Clerk) to respondents No.2 and 3 were got promoted to the post of Senior Assistant in Treasuries Branch. But by this time, respondents No.2 and 3 have already been promoted as Auditors after passing English typing test and they have also completed their probation period on the post of Auditors. Further, as per the Punjab Treasuries (State Services, Class III), Rules, 1979 and 1988, there is no quota for promotion in the District Treasury Offices of Senior Assistant from amongst the Auditors working in the Directorate of Treasuries and Accounts.

Furthermore, the respondents have already got promoted as Auditors in

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year 2000 and 2001, and further the scale of Auditors is equivalent to the scale of Senior Assistants in District Treasuries. Next promotion from the post of Auditor is to the post of Treasury Officer and thereafter to the post of District Treasury Officer and the post of Auditor is not a feeder post for promotion to the post of Senior Assistant in the office of District Treasury offices.

Respondents No.2 and 3 approached the Commission on 02.03.2020, alleging discrimination and prayed for promotion as Senior Assistant against the existing vacancies of reserved quota of Scheduled Castes candidates during the year 1998 to 2000. The said claim was raised by respondents No.2 and 3 after 20 years of their promotion as Auditors. Written reply from the present petitioners was sought by the Commission by 17.09.2021 and since the reply could not be submitted by 17.09.2021, two weeks' more time was sought from the Commission, however, the said request was not accepted by the Commission and the complaints filed by respondents No.2 and 3 were accepted by the Commission by passing the following order on 22.09.2021: -

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“Instead of submitting the departmental report, the department wrote a letter dated 17.09.2021 asking for more time of 2 weeks from the Commission.

The Commission decided that as this case is already pending for a very long time and the documents and facts submitted by the complainant were taken from the departmental records. Therefore it would not be

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appropriate to delay it further. As such the Commission will give its written decision in this matter.

After examining the facts and documents on the above record and hearing the arguments of both the parties, the Commission concludes the following observations: -

1) As per the seniority list of Stenotypist/Clerk issued by the department in the year 1999, the complainant Smt. Urmila Devi (Serial No. 30) and Sh. Amarnath (Serial No. 31) were senior to general category employees Smt. Snehlata and Smt. Bhupinder Kaur (Serial No. 32 and 33 respectively), to which department agreed.

2) Under the Punjab Treasury (State Service Class III) Rules, 1979, there is a provision of 10% quota for the promotion of Treasury and Accounts Branch staff as Senior Assistant in the office of Treasury organization (Field). In 1998, both the complainants were eligible for promotion to Senior Assistant. At that time 15 posts were covered under 10 percent quota of their cadre. Out of which 3 posts were reserved for S.C. employees and from examination of the roster register, it is clear that out of this quota no employee of Scheduled Caste category was working as Senior Assistant on the basis of reservation.

3) As stated by the department in its report dated 04.08.2020, in case of any promotions, the eligible employees/officers from the concerned cadre who are eligible for promotion as per the instructions and rules, are promoted without any option. In view of above, the department should had promoted the complainant as senior assistant against the vacant reserved posts of Scheduled Castes from 1998 to 2000 because 22 employees has been promoted as senior assistants by the

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department during this period. But the complainants were deprived of promotion despite vacant reserved points and being valid in all respects.

In view of the above observations, the Commission under Section 10 (2) of the Punjab State Commission for Scheduled Castes Act, 2004 wants the complainant Sh. Amarnath to be promoted to the post of Senior Assistant among the Treasury and Accounts Branch employees from 1998 to 2000, at one of the three vacancies reserved for Scheduled Castes out of 10 percent quota with all consequential benefits.

Mrs. Urmila Devi is senior to Mr. Amarnath and her case is similar to Mr. Amarnath's case. Therefore, Mrs. Urmila Devi should also be promoted to the post of Senior Assistant among the Treasury and Accounts Branch employees from 1998 to 2000, at one of the three vacancies reserved for Scheduled Castes out of 10 percent quota with all consequential benefits.

Action Taken Report in this regard should be submitted to the Commission by a responsible officer by 06.10.2021.

A copy of the same should be sent to the Director (Treasury and Accounts Branch, Finance Department, Punjab, Chandigarh) Principal Secretary (Social Justice, Empowerment and Minorities, Punjab, Chandigarh) for appropriate action. A copy should also be sent to the complainant for information.

*Chairperson
Tajinder Kaur,
I.A.S. (Retd.)”*

Thereafter, the petitioners-Department filed an application dated 26.10.2021, for reviewing the order dated 22.09.2021, however,

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the same has been rejected by the Commission, vide order dated 17.11.2021 (Annexure P-2), by stating that the order passed by the Commission dated 22.09.2021 is correct. The application for review has been disposed of by the Commission by passing the following order: -

“With reference to your Memo No. 6280454502 dated 25.10.2021 regarding the above subject, I have been directed to write that after examining the points raised by the complainant regarding the report received by the letter under reference, the Commission believes that the complainant's case is absolutely valid and the Commission's issued order dated 22.09.2021 is correct. The Commission agrees with what the complainant has written in point no. 7. The department is deliberately discriminating with an employee/officer belonging to the S.C. category.

According to the letter dated 09.04.2009 of the Chief Secretary, Punjab Government, the provision is "If any officer or official is found guilty of committing any omission or commission in contravening the provision of this act he shall be punishable under the provisions of the Punjab Civil Services (Punishment and appeal) Rules, 1970 or any other relevant services rule." An action can be taken against the officer found guilty.

The following provision is made under paragraph 4 of the same letter:- According to false prosecution, false litigation and false legal proceeding section 3(i) (vii), withdrawal of promotion and delaying promotion is covered under the definition of atrocity and various punishments under section 3 (2) of the same Act, which

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includes a sentence of 7 years or more, may be imposed against the officers who commit such negligence.

Therefore, the Commission wants that the requested Action Taken Report of the Commission be submitted on 21.12.2021.

For Member Secretary”

The said orders dated 22.09.2021 and 17.11.2021 (Annexures P-1 and P-2) passed by the Commission have been impugned in the present petition.

3. While issuing notice of motion on 06.09.2022, the operation of the impugned order dated 22.09.2021 (Annexure P-1) was stayed.

4. Separate replies have been filed on behalf of the Commission and respondents No.2 and 3.

5. Before proceeding further, it would be apt to mention here that respondents No.2 and 3 have also filed CWP No.10167 of 2021 titled “Urmila Devi and another v. State of Punjab and others” primarily seeking quashing of final seniority list of Auditors issued vide circular dated 26.04.2021 issued by the Director, Directorate, Treasuries and Accounts and in the said writ petition, respondents No.2 and 3 have impliedly accepted their promotion as Auditors and have not raised any submission regarding discrimination on the basis of caste and the stand taken by respondents No.2 and 3 is inconsistent with the averments made in the complaint filed before the Commission. In nutshell, the dispute in the said writ petition was with regard to inter se seniority of respondents No.2 and 3 with Sushma Rani and Jasvinder



Singh. The State of Punjab while granting benefit of seniority to Sushma Rani and Jasvinder Singh on the basis of catch-up rule had finalised the seniority list of the cadre of Auditors on 26.04.2021 and the question in the said writ petition was “whether the catch-up rule has been correctly applied in the facts and circumstances” and finally, the said writ petition was disposed of by this Court vide judgment dated 17.03.2023 by holding that the final seniority list issued on 26.04.2021 to the extent of granting benefit of catch-up rule to Sushma Rani and Jasvinder Singh is not correct and consequently the said seniority list was quashed to that extent and the competent authority was directed to prepare a fresh seniority list within a period of two months. The relevant portion from the said judgment reads thus: -

“1. The dispute with respect to inter-se seniority between the petitioners and respondent no.3 and 4 in the cadre of Auditors has come up for final disposal.

2. The State of Punjab while granting benefit of seniority to respondent no.3 and 4 on the basis of the catch-up rule has finalized the seniority list of the cadre of Auditors on 26.04.2021. The question is “Whether the catch-up rule has been correctly applied in the facts and circumstances of the present case?”

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7. On 26.07.1999, a type test was held for filling in 4 backlog vacancies in the promotion quota. The petitioners as well as Sh. Nasib Singh and Sh. Surender Singh took part in the type test. Sh. Nasib Singh and Sh. Surender Singh were at Sr. No. 36 and 37 in the seniority list of the feeder cadre, whereas the petitioners were at Sr. No.30 and 31. The petitioners failed to clear the test, whereas,

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Sh. Nasib Singh and Sh. Surender Singh were declared successful. Thereafter, Sh. Nasib Singh and Sh. Surender Singh were promoted as Auditors on 24.04.2000. In order to fill the backlog of the remaining two vacancies in the reserve category, a type test was again held on 14.07.2000 and only the petitioners, as they belong to the reserve category, were given the opportunity to take the test. The petitioner no.1 was declared successful, whereas, petitioner no.2 failed in the type test. Thus, petitioner no.1- Mrs. Urmila Devi was promoted as Auditor on 23.10.2000 and she joined as such, on 09.11.2000. Thereafter, again a common type test was held for general as well as reserve category candidates on 31.10.2001. The petitioner no.2 and respondent no.3 and 4 successfully passed the said type test. The petitioner no.2 was promoted as Auditor on 05.12.2001, whereas, he joined on 07.12.2001. Thereafter, respondent no.3 and 4 were promoted on 28.03.2005 as Auditors by the department, whereas they joined on 30.03.2005.

x x x x

12. Keeping in view the aforesaid facts, the final seniority list issued on 26.04.2021 is quashed to the extent of granting benefit of catchup rule to the private respondents. The competent authority is directed to prepare a fresh seniority list within a period of two months, in accordance with the observations made, hereinbefore.

13. The writ petition is allowed.”

6. Learned State counsel has submitted that the Commission is only a recommendatory body and has no jurisdiction to issue directions of promotion of any employee. He further submitted that even the complaints were filed by respondents No.2 and 3 after 20

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years of accepting their promotion as Auditors. Therefore, the directions issued by the Commission are against Clauses (5) and (6) of Article 338 of the Constitution of India and, therefore, the impugned orders dated 22.09.2021 and 17.11.2021 (Annexures P-1 and P-2) are liable to be set aside.

7. *Per contra*, learned counsel for respondents No.2 and 3 has submitted that respondents No.2 and 3 had been subjected to discrimination as they belong to reserved category of Scheduled Castes inasmuch as they were wrongly ignored for promotion to the post of Senior Assistant while their counterparts – Shashi Khera, Sneha Lata and Bhupinder Kaur belonging to general category were promoted. Therefore, genuine grievance of respondents No.2 and 3 has been redressed by the Commission and appropriate direction for their promotion to the post of Senior Assistant has been issued, which is perfectly legal and valid.

8. I have heard learned counsel for the parties and perused the record.

9. Respondents No.2 and 3 belongs to Scheduled Castes category and were appointed as Steno-typists on 03.09.1993. After passing the English type test, they were promoted to the post of Auditor on 05.12.2001 and 23.10.2000, respectively against the vacancies meant for Scheduled Castes category. The said promotion was accepted by them voluntarily and without raising any protest. After about 20 years, they approached the Commission with the grievance

that while they were promoted as Auditors, no option was sought from

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them and their two alleged juniors, namely, Sneh Lata and Bhupinder Kaur were promoted to the post of Treasury Officer and on 04.10.2019, they were further promoted to the post of District Treasury Officer. Respondents No.2 and 3 had also approached this Court by filing CWP-10167 of 2021 'Urmila Devi and another v. State of Punjab and others' and claimed seniority over and above Sushma Rani and Jasvinder Singh, who belongs to general category and claimed that while granting benefit of seniority to these two persons on the basis of catch-up rule, they have been made senior to respondents by wrongly applying the catch-up rule and the said writ petition has been allowed, vide judgment dated 17.03.2023, and final seniority list dated 26.04.2021 has been quashed to the extent of granting benefit of catch-up rule to these two persons and the competent authority was directed to prepare a fresh seniority list.

10. It is well-settled proposition of law that an employee cannot avail two parallel remedies. In the present case, respondents No.2 and 3 have availed two parallel remedies, one before the Commission and the second before this Court. The relief, which was claimed before the Commission, was available to respondents No.2 and 3 when they filed CWP-10167 of 2021.

11. Respondent No.1 – Punjab State Commission for Scheduled Castes has been created under the "Punjab State Commission for Scheduled Castes Act, 2004". The impugned order has been passed by the Commission under Section 10(2) of the said

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perusal thereof it is clear that it is only of recommendatory nature and not of adjudicatory nature. Section 10(2) of the Act reads as thus: -

“(2) The Commission shall perform all or any of the following functions, namely:-

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution of India 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 participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development;*
- (c) to make recommendations as to the measures that should be taken by the State Government for the effective implementations of the safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes;*
- (d) to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes as may be prescribed;*
- (e) to advise the Government on legislative and developmental policies affecting Scheduled Casts;*
- (f) to undertake necessary steps at the Government and public level to protect*

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the constitutional and legal rights of Scheduled Castes;

- (g) to monitor the implementation of laws and welfare measures concerning Scheduled Castes and initiate action for legal and administrative reforms to improve status of Scheduled Castes;*
- (h) to investigate suo motu or on complaint with respect to the deprivation of rights or discrimination or victimization of the Scheduled Castes and. to recommend remedial action to the Government and initiate judicial proceedings wherever necessary for effective remedy;*
- (i) to conduct studies and research into the problems of Scheduled Castes and report the same to the Government for appropriate action;*
- (j) to recommend prosecution in offences committed against Scheduled Castes and assist prosecution with evidence and legal services;*
- (k) to conduct public interest litigation on behalf of groups of Scheduled Castes in general, and in special, in an individual case of a Scheduled Caste, who suffer or have suffered from injustice or discrimination or to intervene in only proceeding pending before a court relating to such matters with the permission of the court and provide legal aid and rehabilitation in deserving cases;*

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- (l) *to present to the Government, annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards referred to in the preceding clauses;*
- (m) *to make in such reports, recommendations for the effective implementation of the aforesaid safeguards for improving the conditions of Scheduled Castes by the Union or any State;*
- (n) *to review, from time to time, the existing provisions of the constitution of India and other laws affecting Scheduled Castes and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies. or shortcomings in such legislation; and*
- (o) *to suggest and recommend the measures for safeguarding and uplifting the status and conditions of Scheduled Castes and any other matter, which may be considered necessary and proper by the Commission for the welfare of Scheduled Castes or which may be referred to it by the Government.”*

12. Article 338 of the Constitution of India mandates the creation of the National Commission for the Scheduled Castes. Clause (5) of Article 338 embodies the duty of the National Commission. Clause (6) imposes an obligation upon the President of India to cause all reports of the National Commission to be laid before each House of Parliament, along with a memorandum explaining the action taken or

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proposed to be taken on the recommendations relating to the Union and reasons for the non-acceptance, if any, of any of such recommendations. Clause (7) stipulates that, where any such report of the National Commission, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State, whereupon, the latter shall cause it to be laid before the Legislature of the State, along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations. Clause (8) equips the National Commission with all the powers of a civil court trying a suit, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5).

13. Article 338 of the Constitution of India reads thus:-

“338. National Commission for Scheduled Castes

- (1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.*
- (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.*

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- (3) *The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.*
- (4) *The Commission shall have the power to regulate its own procedure.*
- (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 under this Constitution 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;*
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes 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 reports 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*
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.*

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- (6) *The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.*
- (7) *Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.*
- (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 of any person from any part of India and examining him on oath;*
 - (b) requiring the discovery and production of any documents;*
 - (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;*

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

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

(10) In this article, references to the Scheduled Castes shall be construed as including references to the Anglo-Indian community.”

14. Similar issue came up before the Hon’ble Supreme Court in ***All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and others v. Union of India and others, 1996(6) SCC 606*** and after examining the provisions of Article 338 of the Constitution, it has been held as under: -

“5. It can be seen from a plain reading of clause 8 that the Commission has the power of the Civil Court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of Clause 5 of the Article 338 of the Constitution.

6. Sub-clause (a) to (f) of clause (8) clearly indicate that the area in which the Commission may use the powers of a Civil Court. The Commission has the power to summon and enforce attendance of any person from any part of India and examine him on oath; it can require the discovery and production of documents, so on and so forth. All these powers are essential to facilitate an investigation or an inquiry. Such powers do not convert the Commission into Civil Court.

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7. It will be interesting to observe that the Commissions of Inquiry Act (1952) grants similar powers to the Commission of Inquiry. Section 4 and sub-sections (4) and (5) of Section 5 of the Commissions of Inquiry Act, 1952 which confer such powers are quoted below :

"4. Powers of Commission - The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person 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 or documents;*
- (f) any other matter which may be prescribed.*

5. (4) The Commission shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (Act XLV of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been

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forwarded to him under Section 482 of the Code of Criminal Procedure, 1898.

(5) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code (Act XLV of 1860)."

8. In M.V. Rajwade v. Dr. S.M. Hassan, AIR 1954 Nagpur 71, the question whether the Commission of Inquiry, by virtue of the above provisions, could be treated to be a Civil Court for the purpose of the Contempt of Courts Act, 1971 came to be considered. The High Court observed as under :

"It would appear from Section 4 that it only clothes the Commission with certain powers of a Civil Court but does not confer on it the status of a Court. It is only under sub-section (4) of Section 5 that the Commission is deemed to be a Civil Court and sub-section (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created."

9. The judgment in the case of M.V. Rajwade (supra), was referred to with approval by this Court in Dr. Baliram Waman Hiray v. Justice B. Lentin and others, 1988(4) SCC 419. The question in that case was whether the Commissions of Inquiry Act, 1952 was a Court for the purpose of section 195(1)(b) Criminal Procedure Code, 1973. It was contended before the Court that sub-section (4) of Section 5 of the Commission of Inquiry Act created a legal fiction by which the Commission of Inquiry was deemed to be a Civil Court for all purposes. It was held that the words "for all purposes" are not therein the first part of sub-section (4) and the Court cannot, in the guise

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of interpreting the provision, supply any causes omissus. The Court went on to say that the purpose of creating the fiction was reflected in the second part of sub-clause 4, viz., for the purpose of proceedings under Section 482 of the Old Code and Section 346 of the New Code of Criminal Procedure.

10. Interestingly, here, in clause 8 of Article 138, 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 it 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 power be inferred or derived from a reading of Clause 8 of Article 138 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 March 4, 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."

15. To the same effect is the judgment of a Division Bench of the Delhi High Court in ***Anju Bala v. Municipal Corporation of Delhi and others (LPA 1051 of 2024 & CM APPL.61576 of 2024)*** decided



on 21.10.2024 : Law Finder Doc Id # 2658131. In the said judgment

it has been held as under: -

“7. Having heard the learned counsel for the appellant, this Court is of the view that the present appeal is completely misconceived. The basic premise of the present appeal as well as the underlying application in the writ petition is untenable in law insofar as the NCSC is not empowered to "investigate" or issue any directions in the nature of a civil or criminal Court. A bare perusal of Article 338 of the Constitution reveals that the limited powers of a Civil Court can be exercised by the commission in furtherance of an investigation into matters relating to the safeguards provided for the Scheduled Castes. One of us, Manmohan, J., in Union of India v. National Commission for Scheduled Castes and Anr., 2014 SCC Online Del 3324, has after taking into consideration the judgment of this Court in Municipal Corporation of Delhi v. Lal Chand & Ors., W.P.(C) 5468/2011 as well as All India Indian Overseas Bank SC and ST Employees' Welfare Association and Others v. Union of India & Ors., (1996) 6 SCC 606 and Karnataka Antibiotics v. National Commission for SC & ST, ILR 2008 Kar 3305 has held, "this Court is of the opinion that the Commission under Article 338 of the Constitution is not an adjudicatory body which can issue binding directions of injunction orders. This Court is of the view that the views of the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. Commission's reports are not alternative to the hierarchical judicial system envisaged under the Constitution of India.”

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8. Further, the nature of orders passed by the Commission can only be recommendatory and not directory as is in the present case.”

16. Similar view has been taken by a Co-ordinate Bench of this Court in *CWP-14576 of 2022 – Vijay Sharma and others v. The State of Punjab and others, decided on 08.07.2025 : Law Finder Doc Id # 2762652*.

17. In view of the above, present petition is allowed. Orders dated 22.09.2021 and 17.11.2021 (Annexures P-1 and P-2), passed by the Commission are hereby set aside, with no order as to costs.

12.12.2025
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No