

(2016) 05 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 37828 of 2015

Professor Jayashankar

APPELLANT

Vs

The Minorities Commission

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Citation : (2016) 5 ALT 144 : (2016) 5 AndhLD 129

Hon'ble Judges : Sri R. Kantha Rao, J.

Bench : Single Bench

Advocate : Sri B. Thimothi, Standing Counsel, for the Appellant; Sri Deepak Bhattacharjee, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sri R. Kantha Rao, J.—Professor Jayashankar Telangana State Agricultural University, Rajendranagar, Hyderabad rep. by its Registrar filed the present writ petition to issue a writ order or direction, more particularly one in the nature of writ of certiorari calling for the records relating to orders dated 13.10.2015 in Case No. 67 of 2015 passed by the Minorities Commission (for the State of Telangana and Andhra Pradesh), Hyderabad, the first respondent herein.

2. Briefly stated the following are the averments made in the affidavit filed in support of the writ petition.

The petitioner-University effected transfers in various cadres of teaches viz. Assistant Professors, Associate Professors and Professors depending upon exigencies and administrative requirement for smooth running of the colleges/ research stations and administration from 01.09.2014 i.e. from the date of formation of Professor Jayashankar Telangana State Agricultural University (for short "PJ TSAU"). The second respondent who was working as Scientist and Principal Scientist & Head, AICRP on Biological Control, ARI Campus, Rajendranagar, Hyderabad, since the date of his appointment during 1999 in the university for a period of 15 years in the same place was transferred and posted

as Associate Dean, Agricultural College, Jagtial. The second respondent who was heading a small scheme with single post was elevated to a more responsible post of Associate Dean where more than 25 staff members will be working under him. In the place of second respondent, G. Anitha, Assistant Professor, Department of Entomology, College of Agriculture, Rajendranagar who has been transferred and posted in the place of the second respondent herein has reported at AICRP on Biological Control after getting relieved at College of Agriculture, Rajendranagar. In view of her joining, second respondent is deemed to have been relieved on 09.07.2015 as he applied leave from 09.07.2015 afternoon. He applied various kinds of leave including the leave on medical grounds but did not hand over the charge of his post to G. Anitha. According to the petitioner-university transferring the second respondent is the collective decision taken by the officials of the university and not by way of any discrimination on the ground that the 2nd respondent hails from minority community. In this context, it is submitted that the second respondent never complained that he has been discriminated on the ground that he hails from minority community until the transfer orders are issued.

3. While the matter stood thus, the second respondent filed a complaint dated 09.07.2015 before the first respondent-Commission stating that the transfer was on the basis of long standing and that he has been discriminated as he belongs to muslim minority community and some employees who were long standing at Hyderabad have not been transferred. He did not mention about the persons who over stayed and whom the university did not transfer. The complaint was numbered as Case No.67 of 2015 and the first respondent issued notice to the Registrar of the petitioner-university by granting interim stay on the transfer under Chapter III Section 11(1) of the State Minorities Commission Act, 1998 and directed the Registrar, PJTSAU, Rajendranagar to file a detailed reply within 15 days. By the time the orders were received by the Registrar, Smt. G. Anitha who was posted in the place of second respondent had already joined. The second respondent did not hand over the charge to the incumbent who joined in his place which is evident from the letter dated 23.07.2015 submitted by Smt. G. Anitha.

4. A perusal of the complaint reveals that the second respondent is trying for retention in Hyderabad, the university filed a detailed counter affidavit and also vacate stay petition on 27.07.2015 upon the complaint denying discrimination and also questioning the jurisdiction of the State Minorities Commission in staying the transfer orders as the matter pertains to service conditions of the second respondent as well as Smt. G. Anitha. The second respondent filed reply affidavit and additional reply affidavit with several fresh allegations which are not connected with the original complaint and are not subject matter of the discrimination. It is submitted by the petitioner that the first respondent heard the arguments of both parties only on the issue of jurisdiction on 19.09.2015 and informed that the commission would go into the issue of jurisdiction only for the present, after deciding the issue of jurisdiction the matter would be further heard on merits if it is acceptable to both the parties. It is said that the Commission

also made it clear that there would be no use in hearing the matter on merits if there is no jurisdiction to interfere in the matter of transfer. Both parties accepted the suggestion made by the Commission and made their submissions only on the point of jurisdiction. Thereafter, the case went on for some adjournments and ultimately to the utter surprise of the petitioner, a final order was passed on 13.10.2015 relying on the averments made in the reply affidavit without ascertaining the facts and without giving an opportunity to the university to challenge the jurisdictional aspect by way of filing writ petition before this Court and also without giving an opportunity to file reply to the reply affidavits dated 09.09.2015 filed by the second respondent wherein several fresh issues were raised which are beyond the scope of the original complaint. According to the petitioner, the order which touched the merits of the case apart from jurisdiction is only ex parte order since the petitioner was not afforded any opportunity to submit the case on merits. It is further submitted by the petitioner that the Commission relied on some Xerox copies of the official documents such as attendance register, memorandum of understanding which is unsigned one having no signature of the second party i.e. ICAR. It is the version of the petitioner that once the incumbent who has been transferred and has given joining report at the place to which he/she is transferred, the person holding the post prior to joining the incumbent is automatically deemed to have been relieved in view of the fact that two persons cannot hold the same post at a time. The allegation that relieving orders were pre-dated is completely denied by the petitioner.

5. Nextly it is submitted that Smt. G. Anitha who is posted in place of second respondent is proper and necessary party to the Case No.67 of 2015 before the first respondent but surprisingly without making her party and without giving her an opportunity, the first respondent has passed orders dated 13.10.2015. It is further submitted that if the Commission resorts to issue such orders and interferes in the matters relating to service conditions of the employees of the institutions, the institutions cannot run the administration and it becomes a precedent and the employees would approach the State Minorities Commission whenever a transfer of the person belonging to a minority community is passed. Therefore, according to the petitioner, the orders passed by the State Minorities Commission will not only have adverse effect on the university but also have a wide impact on various institutions in the State.

6. It is further submitted that basing on the allegations made in the reply affidavit, the Commission arrived at the conclusion that the transfer was prompted by mala fides and based on wilful discrimination which are not at all connected with the original complaint and without giving opportunity to the University to establish that the averments are not correct. It is reiterated that the first respondent has no jurisdiction to issue orders to the Registrar to permit the 2nd respondent to continue as Scientist and Principal Scientist & Head, AICRP on Biological Control, ARI Campus, no fundamental right of the 2nd respondent is violated, since the transfer is incidence of service. It is submitted

that the orders of the first respondent directing the Registrar to release the salary of 2nd respondent from 09.07.2015 without counting his personal leave is totally illegal, arbitrary and beyond the jurisdiction for the reason that the second respondent was on leave from 09.07.2015 i.e. before approaching the first respondent herein till date for his personal work and due to illness. The said order was passed even though there was no prayer by the second respondent herein for payment of salary from 09.07.2015. Next, it is submitted that the nature of the orders passed by the Commission shall be recommendatory, the commission having regard to the scheme and object of the Act cannot usurp the adjudicatory power and cannot issue any final orders. It is under the above circumstances, the petitioner filed the writ petition seeking issuance of writ of certiorari.

7. The first respondent-Commission filed counter affidavit contending as under:

The first respondent-Commission is empowered under the A.P. State Minorities Commission Act, 1998 (the 1998 Act) and the Regulations, 2000 specified thereunder to entertain complaints as that of the second respondent in the interest of protecting the rights of the minorities and in order to protect such persons from being subjected to victimization. Under Section 12(d) of the 1998 Act and Clause (7) of the Regulations, 2000, the Minorities Commission is empowered to look into the specific complaints of discrimination against the persons of minority communities. The complaint lodged by the second respondent before the Commission is a specific complaint by an individual against discrimination and thus falls within the jurisdiction of the first respondent Commission. The first respondent Commission has jurisdiction to issue the orders to the Registrar to permit the second respondent to continue as Principal Scientist & Head, AICRP on Biological Control after considering the arguments of both the sides and the material on record it came to the conclusion that the transfer order was discriminatory.

8. Admittedly, the second respondent is part of the Indian Council of Agricultural Research (ICAR) Scheme of Government of India and the petitioner being fully aware of the same is therefore bound by the terms and conditions of the memorandum of understanding signed by the ICAR and the petitioner university. In pursuance of the same, the petitioner has acted in contravention of the terms of the memorandum of understanding, despite a clear understanding that a person of the cadre of second respondent cannot be transferred without the consent of the ICAR. This clearly shows discrimination and lack of bona fides. The transfer is not on the basis of administrative grounds but discriminatory in nature. The second respondent has been transferred under the garb of administrative reasons without the approval of ICAR because he belongs to the minority community and to create a subject related gap in his career thereby preventing further progression of a person of minority community within the institution. The averment made by the petitioner that the power of the Commission is recommendatory in nature is completely denied by the first

respondent. It is submitted that despite the power of commission being recommendatory, Section 12(d) of the 1998 Act, which concerns with specific complaints, is an exceptional, distinct and additional power conferred upon the Commission and implies that the commission does have the jurisdiction to entertain a complaint, investigate and provide the relief. Further it is contended that the petitioner having submitted to the jurisdiction of the commission is precluded from questioning the jurisdiction of the commission at the same time. Therefore, according to the first respondent, it has the jurisdiction to issue order to the Registrar to permit the 2nd respondent to continue as Principal Scientist & Head, AICRP on Biological Control as after considering the arguments of both the sides and the material on record, it came to the conclusion that the transfer order was discriminatory. Further, it is apparent that the second respondent has been targeted and he has been intentionally separated from his field of specialisation of biological control even at the cost of completely nullifying the research efforts of the prestigious ICAR, Government of India and is clear case of discrimination being meted out to a person belonging to a minority community, rather than a service matter and so the commission had the jurisdiction to entertain/adjudicate the dispute raised.

9. The second respondent filed counter affidavit setting forth his contentions as follows:

Section 12(1)(d) of A.P. State Minorities Commission ct, 1998 (Act No.31 of 1998) provides that the Commission shall look into the specific complaints rendering deprivation of rights and safeguards in the interest of the minorities. Section 12(1)(d) of the Act empowers the Minority Commission to deal with not only group rights of a particular minority community but also to deal with rights of an individual hailing from minority community against discrimination and to provide appropriate relief. After passing of the interim order dated 09.07.2015 the petitioner chose to submit to the jurisdiction of the State Minority Commission by filing a counter and therefore it is not open to the university to contend that the commission has no jurisdiction to entertain the complaint.

10. Next, it is contended that the petitioner university did not respect the memorandum of understanding between the petitioner university and Indian Council of Agricultural Research though the second respondent is heading a scheme of Indian Council of Agricultural Research and the scheme is funded by Indian Council of Agricultural Research. The petitioner did not implement the interim direction of this Court in WPMP No.45830 of 2015 in W.P. No.35671 of 2015 dated 04.11.2015 deliberately and wilfully showing absolute disobedience of the direction. The said Minority Commission had authority and jurisdiction to grant the relief in the nature of one granted in the present case under the provisions of A.P. State Minorities Commission Act. Various other contentions with regard to the merits of the case have been raised in the counter affidavit filed by the second respondent. Since this Court intends to examine the nature and extent of the jurisdiction of the A.P. State Minorities Commission, those

contentions have not been referred to in this order.

11. Contending as above, the respondents sought to dismiss the writ petition.

12. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents on the nature and extent of jurisdiction of A.P. State Minorities Commission in passing orders under the A.P. State Minorities Commission Act, 1998.

13. In this writ petition therefore this Court does not intend to examine the merits of the case on the point whether the transfer of the second respondent by the University is justified or not. This Court would examine only the limited question as to whether the State Minorities Commission can pass the impugned order having recourse to its powers under Section 11 and its functions under Section 12 of the A.P. State Minorities Commission Act, 1998.

14. The first respondent Commission passed the following order under Section 12(d) read with Section 11 of the Act directing the petitioner hereunder:

* To withdraw the transfer order (Memo No.10604/Ser.T/A1/2015 dated 08.07.2015), which is beyond doubt, proven to be as mala fide and based on wilful discriminatory approach towards a scientist belonging to minority community.

* To permit the petitioner forthwith, to continue to function as Principal Scientist & Head of AICRP on Bio Control immediately, without creating any further hindrance.

* To release his salary from 09.07.2015 without counting his personal leave as the petitioner is continuing as Principal Scientist & Head of AICRP on Bio control as per interim order.

15. After passing of the order, Dr. S.J. Rahman, the second respondent herein filed W.P. No.35671 of 2015 seeking a writ of mandamus declaring the action of the first respondent by order dated 08.07.2015 in transferring him from the position of Principal Scientist and Head of Scheme i.e. AICRP as contrary to the Memorandum of Understanding entered into between the respondents 1 and 3, contrary to the letter of Indian Council of Agricultural Research dated 27.07.2015, not enforcing the interim order of State Minorities Commission in Case No.67 of 2015 dated 09.07.2015 as arbitrary, illegal, violative of the statutory power vested with the State Minorities Commission under Clause (d) of Section 12 of the Act i.e. Act No.31/1998 and violative of the fundamental rights guaranteed to the petitioner (2nd respondent herein) under Articles 14, 16 and 19(1)(g) of the Constitution of India and to direct the first respondent to permit him to function as Principal Scientist and Head of the Scheme in the same post and release the salary and all benefits with effect from 09.07.2015, implement the direction of State Minorities Commission dated 13.10.2015 in Case No.67 of 2015 setting aside the transfer order under Memo dated 08.07.2015 with Memo No.10604/Ser.T/A-1/2015. In the said writ petition, the second respondent made

an interim application in WPMP No.45830 of 2015 and in the said application, the learned single Judge of this Court passed the following order:

"Mr. B. Thimothi, learned Standing Counsel, takes notice for respondents 1 and 2. Notice to respondent Nos.3 and 4. Post on 07.12.2015. A perusal of the record shows that by a well reasoned order passed on 13.10.2015, the Andhra Pradesh State Minorities Commission has held that the Registrar of respondent No.1-University has played fraud on it by anti-dating the transfer order of the petitioner. It has also granted relief to the petitioner including (i) an order to withdraw the impugned transfer order; (ii) to permit the petitioner to continue to function as the Principal Scientist and Head of AICRP on Biological Control immediately without creating any further hindrance and (iii) to release his salary from 09.07.2015. The learned Standing Counsel has submitted that so far, respondent No.1 has not questioned the said order. In these facts of the case, I find the elements of prima facie case, balance of convenience, and irreparable injury in favour of the petitioner. Hence, respondent No.1 is directed to permit the petitioner to discharge his duties as the Principal Scientist and Head of the Scheme i.e. All India Coordinated Research Project on Biological Control of Crop Pests and Weeds sponsored by third respondent and release his salary from 09.07.2015, pending further orders."

16. Professor Jayashankar Telangana State Agricultural University, Rajendranagar, Hyderabad filed the present writ petition questioning the very power and jurisdiction of the A.P. State Minorities Commission to pass the order. The short question which arises for determination in the present writ petition therefore is whether the first respondent-Commission is within its purview of the authority and jurisdiction to set aside the transfer order passed by the petitioner-University and to direct the University to pay the salary to the 2nd respondent.

17. From the preamble of the Andhra Pradesh State Minorities Commission Act, 1998 it appears that the object of the Act is to provide for the establishment of Religious Minorities Commission to safeguard the interests of the Minority Communities in the State and for matters connected therewith or incidental thereto. Under Section 12(d) of the Act, one of the functions of the Commission is to look into specific complaints regarding deprivation of rights and safeguards in the interest of the minorities. From Section 12(b) of the Act it has to be necessarily understood that the function of the Commission is to make recommendations with a view to ensure effective implementation and enforcement of all (safeguards and) the laws. Sub-section (j) of the Act empowers the Commission to exercise such other powers and perform such other functions as may be conferred or enjoined upon it by the Act or the rules made thereunder.

18. Under Section 11 of the Act, the Commission shall, while performing its functions under Section 12, have the powers of a Civil Court trying a suit and in particular, in respect of the following matters namely summoning and enforcing the attendance of any person from any part of the State and examining him on

oath, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing Commissions for the examination of witnesses or documents; and any other matter which may be prescribed. Under Section 11(2) of the Act, the Commission shall have the power to requisition such information, document and such assistance as may be required from any department of the Government for the effective implementation of the provisions of the Act.

19. From the combined reading of Sections 11 and 12 of the Act it is obvious that the Commission functions to make recommendations with a view to ensure effective implementation and enforcement of all (safeguards and) the laws. For that purpose, it will look into the specific complaints regarding deprivation of rights and safeguards in the interest of the minorities. Section 12(j) of the Act however empowers the Commission to exercise such other powers and perform such other functions as may be conferred or enjoined upon it by this Act or the rules made thereunder. Neither the Act nor the Rules confer adjudicatory power on the Commission. Therefore, the Commission exercises power under Section 11 of the Act only for the purpose of making recommendations with a view to ensure effective implementation and enforcement of all (safeguards and) and laws in respect of minorities.

20. It is contended by the learned counsel appearing for the petitioner that the Commission can make only recommendations, but it cannot pass the final order relating to a transfer of an employee in an institution and such an order would be beyond the scope of the functions and the powers of the Commission.

21. In the instant case, the first respondent Commission set aside the transfer order of the second respondent passed by the petitioner-University and also directed the University to pay the salary to the petitioner during the period of his leave. According to the petitioner, the matter purely pertains to the service conditions of an employee in the University. The 2nd respondent can only seek a departmental remedy or can invoke the jurisdiction of this Court under Article 226 of the Constitution of India if the alternative remedy available to him is not adequate or efficacious, but shall not approach the A.P. State Minorities Commission for redressal. The learned counsel appearing for the petitioner relied on a decision in *State of U.P. Through Principal Secretary Minor Irrigation, U.P. And Others v. Ram Kishore And Another*, 2006(7) AWC 7356 Allahabad. The powers and jurisdiction of the Commission under the U.P. State Commission for Backward Classes Act, 1996 fell for consideration before the Division Bench of the Allahabad High Court. The Division Bench held as follows:

"The learned standing counsel has not been able to demonstrate how the order impugned passed by the U.P. State Commission for Backward Classes is binding upon the State Government. Under the provisions of Section 9(2) of the Act, the only obligation upon the State Government is to lay the reports of the commission before each house of the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the

recommendations and the reason for the non-acceptance of the recommendations, if any. The provisions of Section 9(2) of the Act makes clear that if the Government decides not to accept the recommendation of the commission, it has only to place the same before each house of the State Legislature along with the reasons for its non-acceptance. Therefore, the impugned order/report of the commission is only recommendatory in nature and is not binding upon the State Government. The division Bench dismissed the writ petition as not maintainable basing on the preliminary objection raised by the first respondent as to the maintainability of the writ petition."

22. Learned counsel appearing for the respondents, however, contends that the specific complaints made to the Commission need not be by a group of persons, a single individual belonging to minority community can make a complaint which comes under the purview of single complaint and the Commission can make an enquiry into the allegations levelled into the complaint and grant appropriate relief even to a single individual. In support of their contentions, the respondents relied on A.P. State Minorities Commission v. Osmnia University And Others, 2003(2) ALD 729 (DB). The Division Bench was dealing with a review petition wherein the sole question was whether the commission can look into the specific complaints by the group of people or specific complaints by single individual or complaints by different individuals. The Division Bench reviewed the order passed by the earlier Division Bench taking the view that a single individual belonging to a minority community can also put-forth his grievance in a complaint to the commission and the commission can examine the said complaint. The Division Bench held as follows:

"No doubt, the power of the commission is recommendatory in nature, as pointed out in the above extract. But, we are of the considered view that the view of the division bench of this court in restricting the power of the commission to deal with only group rights, i.e. where the rights of a group have been affected is patently erroneous, in view of clause (d) of Section 12 of the Act. As already pointed out, clause (d) is an exceptional, distinct and additional power conferred upon the commission, apart from the function of dealing with group rights."

The Division Bench had only dealt with the issue as to whether the commission can take cognizance of the complaint made by a single individual setting forth any grievance. The purview of the order passed by the Division Bench does not cover the issue as to the nature and extent of the power of the commission. Moreover, the Division Bench also said that the power of the commission is recommendatory in nature.

23. In the instant case also, there is no dispute about the fact that the second respondent can file a complaint in his individual capacity setting forth his grievance to the commission. The commission can examine the allegations made in the complaint. But, the crucial question is as to what would be the nature of the order the commission can pass and to what extent the commission can

interfere in the administrative functions of the University. The question according to me is not as to whether the order passed by the university is illegal or prompted by mala fides or in the nature of discriminating the second respondent who is a member of minority community. The real issue with which we are concerned in the present writ petition is even if the commission thinks that the order passed by the petitioner transferring the second respondent is not justified or is discriminatory, can it directly set aside the said order. The transfer is an incidence of service. This Court in exercise of powers of judicial review under Article 226 of the Constitution can set aside the transfer made by any institution, if it is the result of victimisation or prompted by mala fides or when it is contrary to the statutory rules. Such an order would in appropriate cases be passed by this Court in exercise of powers of judicial review in exceptional circumstances. If a departmental remedy is available to the employee who was transferred, he can avail the said remedy and the authority vested with jurisdiction can set aside the transfer order.

24. From the order passed by the first respondent-Commission in this case it appears that the commission was convinced that the transfer order is discriminatory and is in the nature of victimising of professor belonging to minority community. Even if the view taken by the commission is correct, the question would be whether the commission can directly set aside the order and issue a direction to the Registrar of the University to permit the petitioner to work in the same place. Upon examining the entire scheme of the Act, this Court is of the view that any order passed by the commission under the Act is only recommendatory in nature, it cannot directly set aside the orders passed by the various institutions even if it is thoroughly convinced that they are illegal and prompted by mala fides. It can only make a recommendation to the institution expressing its views and can ask the authority concerned of the institution to examine the issue of the complainant for granting him appropriate remedy. In spite of the recommendation made by the commission if the authority concerned of the institution does not accept the recommendation, the remedy open to the party aggrieved is either to avail the departmental remedy or to seek a judicial review of the impugned order by this Court in exercise of its powers under Article 226 of the Constitution of India. The aggrieved person cannot file a writ petition seeking enforcement of the order passed by the A.P. State Minorities Commission. The order being recommendatory in nature, cannot be enforced in a court of law. Setting forth the same grievance, the aggrieved party can however file a writ petition directly but he cannot ask this Court to enforce the order passed by the commission. The entire issue has to be examined afresh by this Court in a writ petition filed by the aggrieved party.

25. For what all stated herein above, this Court is of the considered view that the powers of the first respondent-commission are only recommendatory in character. The commission has no power under State Minorities Commission Act, 1998 to set aside the transfer order passed by the petitioner-University. It has also no power to issue a positive direction to pay the salary to the petitioner

during his leave period. A writ petition under Article 226 of the Constitution of India is not maintainable to enforce the order passed by the commission under the provisions of the Act. The second respondent however can assail the order passed by the University in a separate writ petition filed by him but he cannot ask this Court to pass an order to enforce the order passed by the commission because the said order in the opinion of this Court is without jurisdiction.

26. For the foregoing reasons, the orders dated 13.10.2015 in Case No.67 of 2015 passed by the Minorities Commission (for the State of Telangana and Andhra Pradesh), Hyderabad, the first respondent herein are hereby set aside, the writ petition succeeds and it is allowed without any order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.