

(2019) 06 UK CK 0013
In the Uttarakhand High Court
Case No : Writ Petition No. 18 Of 2019 (M/S)

State Of Uttarakhand

APPELLANT

Vs

National Commissioner For Scheduled Castes And Others

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Uttarakhand Pravidhik Shiksha Viniyamavali, 1996 — Section 31, 31(4), 33(1)
Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 — Rule 22D(4)
Constitution Of India, 1950 — Article 226, 226(2), 227, 338, 338(5), 340

Citation : (2019) 06 UK CK 0013

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : J.P. Joshi, Sushil Vashistha, Siddhartha Sah, Aditya Singh

Final Decision : Partly Allowed

Judgement

Lok Pal Singh, J

1) Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India seeking writ in the nature of certiorari quashing of impugned order dated 04.12.2018, passed by respondent no. 1 as well as letter dated 05.12.2018. A further direction in the nature of prohibition has been sought commanding the respondent nos. 1 and 2 not to proceed any further with the inquiry in File no. R-12/Uttarakhand-20/2018/SSW-1 and to drop the said proceedings as being without jurisdiction.

2) Brief facts, necessary for adjudicating the controversy in hand, are that the fourth respondent moved a complaint before the first respondent- National Commission for Scheduled Castes raising his grievance against his victimisation, harassment and mental torture at the hands of the Managing Committee of the K.L. Polytechnic, Roorkee. It is stated in the complaint that the fourth respondent was appointed as Principal, K.L. Polytechnic, Roorkee (a State Govt. Aided Technical Education Institution of the Uttarakhand Government) w.e.f. 17.11.2004. It is stated in said complaint that he (fourth respondent) is a

member of scheduled caste community and belongs to weaker section of society. He was placed under suspension on 17.03.2008 by Mr. D.B. Goel, the Chairman of the Managing Committee levelling baseless and false charges against him. Fourth respondent made representation for quashing his suspension order and the charge sheet filed against him. He had earlier filed a writ petition challenging the order of his suspension before this Court, wherein this Court issued directions to the Managing Committee to appoint a new Inquiry Officer and to complete the proceedings within a period of six months from the date of passing the order. In compliance of said directions, Mr. D.P. Shukla was appointed the Inquiry Officer. Fourth respondent was again terminated by order dated 29.09.2012. In the meantime, a criminal complaint was also filed against the fourth respondent by the Committee of Management, which was dismissed by the Chief Judicial Magistrate, Haridwar.

3) Aggrieved against the same, the fourth respondent made a complaint before the Chairman, National Commission for Scheduled Castes (hereinafter referred to as 'NCSC') on 31.05.2018 with the following prayer:

"I earnestly request your honour kindly to look into the matter, uphold my Appeal based on the lacuna as pointed by the U.K. Board of Technical Education in its 21st Meeting and quash the unlawful and discriminatory orders of my dismissal from service passed by the Management Committee in total disregard of the provisions of Rule 33 and Rule 31(4) restoring all monetary benefits to me. It will be in the larger interest of justice to file an FIR against the perpetrators of injustice, mental torture, indignity upon a Dalit employee by Shri D.B. Goel, the former Chairman and Sri R.K. Jain, the present Chairman and Inquiry Officer Shri A.P. Mittal of the Managing Committee, K.L. Polytechnic Roorkee, Haridwar. Also the Managing Committee may be disbanded under Rule 22D(4) of the Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 (U.P. Act 17 of 1962) and I may be restored to my position of Principal, K.L. Polytechnic, Roorkee, Haridwar, Uttarakhand."

4) First respondent (NCSC) by order dated 04.12.2018, having considered the provisions contained in Rule 31(4) of U.P. Pravidhik Shiksha Sanstha Viniyamavali, 1996, has observed that since the appeal filed by the fourth respondent before the Uttarakhand Technical Education Board has been partly allowed and the matter was remanded to the Committee of Management on 06.11.2017, by the Addl. Chief Secretary, Training and Technical Education, Government of Uttarakhand (petitioner herein), whereby Committee of Management was directed to call a meeting of the Committee of Management within 15 days from the date of passing the order and to consider the punishment awarded to the fourth respondent as per the provisions contained in Section 33(1) and Section 31 of the Uttarakhand Pravidhik Shiksha Viniyamavali, 1996. The first respondent passed the order dated 04.12.2018 on the complaint made by the fourth respondent and recommended that the Addl. Chief Secretary, Technical Education (petitioner herein) and Director, Technical Education may

review the case and get the order no. 2161 / UTEB/Adhi.(2)/21st Sha.Ni.Meeting / 2017-18 dated 06.11.2017 of Uttarakhand Technical Education Board, Roorkee be implemented in toto. It was also recommended that the fourth respondent may be reinstated to the post of Principal with retrospective effect along with all consequential benefits i.e. arrear of pays, perks etc. It was further directed that the petitioner shall submit the action taken report within 30 days and next date of hearing was fixed on 09.01.2019 at 02:00 P.M.

5) Another letter dated 05.12.2018 was written by the Director, NCSC, to the Secretary and Director, Department of Technical Education, Government of Uttarakhand with the request to appear in person before the Member, NCSC on scheduled date at the Headquarters of NCSC at New Delhi along with upto date action taken report and all relevant documents including the relevant files, case diaries etc. to facilitate the hearing.

6) The petitioner has challenged the aforesaid orders on the ground that NCSC, which is a body constituted under Article 338 of the Constitution of India, does not possess the power to pass and issue such recommendations to the Addl. Chief Secretary, Govt. of Uttarakhand (petitioner herein).

7) Heard learned counsel for the parties and perused the entire record.

8) Mr. J.P. Joshi, Addl. Advocate General appearing on behalf of the petitioner would submit that the duty of the NCSC has been assigned in sub-Article (5) of Article 338 of the Constitution of India. Article 338 of the Constitution of India is excerpted hereunder for convenience:

"338. 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.

(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.

(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 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 and documents; (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 such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340,

by order specify and also to the Anglo-Indian Community."

9) Mr. J.P. Joshi has placed reliance on Clause no. 10.7.3 of the NCSC Hand Book 2016, which provides 'procedure for inquiry'. Clause 10.7.3.1 deals with 'Inquiry into specific complaints' and stipulates that the Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Castes. In order to enable the Commission to perform its function effectively and efficiently, the Commission would like the members of Scheduled Castes to know that it will be helpful to inquire into their grievances if they substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules or directions which have been violated.

10) Mr. Joshi also drew attention of this court towards sub-clauses (e), (f), (g) and (h) of Clause 10.7.3.1 of the NCSC Hand Book 2016. A bare reading of the provisions contained in sub-clauses (e), (f), (g) and (h) of Clause 10.7.3.1 would make it abundantly clear that the same speaks about the aspects to be kept in mind while filing complaints before the Commission. Sub-clause (e) provides that no action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s). Reading of sub-clause (e) would reveal that in regard to any matter subjudice, the same shall not be the subject matter of complaint before the NCSC. Sub-clause (g) provides that the cases of administrative nature like transfer / posting / grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner. Though the disciplinary action has not been barred by sub-clause (g), but the gravity of order of dismissal is on higher pedestal in comparison to the transfer/posting/grading of ACRs. NCSC has been barred to undertake administrative nature of work viz. transfer/posting/grading of ACRs. Therefore, in regard to the order of dismissal or pending inquiry, the NCSC could not have exercised its jurisdiction.

11) Learned Addl. Advocate General appearing on behalf of the petitioner has placed reliance on the judgments rendered by Hon'ble Apex Court in All India Indian Overseas Bank SC and ST Employees Welfare Association and others vs Union of India and others (1996) 6 SCC 606 and Collector, Bilaspur vs Ajit P.K. Jogi and others AIR 2012 SUPREME COURT 44 and would submit that the Hon'ble Supreme Court in the case of All India Indian Overseas Bank (supra) has held that the NCSC has got no jurisdiction to issue any injunction. He would further submit that in view of the judgments (supra), NCSC has exceeded in its jurisdiction to recommend the matter to the petitioner to review the case of the fourth respondent and by that time to implement the order dated 07.11.2017 of Uttarakhand Technical Education Board, Roorkee, in toto and to reinstate the fourth respondent with retrospective effect along with all consequential benefits. He would also submit that NCSC has exceeded in its jurisdiction in recommending the aforesaid directions and to submit the action taken report within 30 days. He would further submit that firstly the complaint filed by the fourth respondent is not maintainable as the issue raised in the complaint does

not come within the ambit of any of the clauses or sub-clauses and jurisdiction referred to NCSC. It is contended that since the matter is subjudice before the Committee of Management after the matter was remanded by the High Court as well as by the petitioner herein, therefore, in view of sub-clause (e) of Clause 10.7.3.1 of NCSC Hand Book 2016, NCSC has got no jurisdiction to entertain the complaint. It is also contended that by the interim order dated 04.12.2018, in fact, NCSC has granted the relief more than the final relief sought by the fourth respondent in his complaint. Thus, the first respondent has exceeded in his jurisdiction in granting the interim relief more than the final relief. Since the dispute in regard to the termination of the fourth respondent is subjudice for adjudication before the Committee of Management in view of the order passed by the petitioner allowing the appeal in part and remanding the matter to the Committee of Management to take decision thereon, in accordance with law, keeping in mind the spirit contained in Section 33(1) and Section 31 of the Uttarakhand Pravidhik Shiksha Viniyamavali, 1996, the first respondent could not have exercised its jurisdiction and passed the impugned order.

12) Per contra, Mr. Aditya Singh, counsel for the fourth respondent would submit that this is a case of victimisation of fourth respondent at the hands of Committee of Management. He would further submit that in the case of All India Indian Overseas Bank SC and ST Employees Welfare Association and others vs Union of India and others (1996) 6 SCC 606, NCSC (first respondent) is competent to make recommendation, as such, the ratio of the judgment (supra) is not applicable to the facts of the case in hand. It is contended that NCSC is competent to make recommendation. He would also submit that NCSC in its order dated 04.12.2018 has barely made recommendation. Thus, it is the choice of the petitioner to accept or not to accept such recommendation. I do not find any force in the contention of learned counsel for the fourth respondent.

13) Mr. Aditya Singh has raised another legal plea that since the office of NCSC is at New Delhi and the order has been passed by the NCSC, New Delhi, thus the petitioner could have challenged the order impugned under Article 226 of the Constitution of India before the Hon'ble Delhi High Court and this Court has got no territorial jurisdiction to entertain and decide this writ petition. In support of his contention he has placed reliance upon sub-Article (2) of Article 226 of the Constitution of India. He would further submit that since the first respondent has not passed the order impugned within the territorial jurisdiction of this Court, therefore, this writ petition is not maintainable before this Court.

14) The submission of learned counsel for the fourth respondent is misconceived. So far as the question of territorial jurisdiction of this Court is concerned, the complaint made by the fourth respondent has arisen from an order passed by the Addl. Chief Secretary, Technical Education (petitioner) vide order dated 06.11.2017. Further the directions have been issued by the first respondent to the petitioner which is well within the domain of said respondent. Not only part of cause of action arose in the territorial jurisdiction of this court, but the complaint

filed by the fourth respondent is the genesis of the cause of action which arose in the State of Uttarakhand. It is, therefore, held that Sub-Article (2) of Article 226 of the Constitution has no application in the matter and this Court has territorial jurisdiction to hear and decide this writ petition. The preliminary objection made by Mr. Aditya Singh is rejected.

15) Now, this Court has to deal with the issue involved in the matter. A perusal of the order impugned would reveal that the impugned order is, in fact, not an interim order, but the same is in the nature of a final order. Therefore, this Court is of the view that the first respondent has transgressed in its jurisdiction while passing the impugned order dated 04.12.2018, which is liable to be set aside.

16) So far as letter dated 05.12.2018 written on behalf of the first respondent to the petitioner with a request to appear in person in the hearing before NCSC along with action taken report and all relevant documents including the relevant files, case diaries etc. to facilitate the hearing is concerned, these powers of summoning are well within the domain of NCSC. As far as the maintainability of the complaint before NCSC is concerned, from the prayer no. 2 made in the relief clause of the writ petition, it is apparent that the petitioner has a remedy before the NCSC to file his objection in regard to the maintainability of complaint. This Court should not entertain the writ petition in issuing a writ of prohibition to NCSC not to proceed with the inquiry initiated on the complaint made by the fourth respondent.

17) In such view of the matter, this Court is of the opinion that the impugned order dated 04.12.2018 is liable to be quashed. The same is hereby quashed.

18) Consequently, the writ petition is allowed in part. So far as quashing of letter dated 05.12.2018 is concerned, this Court is not inclined to quash the letter dated 05.12.2018 or to drop the further proceedings of pending inquiry in File no. R-12 / Uttarakhand-20 / 2018 / SSW-1. The petitioner would be at liberty to raise all legal objections, including that of jurisdiction, before the first respondent. The first respondent shall decide the complaint filed by the fourth respondent as well as the objection raised by the petitioner, as expeditiously as possible, in accordance with law, after giving ample opportunity of hearing to the parties.

19) Recall Application CLMA no. 7737 of 2019 filed by the petitioner for recalling the order dated 20.05.2019 stands dismissed as infructuous.

20) No order as to costs.