
(2014) 05 UK CK 0032

In the Uttarakhand High Court

Case No : Writ Petition No. 327 of 2014 (M/S)

UCO Bank

APPELLANT

Vs

S.K. Vijjan

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 100, 195, 346
Penal Code, 1860 (IPC) — Section 175, 176, 177, 178, 179

Citation : (2014) LabIC 3174 : (2015) 2 UC 847

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : J.C. Belwal, Advocate for the Appellant; D.S. Patni, Advocate for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—Present petition is filed assailing the order dated 7th January, 2014, passed by the Uttarakhand Human Rights Commission. Operative portion of the impugned order reads as under:--

"Therefore, denial of the compassionate allowance as mentioned in Clause 15 of the Circular to the complainant is denial of his fundamental rights as per circular of the Bank itself which amounts to violation of human rights of the complainant as the said compassionate allowance is in lieu of his pension. Therefore, we direct the Bank to release the compassionate allowance in terms of its own circular to the complainant within four weeks."

Brief facts of the present case, inter alia, are that undisputedly, vide order dated 27-12-2001, complainant/respondent No. 1 herein was removed from the services of the Bank on account of mis-conduct on the part of the employee/complainant/respondent No. 1 herein. Feeling aggrieved, employee/complainant/respondent No. 1 herein filed Civil Writ Petition No. 1733 (S/B) of 2002, before this Court challenging the order dated 27.12.2001 removing the respondent No.

1 herein from the services of the bank as well as order dated 10.08.2002 whereby statutory appeal filed by the respondent No. 1 herein was dismissed by the appellate authority and further seeking writ of mandamus commanding the employer/Bank to reinstate the respondent No. 1 herein along with all backwages and benefits. Undisputedly, writ petition so preferred was dismissed vide judgment dated 17.09.2010 by the Division Bench of this Court. Meanwhile, respondent No. 1 herein preferred another Writ Petition, being Writ Petition No. 54 (S/B) of 2006, before this Court seeking direction to the employer Bank to release the pensionary benefits in favour of the respondent No. 1 herein. However, writ petition No. 54 (S/B) of 2006 was dismissed on 24.02.2011 for non-prosecution. No effort was made to get that writ petition restored.

It seems after the dismissal of the writ petition, complainant respondent No. 1 herein preferred complaint No. 384 of 2013 before the Uttarakhand Human Rights Commission, Dehradun seeking relief directing the employer/Bank to release the pensionary benefits in favour of the petitioner. Surprisingly, not only complaint was entertained but State Human Rights Commission proceeded to hold that denial of release of pensionary benefits would amount to violation of Human Rights, therefore, Bank was directed to release the compassionate allowance to respondent No. 1 in lieu of his pension.

2. Although it was argued before Human Rights Commission that in view of the dismissal of the earlier writ petition seeking mandamus against the Bank to release the pensionary benefits to the complainant, Human Rights Commission had no jurisdiction to grant the same relief which was denied by the High Court, however, learned Commission not only over-ruled the submission/objection raised by the Bank before the Commission but issued the mandamus/direction to release the compassionate allowance in lieu of pension as if Commission had jurisdiction under Article 226 of the Constitution of India.

3. Mr. D.S. Patni, learned counsel for the complainant/respondent No. 1 on being asked repeatedly could not state under what provisions of law Human Rights Commission could have entertained the complaint and issued direction to pay compassionate allowance in lieu of pension.

4. Sections 12, 13, 14, 17 and 18 of the Act reads as under:--

"Section 12--Functions of the Commission The Commission shall perform all on any of the following functions, namely:--

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of--

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

- (c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various Sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.

Section 13--Powers relating to inquiries

- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - (b) 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.
- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such

information within the meaning of Section 176 and Section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

(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 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, 1973, 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 has been forwarded to him u/s 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under subsection (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it;

Section 14--Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission:--

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of Section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Section 17--Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may--

(i) call for the information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that--

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Section 18--Steps during and after inquiry

The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:--

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority--

- (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
- (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;
- (iii) to take such further action as it may think fit;
- (b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;
- (e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission."

5. State Human Right Commission is constituted u/s 21 of the Act and as per Section 29 of the Act, provision of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 of the Act, shall apply to the State Commission as well.

6. Section 12 of the Act enumerates the functions of the Commission. As per Section 12 of the Act, Commission shall inquire, suo motu or on an application presented on behalf of the victim or any person on behalf of the victim into a complaint of violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant. Commission has also power to intervene in the proceedings involved any allegation of violence of human rights pending before the Court with the approval of such Courts.

7. Joint reading of Section 12 and Section 18(a) of the Act would demonstrate that Commission has jurisdiction to entertain the complaint and to make inquiry and investigation and to make recommendation, in the case of violation of human rights by a public servant only. If in the opinion of the Commission, inquiry discloses commission of violation of human rights and negligence in the prevention of human rights or abetment thereof by the public servant, Commission may recommend to the concerned Government authority to make payment of compensation/damages to the complainant or the victim or the members of his family as the case may be or to initiate proceedings for

prosecution or such suitable action against the concerned person/persons or to take such further action as Commission thinks fit. Commission may also approach this Court or the Supreme Court for such direction, orders or writ as the Court may deem fit in the peculiar facts and circumstances of the case. Commission may also recommend to the concerned Government or authority at any stage of inquiry for grant of immediate interim relief to the victim or the members of his family.

8. Perusal of Chapters III and IV of the Act would demonstrate that Human Rights Commission is only advisory body/recommending body and is not an adjudicatory body. If any direction is required, Commission u/s 18(b) of the Act is at liberty to approach this Court or Supreme Court as the case may be for appropriate direction or writ. However, cannot issue direction or writ without intervention of the Court.

9. In the case in hand, complainant/respondent No. 1 was removed from the services; removal was upheld by this Court in Writ Petition No. 1733 (S/B) of 2002, vide judgment dated 17.09.2010 and another Writ Petition No. 54 (S/B) of 2006, filed by the complainant/respondent No. 1, claiming pensionary benefits was also dismissed for non-prosecution on 24.02.2001, therefore, it was not open to the Human Rights Commission to act as an adjudicatory body and to issue direction to release the compassionate allowance in lieu of pension.

10. At this stage, Mr. D.S. Patni, learned counsel for the complainant/respondent No. 1, does not want to press his complaint filed before the Commission and states that same may be dismissed as withdrawn. For the reasons stated hereinbefore, impugned order does not sustained in the eyes of law. Therefore, present writ petition is allowed. Impugned order passed by the Human Rights Commission is hereby quashed.