

(2014) 09 DEL CK 0376
In the Delhi High Court
Case No : Writ Petition (Civil) 6672/2014

Union of India

APPELLANT

Vs

National Commission for Scheduled Castes

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Constitution of India, 1950 — Article 138
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 2, 3

Citation : (2015) 215 DLT 32

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sanjay Jain, ASG, Vivek Goyal, CGSC, Noor Anand and Rupinder Pal Singh, Advocate for the Appellant; Sanjay Kumar Visen, Shyam Sunder Jindal and G.P. Singh, Advocate for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner/UOI, Ministry of Health and Family Welfare praying inter alia for quashing of the order dated 05.08.2014 passed by the respondent No. 1/National Commission for Scheduled Castes.

2. By the impugned order dated 05.08.2014, the respondent No. 1/Commission has disposed of a complaint dated 05.10.2009 filed by the respondent No. 2, seeking the following reliefs:-

"1. Department should withdraw their show cause notice issued on arbitrary grounds or accept my reply as was accepted previously.

2. Considering the equality parameter, my post should be redesignated as Research Officer since 1-1-1996.

3. I may be promoted as Assistant Advisor w.e.f. 1-1-2000, Deputy Advisor w.e.f. 1-1-2005 and my arrear should be paid with interest accordingly.

4. I may be suitably financially compensated for the mental, physical and social

harassment which I am facing since 2002 till date and responsibility should also be fixed of those officers who harassed me and punish them suitably.

5. My pay in corresponding scale as per 6th CPC be given, notification be issued immediately and subsequently by giving me the promotion as Deputy Advisor accordingly from due date."

3. By the impugned order, the respondent No. 1/Commission has opined that the pay scale of the respondent No. 2 ought to be upgraded to Rs. 8000-13500 w.e.f. 1996 with all consequential benefits of arrears of pay and allowance, promotions and career progression within a period of fortnight. Further, the respondent No. 1/Commission has named four officials, who have allegedly committed atrocities towards the respondent No. 2 and thus attracted the provisions of Section 2 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and are liable for punishment under Section 3 of the Act.

4. Mr. Sanjay Jain, learned ASG assails the impugned order mainly on two counts. Firstly, he submits that despite repeated orders passed by the Supreme Court and the High Courts holding inter alia that the Commission has powers of a civil court limited only to investigate any matter referred to in sub-clause (a) or inquire into any complaint referred to in sub-clause (b) of clause 5 of Article 138 of the Constitution of India and that it does not have the power to examine matters pertaining to service jurisdiction, the impugned order has been passed by the court in favour of the respondent No. 2 directing that his pay scale be upgraded retrospectively w.e.f 1996 with all consequential benefits and arrears of pay and allowances, promotions and career progression, within a fortnight. To substantiate the aforesaid submission, reliance has been placed on the decision of the Supreme Court in the case of All India Indian Overseas Bank SC and ST Employees' Welfare Association and Others Vs. Union of India (UOI) and Others, .

5. Secondly, it is submitted by learned ASG that the orders passed by the respondent No. 1/Commission indicting four officers working on different posts in the Department of Ayush under Sections 2 and 3 of the Act, are liable to be quashed as the respondent No. 2 did not name any of the said individuals in his complaint dated 05.10.2009. Moreover, he points out that none of the four officers were afforded an opportunity of hearing by the Commission before the said order came to be passed thus violating the principles of natural justice, particularly since the consequences of attracting the provisions of Sections 2 and 3 of the Act are grave in nature and are punishable with imprisonment which shall not be less than six months, but which may extend to five years and with fine.

6. Mr. Jain, learned ASG submits on facts that much before the respondent No. 2 had approached the respondent No. 1/Commission with a complaint, in the year 2002, he alongwith some other applicants had approached the Central Administrative Tribunal by filing OA No. 3194/2002 for relief pertaining to their

scales of pay. On 31.07.2003, the Tribunal had quashed the order dated 29.11.2002 passed by the Department and restored the pay scale of the respondent No. 2 with directions issued to the Department to pass a fresh order. On 18.08.2003, the Department had issued a fresh notice to show cause to the respondent No. 2. In the year 2003 itself, the respondent No. 2 had filed another petition before the Tribunal stating inter alia that no action had been taken by the Ministry despite the order dated 29.11.2002. Vide order dated 21.01.2004, the Tribunal had observed that as the Department had not taken any decision after issuing a notice to show cause to the respondent No. 2, he would continue to remain in the pay scale of Rs. 8,000-13,500.

7. A third round of litigation was initiated by the respondent No. 2 in the year 2010 when he filed a petition before the Tribunal praying inter alia that he be granted enhanced pay scale. Vide order dated 16.01.2012, the aforesaid petition was disposed of by the Tribunal with directions to the Department to take the show cause notice dated 18.08.2003 to its logical conclusion, with liberty granted to the respondent No. 2 to seek his remedies against the decision taken, if it is adverse to him.

8. Finally, on 04.04.2012, the Department passed a speaking order withdrawing the scale of pay of Rs. 8,000-13,500 (pre-revised) etc. granted to the respondent No. 2. Aggrieved by the aforesaid decision, the respondent No. 2 filed another petition before the Tribunal challenging the order dated 04.04.2012. The said petition was dismissed by the Tribunal on 06.03.2013, whereafter the respondent No. 2 proceeded to file a review application, which is stated to be pending adjudication and the next date of hearing is 21.11.2014.

9. In the meantime, without taking notice of the fact that the respondent No. 2 has already sought his legal remedies against the order dated 04.04.2012 passed by the petitioner/UOI and further, that the respondent No. 2 has filed a review application against the order dated 06.03.2013 passed by the Tribunal which is pending consideration before the same forum, the impugned order dated 05.08.2014 has been passed by the respondent No. 1/Commission.

10. Learned counsel for the respondent No. 2 who appears on advance copy, states that his client does not wish to press the relief granted to him by the Commission with regard to upgradation of his pay scales as the review application filed by him for review of the order dated 06.03.2013 is pending consideration before the Tribunal. This takes care of the first grievance of the petitioner/UOI.

11. Coming next to the adverse findings returned by the respondent No. 1/Commission against the four officers mentioned in the second but last para of the impugned order, a perusal of the complaint filed by the respondent No. 2 before the Commission reveals that none of the said officers were named therein. The only reference made in the complaint is to one Mr. Lakhanpal, Under Secretary (Est.I), who had allegedly harassed the respondent No. 2. The rest of the

averments made in the complaint refers to the sequence of events narrated by the respondent No. 2, wherein he mentions various officers by their designation, without mentioning the names of the incumbents or levelling specific allegations of harassment against them. Learned Counsel for the respondent No. 2 has been specifically asked if any affidavit had been filed by the respondent No. 2 in respect of the four officers or any documents had been placed before the Commission relating to the conduct of the said officers amounting to committing atrocities against him before the impugned order came to be passed against them, to which the reply is in the negative. Further, learned counsel for the respondent No. 2 is unable to state as to whether notices to show cause were issued to each of the four officers affording them an opportunity to explain their stand before the impugned order came to be passed against them.

12. In the given circumstances, this Court is of the opinion that the impugned order dated 05.08.2014, whereunder four officers working on different posts in the Department of Ayush have been indicted for committing atrocities against the respondent No. 2 under Sections 2 and 3 of the Act, is unsustainable. The principles of natural justice demanded that the said officers ought to have been issued notices to show cause so as to afford them a reasonable opportunity of presenting their stand and of hearing them so as to enable them to meet the allegations levelled against them by the respondent No. 2, before any order, particularly one having such grave ramifications could have been passed, holding them guilty of committing atrocities against the respondent No. 2 and making them liable for punishment with imprisonment and fine.

13. As a result, the present petition is allowed and the impugned order dated 05.08.2014 is quashed and set aside. However, the respondent No. 2 is granted leave to pursue the review application filed by him and pending before the Tribunal. If he is aggrieved by the order that may be passed by the Tribunal, he shall be entitled to seek his remedies before the appropriate forum in accordance with law.

14. Further, if the respondent No. 2 does have a grievance against any individual officer of the Department, which as per him would attract the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is for him to file a complaint and make specific allegations therein, backed by relevant facts in respect of the said officer for seeking the relief as was prayed for by him in prayer clause (4) of his complaint dated 5.10.2009.

15. The petition is disposed of.