
(2014) 04 AHC CK 0065

In the Allahabad High Court

Case No : Writ Petition No. 12173 (M/B) of 2011

U.P. State Bridge Corporation Limited

APPELLANT

Vs

State Minorities Commission

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Commission for Minorities Act, 1994 — Section 10, 11, 12, 13, 14

Citation : (2014) 4 ADJ 536

Hon'ble Judges : Rajiv Sharma, J; Mahendra Dayal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner-U.P. State Bridge Corporation Ltd., a Government company incorporated under the provisions contained in Section 617 of the Companies Act, has assailed the order dated 18.4.2011, passed by the Chairman, State Minorities Commission, U.P., Lucknow [hereinafter referred to as the "Commission"], contained in Annexure 1 to the writ petition, whereby the Commission has issued a direction to the petitioner to promote the opposite party No. 2-Sri Rafi Ullaha Khan on the post of Assistant Engineer w.e.f. May, 1987 and to determine his seniority accordingly. Counsel for the petitioner has submitted that being aggrieved by the fixation of his seniority, the opposite party No. 2 approached the State Public Services Tribunal, Lucknow by filing Claim Petition No. 1158 of 2008. During the pendency of the said claim petition before the Tribunal, the opposite party No. 2 had also preferred a complaint dated 7.10.2008, to which the Commission issued a notice to the petitioner. In response to the said notice, the petitioner submitted his reply dated 16.1.2009. In the meantime, on the statement made on behalf of opposite party No. 2 that his seniority has been fixed at proper place in the final seniority list, the claim petition was dismissed as not pressed on 23.4.2009. Subsequently, the Commission has passed the impugned order dated 18.4.2011.

2. Counsel for the petitioner submits that the Commission is not empowered to adjudicate upon service matters and pass orders directing the employer to act in accordance with the same insofar as the functions of the Commission under the U.P. Commission for Minorities Act, 1994 [hereinafter referred to as the "Act, 1994"], are only recommendary in nature and are restricted to the matter specified in sub-Section (1) of Section 9 of the Act, 1994.

3. Per contra, Counsel for the respondents submits that as per Section 9 of the Act, 1994, any grievance relating to the persons belonging to the minorities can be raised before the Commission and the Commission will hear the matter on its facts and in case it finds the grievance of the incumbent genuine, it may be made a recommendation to the Government for redressal of the grievance of the incumbent. Accordingly, after hearing the parties including the petitioner, by the impugned order, the Commission has recommended for promotion of the opposite party No. 2 on the post of Assistant Engineer with effect from May, 1987 and further it was also recommended to fix the seniority accordingly. Therefore, the contention of the petitioner that the Commission has issued direction to the petitioner to promote the petitioner and further fix the seniority, is totally wrong and incorrect.

4. We have heard Counsel for the parties and perused the records.

5. The U.P. Commission for Minorities Act, 1994 (U.P. Act No. 22 of 1994) has been enacted to constitute a Commission for minorities in U.P. and to provide for matters connected therewith or incidental thereto. The constitution of the Commission has been given in Section 3, which provides that the Government shall constitute a body to be known as the Uttar Pradesh Commission for minorities to exercise the powers conferred on, and to perform the functions assigned to it under this Act. Sub-section (2) provides that the Commission shall consist of a Chairman and six members to be nominated by the Government from amongst persons of eminence, ability and integrity including a woman, provided that five Members including the Chairman shall be from amongst the minority communities. Section 4 provides the terms of office and conditions of service of Chairman and Members and Section 5 deals with the officers and employees of the Commission. Section 6 deals with the salaries and allowances which are to be paid to the Chairman and Members and the administrative expenses, including the salaries and allowances payable to the officers and employees of the Commission, whereas Section 7 protects the action taken by the Commission from being invalid merely on the ground of existence of any vacancy or defect in the constitution of the Commission. The functions of the Commission have been provided in Chapter III and in particular Section 9, which reads as under :

9. Functions of the Commission.-- (1) The Commission shall perform all or any of the following functions, namely :

(a) evaluate the progress of the development of minorities in Uttar Pradesh;

- (b) monitor the working of the safeguards in respect of minorities provided in the Constitution and in laws enacted by the State Legislature;
- (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Government;
- (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal.
- (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (g) suggest appropriate measures in respect of any minority to be undertaken by the Government;
- (h) make periodical or special reports to the Government on any matter pertaining to minorities and in particular difficulties confronted by them; and,
- (i) any other matter which may be referred to it by the Government.

6. Chapter IV consists of Section 10 to 13, which deal with finance, accounts and audit and Chapter V right from Section 14 deals with miscellaneous provisions. Section 17 gives power to the State Government to make rules and Section 18 gives power to the State Government to remove the difficulties in giving effects to the provisions of the Act.

7. A perusal of Section 9, sub-clauses (a) to (I), would reveal that the Commission has not been bestowed or conferred with any such power for issuing a direction to make promotion of a particular person. Without entering into the details of the functions, which have been prescribed under the Act, the controversy in the present case would only revolve around the question whether the Commission could have issued any direction for promoting the opposite party No. 2 to the next higher post of Assistant Engineer (Civil).

8. Sub-Section (2) of Section 9 again makes it very explicit that the Commission is only recommendatory body and it has power to recommend on matters enumerated in sub-section (1), clauses (a) to (I) and that the recommendation so made with respect to Clause (c) of sub-section (1) have to be laid before each House of the State Legislature alongwith a memorandum explaining the action taken. The Commission though has been given powers while performing its functions mentioned in clauses (a), (b) and (d) of sub-Section (1) of a Civil Court trying a suit and in particular, in respect of matters enumerated in Clauses (a) to (f) of sub-section (3) of Section 9, but conferment of these powers do not constitute the Commission either a Tribunal or adjudicating authority or the Court. The aforesaid powers have been given only to arrive at a conclusion in case a complaint is received or where a matter is to be considered as per provisions of the Commission regarding the deprivation of the rights and

safeguarding the interest of a person belonging to minority community but this exercise of power which is done by the Commission cannot be equated nor it can be treated to be a substitute of judicial authority or the tribunal. The recommendations made by the Commission can be accepted or rejected by the State Government or the employer, as the case may be, for any valid reason.

9. In the instant case, the Commission has not only recommended for considering the promotion of opposite party No. 2, if at all such a recommendation could have been made but, as a matter of fact, issued a positive direction for promoting him to the post of Assistant Engineer from May, 1987 and further the order of seniority be issued.

10. Counsel for the opposite parties has made an attempt to justify the order passed by the Commission, but could not satisfy us the authority under which the Commission could have issued such a direction. The Commission Act does not provide any such power with the Commission. We, therefore, find that the Commission acted wholly without jurisdiction and acted beyond the scope of the Act in issuing the impugned direction.

11. For the reasons aforesaid, we are of the view that the Commission is not empowered and authorized to direct any action be taken against any employee, on the pretext of oppression, victimization, or protection of the rights of persons of minority classes. Any such recommendation will be wholly illegal and will be overreaching the jurisdiction conferred by the Commission. Accordingly, the writ petition is allowed. The impugned order dated 18.4.2011 passed by the opposite party No. 1 is hereby set-aside.