



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 17808 OF 2024 (GM-RES)

R

BETWEEN:

1. THE MYSORE EDUCATION SOCIETY
A SOCIETY REGISTERED UNDER THE
SOCIETIES REGISTRATION ACT, 1860
HAVING ITS ADDRESS AT
"BRAHMI", 10TH MAIN, 15TH CROSS
MALLESWARAM, BENGALURU - 560 003
REPRESENTED BY ITS SECRETARY
SUKHEN PADMANABHA
SON OF K.P.PADMANABHA
MAJOR IN AGE.

2. SRI K.M.RAGHAVENDRAN
S/O LATE SRI K.D.MAHADEVAN
AGED ABOUT 63 YEARS
CHIEF EXECUTIVE
THE MYSORE EDUCATION SOCIETY
"BRAHMI", 10TH MAIN, 15TH CROSS
MALLESWARAM, BENGALURU - 560 003.

...PETITIONERS

(BY SRI PRADEEP S. SAWKAR, ADVOCATE)

AND:

1. SRI BABU P.,
S/O SRI PERUMAL
AGED ABOUT 44 YEARS
RESIDING AT NO.3





GROUND FLOOR, C-BLOCK
EWS QUARTERS, 1ST MAIN
VIJANANDANAGAR, NANDINI LAYOUT
BENGALURU NORTH, BENGALURU - 560 096.

2. NATIONAL COMMISSION FOR SCHEDULED CASTE
3RD FLOOR, D-WING, KENDRIYA SADAN
KORAMANGALA, BENGALURU - 560 034
REPRESENTED BY ITS DIRECTOR.

...RESPONDENTS

(BY SRI B. NAGENDRA, ADVOCATE FOR R1,
SRI B.S.VENKATANARANAYA, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN FILE NO. 06/APCR/47/2023-RU BEFORE R-2; QUASH THE PROCEEDINGS PURSUANT TO NOTICE DTD. 19.01.2024 AND IN FILE NO. 06/APCR/47/2023-RU (ANNX-K) BEFORE THE NATIONAL STATE COMMISSION FOR THE SCHEDULED CASTE, R-2.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners - the Secretary and Chief Executive of the Mysore Education Society (for short 'the MES'), which runs MES College at Malleswaram, Bengaluru, are at the doors of this Court calling in question the proceedings before the National Commission for Scheduled Castes (for short 'the Commission'),



in file No.06/APCR/47/2023-RU, on a complaint registered by the first respondent.

2. Facts in brief, germane, are as follows:

Petitioner No.1 - MES was established in the year 1956, a registered Society under the Societies Registration Act. The Society is said to have its foot on diverse array of schools and colleges dedicated to fostering academic excellence and holistic development. The first respondent joins the MES Degree College, Malleswaram, which is one of the Institutions run by the first petitioner. He joins as Computer Technician on 18.02.2008. Long after his service, an agreement is entered between the first respondent and petitioners, detailing the terms of appointment and him being governed by the MES (Cadre and Recruitment) Rules, 2017 and the Code of Conduct laid down thereunder, for Professional Ethics including the ethics for non-teaching staff. The agreement is signed between the petitioners and the first respondent on 01.06.2017.



3. When things stood thus, on 19.07.2002, the first respondent communicates to the Principal of MES College requesting sanction of two years leave effective from 01.08.2022, till 31.07.2024. The petitioner considering the request granted leave as sought for and found a replacement for his post of Computer Technician. The incoming Computer Technician reports to duty on 02.11.2022. Charge was directed to be handed over by the first respondent to the newly appointed Computer Technician by name Santhosh. On 06.11.2023, the first respondent seeks to report back to duties. Since the first respondent was on leave for more than one year and another person was already appointed, the first respondent was transferred to the MES Institute of Management, Rajajinagar, which is also an Institution run by MES; relieving order was issued; the first respondent accepting the order, reported the duties to the MES Institute of Management; the person who had replaced the first respondent continues as Computer Technician in MES Degree College, Malleswaram.

4. While the circumstances standing thus, the petitioners are said to have received a notice on 19.01.2024, from the



second respondent – Commission, enclosing a complaint filed by the first respondent seeking details of the case. The allegation of the first respondent was that, he was being harassed on the ground that he was belonging to a scheduled caste. The petitioners then hold an informal enquiry and a detailed interaction with the first respondent.

5. It is the case of the petitioners that the first respondent accepted the mistake and informed that on the advice of his lawyer, he had approached the Commission. The petitioners then reply to the notice dated 19.01.2024, enclosing all the necessary statements. The second respondent then directed the Commissioner of Police to investigate into the matter and submit a report upon the allegations made by the first respondent. The Commissioner is said to have sent a communication to all the teachers and staff of the petitioners to give their statement and also furnish their detailed reply and a rejoinder to the response submitted by the first respondent. When the proceedings were on, the petitioners are before this Court calling in question the same, contending that the entire proceedings are without jurisdiction.



6. Heard Sri Pradeep S. Sawkar, learned counsel for petitioners, Sri Nagendra B., learned counsel for respondent No.1 and Sri B.S.Venkatanarayana, learned counsel for respondent No.2.

7. Sri Pradeep S. Sawkar, learned counsel for the petitioners would vehemently contend that the first respondent avails two years leave; the Institution could not be without a Computer Technician for two years; a technician is appointed; the first respondent cuts his leave short, wants to join back and in the teeth of another person working, he is transferred to another Institution of the same Society, which is 4 kilometers away. The first respondent accepts the transfer by expressing his gratitude for having taken him back to the duties and in the same breath, goes before the Commission and alleges harassment or atrocity against the petitioners. The Commission without jurisdiction to entertain a service dispute takes up the cause, initiates proceedings and creates havoc in the Institution. He would therefore, submit that the entire proceedings are without jurisdiction and should be annulled.



8. *Per contra*, Sri Nagendra B., learned counsel for respondent No.1 would take this Court through the communications between the petitioners and the Institution and seeks to project that the Institution has abused the complainant by taking the name of the caste, when he goes to report to duties, and further contends that the first respondent pleaded not to talk in the said manner, which would become an offence as obtaining under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He would submit that it is the matter where the Commission will have to continue the proceedings as it cannot be said that the proceedings are without jurisdiction.

9. Sri Venkat Satyanarayana, learned counsel representing the second respondent would also contend that they have the jurisdiction to enquire into the complaint and they have conducted an enquiry or wanted to conduct a detailed enquiry. In that light, both the learned counsel for the first and the second respondents would seek dismissal of the petition.



10. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

11. The afore-narrated facts are not in dispute. The petitioner joins MES Degree College on 18.02.2008, this is a matter of record. On 01.06.2017, certain clauses of the agreement which is signed by the first respondent is germane to be noticed:

**"CODE OF CONDUCT AND PROFESSIONAL ETHICS
FOR NON-TEACHING STAFF OF MES**

Non-teaching and support staff appointed by the MES, at the Management office as well as at its institutions, shall abide by the following Rules that together constitute the Code of Conduct during their employment with the MES:

- 1. Personnel appointed by MES at all times exhibit utmost competence, prudence, transparency and a helpful attitude in the discharge of their duties and conduct themselves in a manner that upholds the image of the Society.**
- 2. They are liable to inter-Institutional transfers within the MES group of institutions.**
- 3. They shall accept training or deputation duties within or outside the institutions, as and when so directed by the Management.**



.....

13. They cannot absent themselves without prior sanction of leave or without previous permission of the Head of the Institution. They cannot leave the country without prior sanction from the MES Management.
14. Leave cannot be claimed as a matter of right. When the exigencies of Institutional service so require leave of any kind may be refused or revoked by the management, on a case to case basis."

(Emphasis added)

As observed hereinabove, the first respondent has signed the said agreement, which clearly indicates that the employee would be liable to work in inter-Institutional transfers within the MES group of institutions. Five years passed by after entering into the agreement, the first respondent submits an application seeking sabbatical / leave for a period of two years. The communication reads as follows:

"Date:19-07-2022

From,

Babu P M
System Technician
MES College,
Bangalore - 3

To,

The Principal
MES College,
Bangalore-3



Dear Madam,

Subject: Request for sanctioning for two years of leave (1st August 2022 to 31 July 2024) without pay.

I have been working as Computer technician in this esteemed organisation since 2008 till date. In October 2018 I had taken two months leave for my mother's medical treatment. Now in the month of August 2022 **my mother who is aged around 75 years will be undergoing knee surgery and after her surgery she might be advised to take complete rest for a year.**

Meanwhile my wife has been elected as a Panchayat president in my native and she will not be able to take care of my mother. In this regards I have to take care of my mother and my children's who are studying in MES Kishore Kendra (Malleswarm). Now my mother is taking care of my children's and after her surgery, I personally have to take care of her and my children.

I will also be joining Ph.D. (Computer Science) to upgrade my qualification and skills required for my work at college. In this regard, I have to visit University for course work and other academic exertion, in this regard I felt it would disturb the college work often. So Kindly consider my situation and sanction leave. I will be joining the college as early as possible even before completion of my leave once, I complete my work.

During my leave, if any technical emergency I will be providing all kind of support to the institution.

So I humbly place my request to the college Management to grant me two years of leave without pay

Thanking you."

(Emphasis added)



First respondent wanted two years leave to take care of his mother, to assist his wife who was elected as Panchayat President and to upgrade his qualification. Leave is sanctioned, the computer department has a vacuum. One Santhosh is appointed in the light of the leave being sanctioned to the first respondent. The appointment order of Santhosh reads as follows:

"Sub: Appointment as Computer Technician

.....

The Management of MES is pleased to appoint you as a Computer Technician at MES College of Arts, Commerce & Science, Malleswaram, Bangalore - 560 003 on consolidated salary of Rs.30,000/-Plus Travelling Allowance of Rs.3000/-per month w.e.f. 02.11.2022 initially for a period of one year extendable based on your performance.

The appointment is subject to the following terms & conditions:

1. Your services are terminable with one month's notice on either side or one month's salary in lieu thereof.
2. You shall not leave the Institution during the middle of the academic year.
3. You shall be present in the institution during the working hours and should maintain the discipline of the institution as desired by the Principal.
4. You shall discharge all the duties and responsibilities as may be assigned by the Management of MES and the Head of the institution from time to time.



5. You shall abide by the rules and regulations of MES and its institutions.
6. You shall maintain the integrity and confidentiality of the MES Management and its Institutions.
7. You are required to execute an agreement with the Management and sign the Code of Conduct in the format as enclosed herein.
8. If the above terms & conditions are acceptable to you, you may report to the Principal, MES College of Arts, Commerce & Science, Malleswaram, Bangalore – 560 003 and sign a copy of this letter and submit to the Management Office for records.
9. You are also requested to submit your original certificates for verification and two sets of Xerox copies of certificates relating to your qualification, experience and testimonial for records.

Yours faithfully

Sd/-

CHIEF EXECUTIVE

Chief Executive

The Mysore Education Society
Malleswaram, Bangalore-560 003."

And the first respondent is officially relieved. The relieving letter reads as follows:

"To,

The Chief Executive,
The Mysore Education Society,
Malleswaram, Bengaluru.

Respected Sir,

Subject: Relieving of Mr. Babu, Computer Technician.



With reference to the above subject, I wish to inform you that Mr. Babu has appraised Mr. Santosh about the systems, networking, C.C.TVs in MES College of Arts, Commerce and Science. Ms. Rekha, IT Manager has spoken to both Mr. Babu and Mr. Santosh regarding the handing over of charge in the morning of 14th November 2022. The details of the systems and passwords are enclosed for perusal.

Mr. Babu may be kindly relieved from duties in the college from the afternoon of 14th November 2022.

Thanking you,"

(Emphasis added)

The first respondent who had sought leave upto 31.07.2024, swings back by the following communication:

"Date:06.11.2023

From,
Babu P
System technician
M.E.S Degree college
Malleswaram,
Bangalore - 560003.

To,
The Principal
M.E.S degree College
Malleswaram,
Bangalore - 560003.

Sub: Duty report.

Respected madam,

I Babu P working as a computer System technician at your esteemed institution first would like to thank you from my heart for granting me leave (LOP) and helping me to serve my aged mother. I am devoid of words to express my gratitude to the institution, Principal and management in specific to C E Sir Sri K M Raghavendran who have been very kindful.



I will be reporting to my duty on 15th November 2023 since my leave ends on 14th November 2023.

kindly accept my duty report and do the needful."

(Emphasis added)

Now there were two technicians. Therefore, the petitioners transferred the first respondent to another Institution of the same Society, at a distance of 4 kms. The order of transfer dated 20.11.2023, reads as follows:

"Sub: Transfer of Sri Babu P, Computer Technician, ACS Degree College."

OFFICE ORDER

Sri Babu P, Computer Technician, MES ACS College is transferred with immediate effect and until further orders to MES Institute of Management, Rajajinagar.

He is directed to report to the Principal, MES IOM immediately and submit the duty report.

He shall look after all the computer related matters and CCTV surveillance systems of MES IOM, MPL PU College and Teachers College.

Sd/-
CHIEF EXECUTIVE
The Mysore Education Society
Malleswaram, Bangalore-560 003."

(Emphasis added)



The first respondent is directed to join the transferred place *i.e.*, MES Institute of Management, Rajajinagar. He reports to duty at the said transferred place. The reporting is evidenced by the following communication:

"Date: 21/11/2023

From:

Babu P
System Technician
Bangalore - 560010

To,

The Principal
M.E.S & O M
Rajajinagar,
Bangalore - 560010

Sub: Duty report

Respected Madam,

**I Babu P computer system technician
Reporting to duty on 21/11/2023 at 11.45 am. In
this regard kindly accept my duty report.**

Thanking you,
Your's truly
Sd/-"

(Emphasis added)

Accepting the order of transfer, reported to duties without demur in terms of the conditions of service agreement. Later, the first respondent approached the second respondent - the National Commission for Scheduled Castes, registering a



complaint. The petitioners come to know that the petition is addressed by a notice / communication dated 19.01.2024. The complaint reads as follows:

"From,

Babu Perumal
System Admin
Mysore education society
Malleswaram, Bengaluru-560003
Mobile number:9972926074.

To,

Commissioner
National Commission for Scheduled Castes and
Scheduled Tribes
3rd Floor, 'D'Wing, CGO Complex,
Kendriya Sadan, Koramangala,
Bangalore-560034.

Subject: **Harassment and Discrimination Scheduled Caste**

Respected Sir/Madam,

I am P.M. Babu, serving as the system administrator at MES Degree College of Arts, Commerce, and Science since February 18, 2008. Throughout this tenure, I have dedicated myself to the institution with unwavering sincerity, leading to the confirmation of my appointment on March 1, 2010, after successfully completing a two-year probationary period, a testament to my enduring perseverance and commitment.

....

Initially, everything went well for the first few months until I encountered a professor named K.M. Ragavendra (referred to as KMR). He was initially kind and appreciative of my work. We used to have interactions, but at one point, KMR asked me about my background,



specifically if I belonged to the Brahmin community. I informed him that I belonged to a scheduled class. Following this revelation, his behavior towards me changed dramatically.

Subsequently, whenever he required assistance with computer-related issues, he insisted that I should not enter his chamber. Instead, he instructed me to call his assistant and have them bring the computer and printers outside his chamber for servicing. At times, he even brought in an external computer technician to service college computers, explaining that he did not want me to handle his system or touch anything I had worked on. This deeply hurt me, leading to days filled with tears and profound pain.

There were occasions when I had conveyed to him that both of us are here to work for the college and the welfare of students, and we are all human beings. I questioned why I was subjected to such mistreatment. In response, he used to say to me, "You don't teach me; I am a professor. I don't want to see your face; get lost." At every opportunity, he would mistreat me, verbally abuse me, and spread false accusations against me. Despite this, I used to be subdued, attempting to please him.

At times, I reported the incidents to the concerned principals. Some of them understood my situation and offered assistance or advice, suggesting that I ignore him due to his status as a professor and an elderly person with traditional views. Despite his mistreatment, I remained kind to him, making efforts to please him. During positive events in Professor KMR's life, I even presented bouquets, but he discarded them in a bin in front of me. I undertook these actions in the hope of altering his perception of scheduled caste individuals, but unfortunately, that change never materialized.

In 2022, Professor KMR retired, and shortly afterward, he assumed the position of Chief Executive (CE) at the MES group of institutions. Following his appointment as CE, he consistently subjected me to verbal abuse and occasional scolding. On certain occasions, he even referred to me as a scoundrel. Strangely, in the presence of others, he maintained a pleasant demeanor.



I found it challenging to endure such mistreatment from Professor KMR, but given the importance of my job and the associated salary, I felt uncertain about how to address the situation. Despite my discomfort, I lacked a clear course of action. Feeling overwhelmed, I ultimately decided to take a leave of absence for a year, citing personal reasons. All these never came to an end professor KMR harassment reached peak on 20th November 2023 around 3pm professor KMR had informed principal asking me to meet him.

When I entered his chamber to meet him, he instructed, "Don't come in; I'll come out." He then informed me that he had handed over an order copy to the principal and instructed me to adhere to its directives. When I inquired about the content of the order, he retorted, "You scoundrel, don't question me; just do as I say. Everything is detailed in the order."

I expressed concern pleaded professor KMR that my kids are watching sir please don't talk like this they will feel bad. Disregarding my plea, he replied, "Who the hell appointed people like you? It's their mistake. One day, I'll ensure you won't be here to question me. If your kid feels something, I'm not responsible. It's your fate. Go to hell and don't show me your dirty face you people are fit only to clean toilets not for office work. I have a lot of work. You are like dogs, at times moving around our feet, licking the boot, and sometimes barking, and never mind biting ."

I don't have any other resort so approaching the commission for relief. Kindly consider my plea and give me a solution.

Thank you,

Sincerely,

Sd/-

Babu Perumal
System Admin
MES college
Malleswaram, Bengaluru-560003
Mobile number:9972926074"



A perusal at the complaint would indicate grievances of 10 years vintage being projected, without uttering a word about all of that, at any time earlier. Therefore, **nothing can be farther from truth.** The petitioners submit their reply to the Commission; no action is taken on the reply and the proceedings go on. It is at that juncture, the petitioners are before this court.

12. The issue now would be, whether the proceedings should be permitted to continue, or obliterated.

13. To consider the aforesaid issue, it is germane to notice the genesis of the Commission, with the objective of replacing the Special Officer created under Article 338 when the Constitution was adopted, with a high level Five Member Commission for more effective management of constitutional safeguards for scheduled castes and scheduled tribes, the Constitution (65th amendment) Act, 1990 was enacted. The statement of objects and reasons for the amendment read as follows:



"STATEMENT OF OBJECTS AND REASONS

Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It is felt that a high level five-member Commission under article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer as at present. It is also felt that it is necessary to elaborate the functions of the said Commission so as to cover 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 Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It is also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States."

Article 338 of the Constitution of India post amendment reads as follows:

"National Commission for Scheduled Castes and Scheduled Tribes."

338.(1) There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five 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 and Scheduled Tribes 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 and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes 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 socioeconomic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes 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 subclause (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 and Scheduled Tribes.

(10). In this Article, references to the Scheduled Castes/Scheduled Tribes shall be construed as including the references to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of Article 301 of the Constitution by order specify and also to the Anglo-Indian community."

(emphasis supplied)

Post the aforesaid amendment the duties of the Commission were to investigate and monitor all matters relating to safeguards provided for Scheduled Castes and Scheduled Tribes and enquire into specific complaints with respect to deprivation of rights and safeguards of Scheduled Castes and Scheduled Tribes. One major change that was brought about in the 65th amendment to Article 338 was that it vested the Commission with all the powers of a civil Court trying a suit while investigating any matter referred to it under sub-



clause (a) or enquiring into any complaint referred it under sub-clause (b) of Clause (5) of Article 338.

14. The powers conferred do not contemplate that the Commission can examine matters like a civil Court and adjudicate dispute and pronounce its decision either interim or final.

15. The Commission cannot be construed to be a Tribunal or a forum discharging the functions of a judicial character or Court. Article 338 of the Constitution itself does not entrust the Commission with the power to take up the role of a Court or an adjudicatory Tribunal and determine the rights of parties *inter se*. **The procedure that is conferred under Article 338 cannot be confused to be conferring a substantive power akin to that of a civil Court or a Tribunal which are adjudicating bodies of disputes of citizens.**

16. It is apposite to refer to the judgment of the Apex Court in the case of **ALL INDIA INDIAN OVERSEAS BANK SC AND ST EMPLOYEES' WELFARE ASSOCIATION v. UNION OF INDIA** reported in **(1996) 6 SCC 606** has laid down as under:—

"3. The short question that arises for consideration in this matter is whether the Commission had the power to issue a direction in the nature of an interim injunction? The appellant supports the letter dated 4-3-1993 of the Commission on the facts of the



case which supposedly justify the passing of an interim direction of the type contained in the letter dated 4-3-1993. The appellant refers to Article 338, clauses (5) and (8) of the Constitution introduced by the Constitution (Sixty-fifth Amendment) Act, 1990 to argue that the Commission had power to requisition public record and hence it could issue directions as if it enjoyed powers like a civil court for all purposes. Further the appellant contends that even a single member of the Commission has every authority to pass a direction on behalf of the entire Commission and hence the High Court was wrong in expressing the view that a single member of the Commission could not have issued the direction contained in the letter dated 4-3-1993. The appellant further contends that no writ would lie against an interim order of the Commission.

4. The basic question, however, is whether the Commission had the authority to issue the direction it did by the letter dated 4-3-1993. Clauses (5) and (8) of Article 338 of the Constitution, which the appellant refers to as the source of the Commission's power, can be quoted for ready reference:

"(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 and Scheduled Tribes under this Commission 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 and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes 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 report 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 Scheduled Tribes; and



(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes 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."

5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in subclause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.

6. Sub-clauses (a) to (f) of clause (8) clearly indicate the area in which the Commission may use the



*powers of a civil court. The Commission has the power to summon and enforce attendance of any person from any part of India and examine him on oath; it can require the discovery and production of documents, so on and so forth. **All these powers are essential to facilitate an investigation or an inquiry. Such powers do not convert the Commission into civil court.***

(emphasis supplied)

The afore-extracted judgment of the Apex Court, makes it unmistakably clear that the Commission is not empowered to adjudicate and decide disputes between the parties and pronounce its orders either interim or final.

17. It is further germane to refer to a later judgment of the Apex Court in the case of **COLLECTOR v. AJIT JOGI**¹, which reads as follows:

"17. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to Scheduled Castes and Scheduled Tribes by ensuring : (i) anti-discrimination, (ii) affirmative action by way of reservation and empowerment, and (iii) redressal of grievances. The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central

¹ (2011) 10 SCC 357



Government or the State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of the Scheduled Tribes. This power to enquire into "deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in *Madhuri Patil v. Commr., Tribal Development* [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] directed constitution of scrutiny committees.

22. It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of the certificate and also initiate criminal action. **All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false.** If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case."

(Emphasis supplied)

In the light of the mandate permitted to the Commission, by the Constitution of India and its interpretation by the Apex Court in the afore-quoted judgments, what would unmistakably emerge is, the absence of jurisdiction of the Commission in



entertaining a service dispute, of the kind in the case at hand, between an employer and an employee.

18. Though there is no order passed by the Commission directing a particular act to be done, the very proceeding has created ripples on the Institution. There is neither atrocity nor abuses that are hurled against the first respondent. It is a **canard** presented by the employee against the employer before the Commission.

19. The first respondent seeks leave of two years; it is granted; his appointment is saved; he is taken back; since the vacancy had already been filled and is transferred four kilometers away to another Institution of the same Society, in terms of the conditions of employment which had been signed by the first respondent, with eyes wide open. With the circumstances being thus, the Commission ought not to have entertained the complaint, which on the face of it, is a misuse of the provisions of the Act, projecting abuse and imaginary atrocity. As observed hereinabove, a palpable service dispute, is projected as an atrocity dispute.



20. In the light of the aforesaid reasons, the proceedings before the Commission suffering from want of jurisdiction, in the peculiar facts of the case, needs to be obliterated.

21. For the aforesaid reasons, the following:

ORDER

- a. The writ petition is allowed.
- b. The proceedings in file No.06/APCR/47/2023-RU, before the National Commission for Scheduled Castes stand quashed.

I.A.No.1/2024 stands disposed, as a consequence.

Sd/-
(M.NAGAPRASANNA)
JUDGE