

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Namit Kumar****Date of Decision: 15th May 2024**

CIVIL WRIT PETITION NO. 8542 OF 2022

Punjab State Power Corporation Ltd. ...PETITIONER**VERSUS****Punjab State Scheduled Caste Commission and another
...RESPONDENTS****Legislation:**

Articles 226/227 of the Constitution of India

Punjab State Commission for Scheduled Castes Act, 2004

Subject: Writ petition challenging the jurisdiction of the Punjab State Scheduled Caste Commission to direct the promotion of an employee.**Headnotes:**

Administrative Law - Jurisdiction of State Commissions – Writ Petition under Articles 226/227 – Petition filed against the Punjab State Scheduled Caste Commission’s order directing the promotion of an employee – Commission directed that respondent be promoted as Senior Executive Engineer – Held, the Commission lacks the authority to issue such directions – Commission’s role is recommendatory and investigatory, not adjudicatory – Order by Commission set aside. [Paras 1-10]

Jurisdiction of State Scheduled Caste Commission – Analysis – Held – The powers of the Commission are confined to investigation and making recommendations, without authority to enforce such recommendations as binding directives – Similar legal position held by the Supreme Court in All India Indian Overseas Bank SC and ST Employees’ Welfare Association v. Union of India, 1996 (6) SCC 606. [Para 7]

Decision – Commission’s Direction to Promote Employee – The impugned order by the Punjab State Scheduled Caste Commission directing the promotion of the respondent is set aside due to lack of jurisdiction – Petition allowed with liberty to respondent to seek other legal remedies. [Paras 9-11]

Referred Cases:

- All India Indian Overseas Bank SC and ST Employees’ Welfare Association v. Union of India, (1996) 6 SCC 606
- Dr. Baliram Waman Hiray v. Justice B. Lentin and others, [1988] 4 SCC 419
- M.V. Rajwade v. Dr. S.M. Hassan, AIR (1954) Nagpur 71

Representing Advocates:

Mr. Adityajit Singh Chadha, Advocate for the petitioner

Mr. Teevar Sharma, AAG, Punjab

Mr. Jigerjeet Singh, Advocate for Mr. Ashish Aggarwal, Advocate for respondent No.2

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NAMIT KUMAR J.

1. The petitioner-Punjab State Power Corporation Limited has approached this Court by filing the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of certiorari for quashing the order dated 02.02.2022 (Annexure P-3) passed by respondent No.1-Punjab State Scheduled Caste Commission, Chandigarh (herein after referred as ‘the Commission’), whereby it has been directed that respondent No.2 is liable to be promoted as Senior Executive Engineer.
2. The brief facts, as have been pleaded in the petition, are that respondent No.2-Surinder Pal (retired Assistant Executive Engineer) was initially appointed as Junior Engineer (Electrical) by way of direct recruitment in the year 1985 against a reserved vacancy. Thereafter, he was promoted to the post of Assistant Executive Engineer by seeking the benefit of reservation in promotion. Next avenue of promotion from the post of Assistant Executive

Engineer is to the post of Senior Executive Engineer. Although, he was not in the zone of consideration for promotion to the post of Senior Executive Engineer, however, vide complaint dated 01.04.2021, he approached respondent No.1-the Commission for redressal of his grievance, wherein he had requested that inspite of the facts and circumstances in his favour, he is being denied his right for promotion to the post of Senior Executive Engineer. On the complaint of respondent No.2, the report was sought from the petitioner-Corporation by the Commission vide letter dated 05.05.2021. The report was submitted by the petitioner Corporation vide letter dated 26.05.2021. Thereafter, respondent No.2 submitted his replication dated 09.08.2021. A report was again sought from the petitioner-Corporation by the Commission on the said replication which was given by it vide letter dated 09.11.2021. The respondent No.2 has also approached this Court by filing CWP No.9684 of 2021 (Surinder Pal Vs. Punjab State Power Corporation Limited and others) inter alia, seeking direction to the Corporation to consider his candidature for promotion to the post of Senior Executive Engineer. The said writ petition was disposed of by this Court vide order dated 28.06.2021 by observing as under :-

“Learned counsel for the petitioner further submits that for the relief, which is being claimed in the present writ petition, the petitioner has already submitted representations dated 17.10.2020 (Annexure P/9) and 04.02.2021 (Annexure P/10) to the respondents, which are still pending consideration with the respondents and the petitioner will be satisfied, at this stage, in case a time bound direction is issued to respondent No.2 to decide the said representations by passing an appropriate speaking order.

In view of the above, without expressing any opinion on the merits of the case or the claim being made by the petitioner, respondent No.2 is directed to decide representations dated 17.10.2020 (Annexure P/9) and 04.02.2021 (Annexure P/10), submitted by the petitioner by passing a speaking order within a period of six weeks from the date of receipt of a copy of this order. Present writ petition stands disposed of.”

3. In compliance thereto, the petitioner-Corporation passed a speaking order dated 24.08.2021, declining the claim of the petitioner for promotion to the post of Senior Executive Engineer. The said speaking order was never challenged by the petitioner before this Court. However, he pursued his complaint before the Commission and on the said complaint, the following order dated 02.02.2022 (wrongly mentioned as 02.02.2021 in the order) was passed by the Commission :-

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After examining the complaint-reply of the complainant, departmental letters submitted by the Department to the Commission from time to time, the Commission observes as under:-

- 1) After giving repeated representations to the department by the complainant, his seniority was amended. From this, it is clear that the department has deliberately created hindrance in his promotion.*
- 2) The department has also admitted that by virtue of the wrong interpretation of the Regulation 10 (8) (b) of P.S.E.B. Service of Engineers Regulations, some officers and one junior officer Er. Ram Pal was promoted as Senior Executive Engineer.*

The comments of the Commission are that these officers are getting financial benefits after their retirement and are enjoying the status, even today.

- 3) Due to departmental error, instructions have been passed to issue warning letter to the officer of Joint Secretary level.*

In view of all the above facts, the Commission opines that injustice has been done to the complainant. His status was lowered and he has suffered financial losses. The Commission wants that under which criteria, Er. Ram Pal and others were promoted as Senior Executive Engineer, in the same criteria and on the same date of 06.05.2016, the complainant is liable to be promoted as Senior Executive Engineer, because the Department has stayed the promotions in the year 2019.

The Commission wants that after promoting the complainant from the due date, the action taken report be submitted on the next date on 09.03.2022.

Sd/ For Member Secretary”

4. The abovesaid order has been impugned by the petitioner Corporation, inter alia, on the ground that the Commission has no power to issue any directions and the Commission can only make a recommendation to the Government. While issuing notice of motion on 26.04.2022, operation of the impugned order dated 02.02.2022(Annexure P-3) was stayed by this Court. In the order dated 26.04.2022, the following contention of learned counsel for the petitioner was recorded :-

“Learned counsel for the petitioner contends that the Commission (respondent No. 1) has erroneously directed that respondent No. 2 be promoted as Senior Executive Engineer w.e.f. 06.05.2016 and has sought compliance report even though the Commission can only make a recommendation to the government. In support of his contentions, he has relied upon the judgment 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, (1996) 6 SCC 606.”

5. On the other hand, learned counsel for respondent No.2 has supported the order dated 02.02.2022 (Annexure P-3) and submits that since respondent No.2 belongs to reserved category of Scheduled Caste, therefore, he has rightly approached the Commission for issuance of appropriate direction to the petitioner-Corporation to promote him to the post of Senior Executive Engineer.
6. I have heard learned counsel for the parties and perused the record with their able assistance.
7. The Hon’ble Supreme Court, while considering the similar issue 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*** has examined the powers and jurisdiction of the National Commission for Scheduled Caste and Scheduled Tribes, New Delhi and observed 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 nonacceptance, 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 sub-clause (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.

7. It will be interesting to observe that the Commissions of Inquiry Act, 1952 grants similar powers to the Commission of inquiry. Section 4 and sub-sections (4) and (5) of Section 5 of the Commissions of Inquiry Act, 1952 which confer such powers are quoted below:

"4. Powers of Commission-The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person 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 or documents;
- (f) any other matter which may be prescribed.

5. (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 1860 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, 1898 (Act V of 1898) 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 had been forwarded to him under Section 482 of the Code of Criminal Procedure, 1898.

(5) Any proceedings before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code 1860."

8. *In M.V. Rajwade v. Dr. S.M. Hassan, AIR (1954) Nagpur 71, the question whether the Commission of Inquiry, by virtue of the above provisions, could be treated to be a civil court for the purpose of the Contempt of Courts Act, 1971 came to be considered. The High Court observed as under:
"It would appear from Section 4 that it only clothes the Commission with certain powers of a Civil Court but does not confer on it the status of a Court, It is only under sub section (4) of Section 5 that the Commission is deemed to be a Civil Court and subsection (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created."*
9. *The judgment in the case of M. V. Rajwade (supra) was referred to with approval by this Court in Dr. Baliram Waman Hiray v. Justice B. Lentin and others, [1988] 4 SCC 419. The question in that case was whether the Commission of Inquiry constituted under Section 3(1) of the Commissions of Inquiry Act, 1952 was a court for the purpose of Section 195 (l)(b) Criminal Procedure Code, 1973, It was contended before the Court that sub- Section (4) of Section 5 of the Commission of Inquiry Act created a legal fiction by which the Commission of Inquiry was deemed to be a Civil Court for all purposes. It was held that the words "for all purposes" are not there in the first part of sub-section (4) and the Court cannot, in the guise of interpreting the provision, supply any casus omissus. The Court went on to say that the purpose of creating the fiction was reflected in the second part of sub-clause 4, viz., for the purpose of proceedings under Section 482 of the Old Code and Section 346 of the new Code of Criminal Procedure.*
10. *Interestingly, here, in clause 8 of Article 138, the words used are "the Commission shall... have all the powers of the Civil Court trying a suit." But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a Civil Court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause 8 of Article 338 of the Constitution.*
11. *The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4-3-1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs."*

8.Respondent No.1-Punjab State Scheduled Caste Commission has been constituted under the Punjab State Commission for Scheduled Castes Act, 2004 and the relevant provisions of the said Act are reproduced hereunder

:"10. (1) The Commission shall, while investigating any matter under this Act, 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 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 ; and*
 - (f) any other matter which may be prescribed.*
- (2) The Commission shall perform all or any of the following functions, namely :-*
- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution of India 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 participate and advise on the planning process of socioeconomic development of the Scheduled Castes and to evaluate the progress of their development ;*
 - C) to make recommendations as to the measures that should be taken by the State Government for the effective implementations of the safeguards and other measures for the protection, welfare and socioeconomic development of the Scheduled Castes ;*
 - (d) to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes as may be prescribed ;*
 - (e) to advise the Government on legislative and developments policies affecting Scheduled Castes ;*
 - (f) to undertake necessary steps at the Government and public level to protect the constitutional and legal rights of Scheduled Castes ;*
 - (g) to monitor the implementation of laws and welfare measures concerning Scheduled Castes and initiate action for legal and administrative reforms to improve status of Scheduled Castes ;*
 - (h) to investigate suo motu or on complaint with respect to the deprivation of rights or discrimination or victimization of the Scheduled Castes and to recommend remedial action to the Government and initiate judicial proceedings wherever necessary for effective remedy ;*
 - (i) to conduct studies and research into the problems of Scheduled Castes and report the same to the Government for appropriate action ;*
 - (j) to recommend prosecution in offences committed against Scheduled Castes and assist prosecution with evidence and legal services ;*
 - (k) to conduct public interest litigation on behalf of groups of Scheduled Castes in general, and in special, in an individual case of a Scheduled Caste, who suffer or have suffered from injustice or discrimination or to intervene in only proceeding pending before a court relating to such matters with the*

permission of the court and provide legal aid and rehabilitation in deserving cases ;

- (l) to present to the Government, annually and at such other time as the Commission may deem fit, reports upon the working of the safeguards referred to in the preceding clauses ;
- (m) to make in such reports, recommendations for the effective implementation of the aforesaid safeguards for improving the conditions of Scheduled Castes by the Union or any State ;
- (n) to review, from time to time, the existing provisions of the Constitution of India and other laws affecting Scheduled Caste and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation; and ;
- (o) to suggest and recommend the measures for safeguarding and uplifting the status and conditions of Scheduled Castes and any other matter, which may be considered necessary and proper by the Commission for the welfare of Scheduled Castes or which may be referred to it by the Government.

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12. (1) The Commission may, for the purpose of conducting investigation under the Act, utilize the services of, -

- (a) any officer or investigation agency of the State of Punjab or any other State or the Central Government with the concurrence of that Government; or
- (b) any other person.

(2) For the purpose of conducting an investigation, any officer or agency referred to in clause (a) of 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) Such officer or agency or the person shall investigate into the matter as directed by the Commission and submit a report thereon (hereinafter in this section referred to as "the investigation report") to the Commission within such period, as may be specified by the Commission in this behalf.

(4) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the investigation report submitted to it under sub-section (3), 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 considers appropriate."Perusal of the abovesaid reproduction would show that powers conferred upon the National Commission and the State Commission for Scheduled Caste is more or less the same.

9. In view of the law laid down by the Hon'ble Supreme Court in **All India Indian Overseas Bank SC and ST Employees' Welfare Association's case (supra)**, it is held that the Commission can only make recommendation and

has no power to issue any directions for promoting any particular employee as the Commission constituted under the Punjab State Commission for Scheduled Castes Act, 2004 is only a regulatory body, which can conduct an investigation and thereafter, gives its recommendation, which may or may not be binding upon the Government agencies. Therefore, without going into the merits of the claim of respondent No.2 as to whether he is entitled to be considered for promotion to the post of Senior Executive Engineer, the impugned order dated 02.02.2022 (Annexure P-3) passed by the Commission is wholly without jurisdiction and is hereby set aside.

10. The present petition is accordingly allowed in the abovesaid terms.
11. However, respondent No.2 shall be at liberty to avail other legal remedies in accordance with law.

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