

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.2682/2022

Ratnakar Sharma ...Petitioner(s)

Through:- Mr. S.S.Ahmed, Advocate with
Mr. Rahul Raina, Advocate

V/s

Union Territory of J&K and others ...Respondent(s)

Through:-

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

Through the medium of present writ petition the petitioner has called in question the validity of communication dated 10.11.2022 issued without jurisdiction by respondent Nos. 2 and 3 on the complaint filed by respondent No.5, whereby respondent No.3 has directed that as an interim measure, respondent No.5 be made as Head of the Department, Department of Surgery, Government Medical College, Jammu inspite of the fact that the petitioner, who is senior most faculty member of the Department of Surgery, is performing the duties of the Head of Department since 31st May, 2022.

Learned counsel for the petitioner has vehemently argued that Hon'ble the Supreme Court is already seized of the Matter in SLP (C) No.32820/2015 arising out of the batch of petitions with lead case titled Ashok Kumar Sharma v. State of J&K and others connected with SWP No. 1583/ 20144 titled *Dr. Ratnakar Sharma V/s State of J&K and Ors* wherein

the Hon'ble Division Bench of the High Court of J&K and Ladakh at Jammu allowed the writ petitions and struck down Section 6 of the J&K Reservation Act, 2004 and Rules 9, 10 & 34 of the J&K Reservation Rules, 2005 being *ultra vires* to the Article 16 of the Constitution of India, besides quashing the orders of placement of respondent No.5 as Incharge Assistant Professor made vide Order No.619-HME of 2011 dated 25-11-2011 and also the corrigendum issued thereafter.

The brief case of the petitioner is that since the issue in question is pending adjudication before the Apex Court of the country then how and under what circumstances, respondent No.5 can file complaint regarding the service conditions viz. *inter se* seniority between the petitioner and respondent No.5 before respondent Nos. 2 and 3. The further case of the petitioner is that since respondent No.5 has not availed the remedy of filing appeal against the judgment passed by the Division Bench of this Court before the Apex Court, which has assumed finality, respondent No.5, by no stretch of imagination, can claim himself to be senior to the petitioner, when the similar issue is already subjudice before the Apex Court and the matter is likely to be taken up by the Supreme Court.

The petitioner is aggrieved of the impugned communication/order No.E-office No. NCSC-SSW2055/5/2022-US-(SSW) File No. S-20/Jammu- L /2021/SSW-II dated 10.11.2022 issued by the respondents 2 & 3 being illegal, arbitrary and passed without jurisdiction. The brief case of the petitioner is that the National Commission for Scheduled Castes has been misled by respondent No.5, who has suppressed the material facts from respondent Nos. 2 and 3 as the service dispute viz-a-viz seniority and

other relevant issues between petitioner and respondent No.5 was already clinched by the Division Bench of this Court, which has assumed finality. The petitioner after having successfully obtained the relief against the respondent No.5 from the Division Bench of this Court, the respondent No.5 started filing false and frivolous complaints before respondent Nos. 2 and 3 with a view to defeat the rights of the petitioner.

The further case of the petitioner is that respondent Nos. 2 and 3, by no stretch of imagination, can issue positive direction with respect to the service conditions of the petitioner and respondent No.5 as the National Commission for Scheduled Caste is not empowered to issue any such direction either to transfer an employee in a particular post or place or to pass any order relating to service matter, which falls within the realm of administrative action as it is only recommendatory body. Therefore, the Commission has to exercise restraint in service matters, more specifically in the matters of promotion, transfer, postings etc. The National Commission for Scheduled Castes is not expected to interfere with the routine administrative affairs of the department as the role of the Commission is to issue only suitable recommendations.

The learned counsel for the petitioner places reliance on a judgment of the Madras High Court in case titled *Life Insurance Corporation of India v. The National Commission for Schedule Caste* dated 28.10.2022 which is passed on the basis of a Supreme Court judgment. Learned counsel for the petitioner has specifically argued that the aforesaid judgment has been passed by the Madras High Court on the basis of a judgment of the Supreme Court in the case of **All India Indian Overseas Bank SC and**

SC and ST Employees' Welfare Association and others v. Union of India and others, (1996) 6 SCC 606.

The further case of the petitioner is that respondent Nos. 2 and 3 have issued the communication impugned without jurisdiction as the issue with regard to service dispute between the petitioner and respondent No.5 is clinched by the Division Bench and similar issue is subjudice before the Apex Court and the judgment passed by the Division Bench of this Court, which has already assumed finality, has not been called in question by respondent No.5. Having accepted the judgment passed by a Division Bench of this Court without any demur, the respondent No.5 is estopped under law to question the same before respondent Nos. 2 and 3 by filing false and frivolous complaint.

Learned counsel for the petitioner has argued that the order/communication impugned is violative of Rules of Procedure of the National Commission for Scheduled Caste issued vide CSR 414(E) dated 25.03.2009 and the reliance has been placed on clause 7.4.1 of the aforesaid Rules of procedure, which for facility of reference is reproduced hereunder:-

“7.4.1 The following aspect may be kept in mind while filing complaints before the Commission-

(a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.

(b) The complainants should disclose his full identity and give his full address and should sign the representation.

(c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.

(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules of Reservation.

(e) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).

(f) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.

(g) The cases of Administrative nature like transfer/posting/grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.

(h) No action will be taken on the matters where there is no mention of violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation of Rules of Reservation. Hence the matters where there is no mention of violation of above Rules need not be referred to the Commission as complaints”

Learned counsel for the petitioner has further argued that keeping in view the peculiar facts and circumstances of the case, respondent Nos. 2 and 3 have become *functus officio* and lack jurisdiction to decide service rights of the petitioner and respondent No.5, more particularly when Apex Court of the Country has already seized of the similar matter. Thus, as per the learned counsel for the petitioner, the proceedings initiated by respondent Nos. 2 and 3 pursuant to the filing of a false and frivolous complaint by respondent No.5 and the impugned order/communication are nothing but an abuse of the process of law and, accordingly, he seeks quashment of the same.

Lastly, learned counsel for the petitioner has argued that the order/communication impugned is violative of the principles of natural

justice, as the petitioner has been condemned unheard before passing the order impugned.

Heard learned counsel for the petitioner in detail and perused the record.

Prima facie, case for indulgence has been made out.

Issue notice to the respondents in the main petition as well as CM seeking interim relief, returnable within four weeks.

On the asking of the Court, Mr. Amit Gupta, learned AAG accepts notice on behalf of respondent Nos. 1 and 4. He may file objections by or before the next date of hearing.

Subject to taking of requisite steps within one week, registry shall issue notice to respondent Nos.2, 3 and 5.

Meanwhile, subject to objections from the other side and till next date before the Bench, operation of the impugned communication/order dated 10.11.2022 issued by respondent Nos. 2 and 3 shall stay.

List on 22.02.2023.

(Wasim Sadiq Nargal)
Judge

Jammu
14.12.2022
Vinod, PS