

**THE HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**Writ Petition No.2731/2019**

***Vice Chancellor, Atal Bihari Vajpayee Hindi  
Viswavidyalaya, Bhopal***

***Vs.***

***Madhya Pradesh Rajya Anusuchit Jati Aayog & another***

Date of Order	<b>29.08.2019</b>
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	<b>Yes</b>
Name of counsels for parties	For Petitioner/University: Shri Vibudhendra Mishra, Advocate For Respondent No.1: Shri Akshay Pawar, Panel Lawyer For Respondent No.2: Shri Balaji Akillawar, Advocate
Law laid down	For issuance of mandate to the petitioner/University asking to reinstate the services of its contractual employee, the Commission i.e. Madhya Pradesh Rajya Anushuchit Jati Aayog (respondent No.1) has no competence.
Significant paragraph numbers	9, 10 and 11

**O R D E R**  
**(29.08.2019)**

By the instant petition, the petitioner/University is challenging the order dated 11.01.2018 (Annexure-P/1) passed by the Commission/

respondent No.1 mainly on the ground that the Commission/respondent No.1 has no jurisdiction to issue any direction as has been issued by the order impugned.

**2.** The learned counsel for the petitioner submits that the Commission/respondent No.1 exceeded its jurisdiction and infact has given threat to the petitioner/University for initiating criminal action against them. To bolster his submission, the learned counsel for the petitioner/University has placed reliance upon a decision of the Delhi High Court reported in **(2013) SCC Online Del 2229** parties being ***National Seed Corporation Limited Vs. National Commission for SC & ST & another***. He further submits that the order impugned is without any competence and therefore, the same deserves to be set aside.

**3.** *Per contra*, the learned Panel Lawyer submits that the petition suffers from delay and laches and no sufficient explanation has been given by the petitioner in this regard. He further submits that as per Section 10 of the Madhya Pradesh Rajya Anusuchit Jati Ayog Adhinyam, 1995, the Commission/respondent No.1 has ample power to issue any direction and as such, the order impugned is well within the competency of the Commission.

**4.** On the other hand, the learned counsel for respondent No.2 submits that respondent No.2 was engaged for teaching and, therefore, he cannot be compelled to attend the Yoga classes from morning

06:00 am. He further submits that in the advertisement itself, it was mentioned that the selection of guest faculty will be made as per rules of M.P. Higher Education Department but there are no rules made by the Higher Education Department to terminate the services of a guest faculty and in absence of any such provision, respondent No.2 cannot be removed from service. In support of his contention he has relied upon a decision reported in **2001 (3) MPLJ 616** parties being ***Rahul Tripathi Vs. Rajeev Gandhi Shiksha Mission, Bhopal.*** He further submits that without giving any opportunity of hearing, respondent No.2 was removed from service and this act of the petitioner/University is said to be illegal and therefore, this petition being without any substance, is liable to be dismissed. He submits that as the basic order passed on 20.09.2017 has not been assailed by the petitioner/University in this petition, therefore, this petition is liable to be dismissed as the order impugned is nothing but a consequential order passed by the Commission/respondent No.1. Unless the basic order goes, the subsequent order cannot be challenged.

**5.** I have heard the arguments advanced by the learned counsel for the parties and perused the record.

**6.** The petitioner by the instant petition is challenging the order dated 11.01.2018 (Annexure-P/1) whereby, respondent No.1/Commission issued

an instruction to the petitioner for submitting the compliance report apprising them that respondent No.1/Commission had earlier passed an order on 20.09.2017 by which, the termination of respondent No.2 from service was held to be illegal and also directed for his reinstatement in service. Respondent No.2 was engaged as a Guest Faculty Lecturer in the petitioner/University. In order to train and develop the interest in the people of surrounding areas, yoga classes were being organized in the morning regularly and accordingly, people started attending the classes on regular basis in public assembly (jan-shivir). In pursuance to the same, some students got enrolled and showed their interest towards the yoga activities but it was noticed by the petitioner/University that due to irregular and reluctant attitude of respondent No.2, the response of already enrolled students became declined and no new candidate joined the jan-shivir and ultimately, it had to be closed down, therefore, respondent No.2 was asked to attend the yoga classes sincerely but he refused to attend the same; when there was no improvement noticed in the conduct of respondent No.2 as he was misbehaving and not obeying the command of the employer, monetary benefit granted to him was stopped.

**7.** Respondent No.2, therefore, approached the Commission/respondent No.1 and the Commission then initiated the proceeding, asked the petitioner/University to appear before the Commission and even after making appearance and

satisfying the Authorities, an order dated 20.09.2017 was passed by the President of the Commission/respondent No.1 declaring the removal of respondent No.2 illegal asking the petitioner/University to reinstate the services of respondent No.2. When the said order of the Commission/respondent No.1 was not complied with, the Commission/respondent No.1 again issued an order on 11.01.2018 (Annexure-P/1) asking the petitioner/University to submit the compliance report of earlier order dated 20.09.2017 otherwise, criminal proceeding would be initiated against them.

**8.** Being aggrieved with the said action of the Commission/respondent No.1, this petition has been filed solely on the ground that the action taken by the Commission/respondent No.1 is without any competence as well as without any jurisdiction, therefore, it is void.

**9.** As per arguments advanced by the learned counsel for the parties, the only question survives to be adjudicated is whether the Commission/respondent No.1 who has passed the impugned order, has any competence or authority to direct the petitioner/University for reinstatement of respondent No.2 in service or not? So far as the judgment on which the learned counsel for the petitioner/University has placed reliance i.e. **National Seed Corporation Limited (supra)** is concerned, the same is directly on this point and issue involved in the case is altogether similar which has been dealt with by the

Delhi High Court regarding competency of the Commission and also the powers which have been provided to the Commission and to what extent, the same can be exercised. The relevant paragraphs of the said judgment are as under:-

“8. The Respondent No.1, National Commission for Scheduled Castes and Scheduled Tribes (hereinafter referred to as “the Commission”), vide the impugned order dated 11.09.2000 directed as under:-

“10. In its letter dated 17.8.2000 NSC has desired to know whether further action as directed on 2.8.2000 to Shri Verma has to be taken simultaneously or it has to be considered after the result of vigilance inquiry by the Deptt. of Agriculture and Cooperation. In view of the considerations explained in the preceding paragraphs, the undersigned has been directed to say that Shri Dharam Narain should be immediately taken back in the service of the National Seeds Corporation as gross injustice has been meted out to him while relieving him from the Corporation. Further an inquiry should be constituted to probe into the circumstances under which he has been discharged from the service of National Seeds Corporation by misusing the provisions of the VRS.”

9. Aggrieved by the order of the Commission dated 11.09.2000, the Petitioners have filed the present Writ Petition impugning the powers of the Commission to return a finding of misuse of provisions of VRS and to issue such a direction of reinstatement and for constitution of an inquiry.
10. It is the case of the Petitioner that subsequent to, but not as a consequence of, the order dated 11.09.2000 passed by the Commission, the Respondent No. 2 has been given a fresh employment. The learned counsel for the Petitioner submitted that the re-employment had been given on compassionate grounds and it is not a reinstatement pursuant to or as a sequitur to the order dated 11.09.2000 passed by the Commission.
11. Learned counsel for the Petitioner submitted that the Commission was not vested with the powers under Article 338 to decide service disputes or to issue direction of either

temporary or permanent nature thereby directing the re-instatement of an employee or for directing Constitution and holding of an enquiry for any conduct/misconduct of an officer.

12. Learned counsel for the Petitioner further submitted that the Respondent No. 2 had voluntarily applied under the Voluntary Retirement Scheme and had duly accepted the terminal benefits. He contended that the complaint is way beyond the period of limitation inasmuch as the same has been filed after a gap of 5½ years from the date of the application seeking voluntary retirement. He further submitted that having accepted the terminal benefits under the Voluntary Retirement Scheme, the Respondent No. 2 was estopped from raising any further dispute.
13. Learned counsel for the Petitioner contended that the Respondent No. 2 had already availed of his remedies by way of filing a Writ Petition in the High Court of Allahabad, Lucknow Bench, which was subsequently withdrawn and also the industrial dispute raised by him had been decided in favour of the Petitioners. Thus he submitted that the Respondent No. 2 was barred on the principles of res judicata from raising any further dispute qua his voluntary retirement.
14. The Counsel for the Petitioner though submitted that irrespective of the outcome of the present petition, the Respondent No. 2 who had been re-employed would not be disturbed from his re-employment and would be entitled to all benefits admissible in law as per the terms of his re-employment.
15. Learned counsel appearing for Respondent No. 2 controverted the submissions of the counsel for the Petitioner. Learned counsel for Respondent No. 2 referred to the impugned order to contend that no plea of lack of jurisdiction was raised before the Commission and as such the Petitioners were now precluded from raising such a plea.
16. Learned counsel for Respondent No. 2 further contended that Respondent No. 2 had never voluntarily applied under the Voluntary Retirement Scheme but the said scheme had been utilized by the Petitioner to get rid of Respondent No. 2.
17. As per the counsel for Respondent No. 2, the Voluntary Retirement Scheme was implemented on 27.05.1993 and applications were invited

upto 31.03.1994. She further submitted that on 8.6.1994, the Voluntary Retirement Scheme was extended upto 31.8.1994 and as such as per her, between 1.4.1994 to 7.6.1994 there was no scheme in existence.

18. She contended that the voluntary retirement application had been made on 12.5.1994 but had been anti-dated to 31.3.1994. She further contended that the application of Respondent No. 2 was accepted on 28.4.1994 when no such scheme was in place and communication of acceptance was made on 13.7.1994 by which time, as per her, Respondent No. 2 had already applied for withdrawal of the application seeking voluntary retirement. She thus submitted that the impugned order was justified on merits.
19. The issue that is raised by the Petitioners is not mere justification on merits of the order but the scope of the powers exercised by the Commission under Article 338 of the Constitution of India.
20. To understand the scope of the powers exercised by the Commission, it may be necessary to look into the constitutional scheme of Article 338 of the Constitution of India.
21. At the time when the framing of the Constitution of India was being debated, the framing fathers of the Constitution proposed for an appointment of a Special Officer for the Scheduled Castes and Scheduled Tribes. The Special Officer was to be entrusted with the duty to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Castes and Scheduled Tribes or of such other backward classes. The report to be submitted to the President along with the recommendations of the President were contemplated to be laid before the Parliament.
22. The Drafting Committee submitted to the President of the Constituent Assembly on 21st February, 1948 the draft of the new Constitution of India as settled by the Committee, the proposed Article 299 for appointment of a Special Officer was as Under:

“299. (1) There shall be a Special Officer for minorities for the Union who shall be appointed by the President, and a Special Officer for minorities for each State for the time being specified in part I of the First



Schedule who shall be appointed by the Governor of the State.

(2) It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before Parliament.

(3) It shall be the duty of the Special Officer for a State so specified to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards at such intervals as the Governor may direct and the governor shall cause all such reports to be laid before the Legislature of the State.”

23. The Article 299 as proposed by the Drafting Committee contemplated appointment of a Special Officer by the President for the minorities whose duty was to investigate all matters relating to safeguards provided for minorities and to report to the President upon the working of the safeguards and the President was to cause all such reports to be laid before the Parliament.

24. The proposed Article 299 was debated upon by the Constituent Assembly and was finally adopted as Article 338 as under:

338.(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this Article the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference 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.”

25. Article 338 as finally adopted by the Constituent Assembly stipulated appointment of a Special Officer by the President for the Schedule Caste and Schedule Tribes whose duty was to investigate all matters relating to safeguards provided for Schedule Castes and Schedule Tribes and to report to the President upon the working of the safeguards and the President was to cause all such reports to be laid before the Parliament.
26. With the objective of replacing the Special Officer with a high level five-member Commission for more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes, the Constitution (65th Amendment) Act, 1990 was enacted. The Amendment Act further elaborated the functions of the Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of the safeguards and other measures for protection, welfare and socioeconomic development of the Scheduled Castes and Scheduled Tribes.
27. The Statement of Objects & Reasons of the Constitution (65th Amendment) Act, 1990, reads as under:-

**“THE CONSTITUTION (SIXTY-FIFTH AMENDMENT) ACT 1990**

Statement of Objects and Reasons appended to the Constitution (Sixty-eighth Amendment) Bill, 1990 which was enacted as THE CONSTITUTION (Sixty-fifth Amendment) Act, 1990

**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.

2. The Bill seeks to achieve the aforesaid objects.”

28. Article 338 of the Constitution, post amendment reads as under:

“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 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 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.

(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 the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference 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.”

29. Post the Constitution (65th Amendment) Act, 1990, the duties of the Commission were to investigate and monitor all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes and to enquire into the specific complaints with respect to deprivation of rights and safeguards of Scheduled Castes and Scheduled Tribes and further to participate and advice on the planning process of Socio-economic development of the Scheduled Castes and Scheduled Tribes. The Commission had to present to the President, annually and at such other times, as the Commission may deem fit, reports upon the working of those safeguards. The Commission in the said reports had to make recommendations as to the measures that should be taken by the Union or the State for the effective implementation of those safeguards and other measures for the

protection, welfare and the socio-economic development of the Scheduled Castes and Scheduled Tribes. Under Article 338, the Commission had to further discharge such other functions in relations 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. All reports of the Commission were to be laid before each House of the 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 non-acceptance, if any, of any such recommendations and similar provision was made with respect to the State Government where the report or any part thereof related to any matter with which any State Government was concerned.

30. Another major change brought about by 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 in Sub-clause 'a' or enquiring into any complaint referred to in Sub-clause 'b' of Clause 5 of Article 338.
31. The Constitution (89th Amendment) Act, 2003, further amended the provision of Article 338 of the Constitution whereby a separate National Commission for Scheduled Tribes was setup by bifurcating the existing National Commission for Scheduled Castes and Scheduled Tribes. By the said amendment, the Constitution of the respective Commissions was also modified.
32. For the purposes of the present dispute, it is the scope of the powers as vested with the National Commission for Scheduled Castes and Scheduled Tribes which is relevant as the order impugned in the present petition was passed on 11.9.2000 by the then National Commission for Scheduled Castes and Scheduled Tribes prior to the bifurcation by the Constitution (89th Amendment) Act, 2003.
33. The main issue that arises for consideration is the scope of the powers vested with the National Commission for Scheduled Castes and Scheduled Tribes as conferred by Article 338 of the Constitution of India.
34. The Constitutional scheme of Article 338 clearly indicates that the Special Officer was vested with the power primarily to examine rights and safeguards of Scheduled Castes and Scheduled Tribes and to submit a report to the President

with respect to the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes.

35. Though the Commission post the 65th Amendment has been vested with the power to examine instances and individual complaints but that investigation and enquiry is for the purposes of furtherance of the objective of the setting up of the Commission, i.e., for the purposes of investigation and monitoring all matters relating to the safeguards and for submission of a report to the President.
36. The powers vested with the Commission of enquiry and submission of report cannot be extended to adjudication of disputes between an individual and a corporation or a statutory authority. The powers conferred do not contemplate that the Commission can examine the matter like a Civil Court and adjudicate the dispute and pronounce a judgment either interim or final.
37. The Commission is not a Tribunal or a forum discharging the functions of a judicial character or a Court. Article 338 does not entrust the said Commission with the powers to take up the role of a Court or an adjudicatory tribunal and to determine the rights inter-se the parties.
38. No doubt, under clause 8 of Article 338, the Commission has been given all the powers of the Civil Court trying a suit but the said powers are to be exercised while investigating any matter referred to in sub - clause 'a' or enquiry into any complaint referred to under sub-clause 'b' of Clause 5.
39. The powers given to the Commission are procedural powers of a Civil Court for the purposes of investigating and enquiring into these matters and are limited for that purposes. The power conferred under Clause 8 of Article 338 do not confer the powers of a Civil Court of granting injunctions of temporary or permanent nature and for adjudicating and deciding disputes between parties like a court.
40. The Supreme Court in case of All India Indian Overseas Bank SC and ST Employees Welfare Association v. Union of India AIR (1996) 6 SC 606 has laid down as under:-

“10. Interestingly, here, in clause (8) of Article 338, 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.***”

(Emphasis Supplied)

41. No doubt, the Commission has been given the procedural powers of a Civil Court but the substantive powers of a Civil Court to adjudicate and decide disputes between the parties and to pronounce orders of final or interim nature have not been conferred by Article 338 under the Constitution of the Commission.
42. This Court in the case of Gulmarg Restaurant v. Delhi Development Authority 119 (2005) DLT 648 has laid down as under:

“29. It may be noticed that the appellant had even approached the National Commission for Scheduled Caste and Scheduled Tribes and directions were issued on 02.08.1997. These directions were, however, issued in a pending disputed matter. ***In any case within the Constitutional Scheme of Article 338 of the Constitution of India, the observations of such a Commission can only be recommendatory in nature.*** The directions passed by the said Commission seek to transfer the property in favor of the appellant at a price of Rs. 12,42,700/-, can hardly be acceptable as either the auction bid was rightly rejected or wrongly rejected. It would not proper for any other authority to determine the price. However, we are not required to deal any further with this issue since those are only recommendatory in nature.”

(Emphasis Supplied)

43. Further in the case of Indian Institute of Technology v. National Commission for Scheduled Castes and Scheduled Tribes 111 (2004) DLT 155 this Court has laid down as under:



“15. It will thus be seen from the aforesaid that it is only in specific matters that the power of civil court has been conferred on Respondent No. 1 Commission. This aspect has also to be examined keeping in mind the duties of the Commission set out in Article 338(5) which has to investigate and monitor all matters relating to safeguarding the rights of the scheduled caste and scheduled tribes and to enquire into specific complaint with respect to deprivation of the rights and safeguarding. The jurisdiction is advisory in nature but it is only for the purpose of investigating of the complaint that the powers of civil court have been conferred in respect of certain matters.”

16. The aforesaid is in fact no more res integra in view of the judgment of the Supreme Court in All India Indian Overseas Bank SC and St. Employees' Welfare Association (1996) 6 SCC 606, where the Supreme Court observed in para 6 as under:

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

44. The Division Bench of this Court in Deepshikah Jiwan Pandit v. NCERT 2004 (73) DRJ 442 (DB) held as under:

“8. Having examined the matter in the light of the aforesaid advise of the Commission, we are of the view that answer to the question has to be in the negative. From a reading of Clauses (5) & (8) and in particular sub-clause (b) of Clause (5) of Article 338 of the Constitution, introduced by the Constitution (Sixty fifth Amendment) Act, 1990, **it appears that though the Commission has the power to enquire into a specific complaint and make its report thereon but its reports are recommendatory in nature.** We leave it at that because learned counsel for the Petitioner has not seriously contended that the “advice” of the

Commission was mandatory and binding on the authorities below. We find from the orders of the lower authorities that they were fully conscious of the advice of the commission. Therefore, we do not agree with learned counsel for the Petitioner that what was advised by the Commission has been ignored by the Tribunal or the Tribunal or the NCERT.”

(Emphasis supplied)

45. This Court in Professor Ramesh Chandra v. University of Delhi (2007) ILR 2 Delhi 593 also held as under:

**“6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the Constitution of India is an adjudicatory body which can issue binding directions or injunction orders.** Clause 8 of Article 338 of the Constitution of India has conferred limited powers of a civil court on the Commission on matters relating to summoning and enforcing attendance of any person in India and examining him on oath, for discovery and production of documents, receiving evidence on affidavits, requisitioning any public document or copy thereof from any court of office, issuing commission for examination of witnesses and documents. It also has powers of a civil court in respect of matters which the President by a rule may confer. No such rule has been brought to our notice. **While conferring limited powers of a civil court for some purposes, Article 338 has not given the commission, the power to adjudicate and pass binding and executable decrees like a civil court.** The above powers are procedural powers vested with a Civil Court, which have been given to the Commission for the purpose of investigation and enquiry into the complaints in terms of Sub-clause (a) and (b) of Clause 5. A reading of Clauses 6 and 7 shows that the Commission is required to submit its report, which is to be placed before each house of the Parliament along with the memorandum explaining the action taken or proposed to be taken on the recommendation made by the said Commission and in case of non-acceptance the reasons for the same. In case the report or any part thereof relates to matter with which a State Government is concerned, a copy of the report is required to be forwarded to the Governor of the State who is required

to lay the report before the legislature of the State along with memorandum explaining the action taken or proposed to be taken on recommendation relating to the State and reasons for non-acceptance of the said recommendations. It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are alternative to the hierarchical judicial system envisaged under the Constitution of India.”

46. The Supreme Court of India in *Collector v. Ajit Jogi*, (2011) 10 SCC 357 has laid down as under:

“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 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.”
47. The submission of the learned counsel for the Respondent that the Voluntary Retirement Scheme was utilized to get rid of Respondent No. 2 does not hold much water inasmuch as there is no denial to the fact that a voluntary retirement application was, in fact, moved and the amounts towards terminal benefits have been received as far back as in July, 1994.
48. The Respondent No. 2 has not even preferred any proceedings impugning the action of the Petitioners in accepting the application of Respondent No. 2 under the Voluntary Retirement Scheme.
49. Since the National Commission for Schedule Caste and Schedule Tribe is not a Court or a Tribunal and the orders of the Commission are merely directory in nature, the Respondent No. 2 could not have approached the Commission for the redressal of his grievance. The remedy lay elsewhere.
50. The fact that Respondent No. 2 was unsuccessful in getting appropriate relief from

either the High Court or the Industrial Tribunal, the Respondent No. 2 was precluded from approaching the Commission for seeking redressal of his grievance.

51. The National Commission for Schedule Caste and Schedule Tribe clearly did not have the power to issue a mandate to the Petitioners to either reinstate the Respondent No. 2 back into service or to conduct an enquiry into the circumstances under which the Respondent No. 2 was discharged from the services of the Petitioner by alleged misuse of provisions of Voluntary Retirement Scheme, which clearly was beyond the Constitutional scheme of the powers conferred on the said Commission by Article 338 of the Constitution of India.”

In view of the above, it is clear that the Commission/respondent No.1 is not competent to issue order impugned or to issue any mandate to the petitioner/University directing to reinstate the services of respondent No.2.

**10.** However, the judgment in the case of **Rahul Tripathi (supra)**, relied upon by the learned counsel for respondent No.2 is not applicable in the present facts and circumstances because in the case at hand, the petitioner/University is challenging the order passed by the Commission/respondent No.1 mainly on the ground that the said order is without having any competence.

**11.** The contention of the learned counsel for respondent No.2 that the basic order dated 20.09.2017 has not been assailed by the petitioner/University, therefore, this petition is not maintainable, has no substance for the reason that even the basic order dated 20.09.2017 was without having any competence and thus, the same was void and, therefore, there was no reason for the

petitioner/University to comply the same and accordingly, any consequential order and direction issued on the basis of void order cannot stand and thus, the order impugned dated 11.01.2018 (Annexure-P/1) passed by the Commission/ respondent No.1 is hereby set aside.

**12.** Resultantly, the petition filed by the petitioner/University stands **allowed**.

**(SANJAY DWIVEDI)**  
**JUDGE**