

Calcutta High Court (Appellate Side)

Pawan Kumar Niroula vs Union Of India And Others on 24 January, 2022

1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WP.CT 86 OF 2021
Pawan Kumar Niroula
Vs
Union of India and others.

Mr.Suman Banerjee.

..... for the Petitioner.

Mr. Tapan Bhanja.

..... for the Respondent No.1.

Mr. Pulkesh Bajpayee.

..... for the Respondent Nos. 2 to 6.

Heard On : 07.12.2021

Judgment on : 24.01.2022

Rabindranath Samanta, J:-

1. This writ petition has been preferred by the petitioner Pawan Kumar Niroula challenging the order dated 05.10.2021 passed by the Central Administrative Tribunal, Kolkata Bench(hereinafter be referred to as the Tribunal) in O.A. No. 352/09/SKM/2021.

2. In the tribunal application the petitioner sought for the following reliefs :

a) An order be passed directing the respondent authorities concerned to immediately allow the applicant to join his duties as TGT at Jawahar Navodaya Vidyalaya, Ravangla, South Sikkim;

b) An order be passed directing the respondent authorities concerned to forthwith set aside/cancel/withdraw/ rescind the decision of the respondent no. 2 to conduct summary trial into the allegation against the applicant vide reference no. PER-14032/2/2020-Estt- III/13728- 733 dated 16.06.2020;

c) An order be passed directing the respondent authorities concerned to forthwith set aside/cancel/withdraw/ rescind the order of suspension being Ref. No. PER.DP/NVS (SHR)/PK Niroula/6170 dated 16.02.2020 and the subsequent orders of extension.

3. The Learned Tribunal by the order impugned permitted the respondent authorities to proceed with the order for summary trial and directed the petitioner to co-operate with the authorities.

4. The seminal question involved in this writ petition is as to whether the order of suspension inflicted upon the petitioner is sustainable in law and the committee constituted for summary trial pertaining to the allegations of sexual harassment against the petitioner has statutory force after enactment of The Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and amendment of relevant provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the light of the Act.

5. The background facts as projected by the petitioner and which are necessary for adjudication may be adumbrated as under:

The petitioner is a teacher and he was appointed by the respondent Navodaya vidyalaya Samiti on 17.11.1997 as TGT(Trained Graduate Teacher)-Nepali. He was initially posted at Jawahar Navodaya Vidyalaya, North Sikkim. Later he was transferred to Bihar in the year 2006 and in the year 2007 he was again transferred to North Sikkim. Lastly, he was transferred to his present place of posting in the year 2011.

On 15.02.2020 the respondent no. 4, the principal, Jawahar Navodaya Vidyalaya, Ravangla, South Sikkim made a written complaint with the Officer-in-Charge of Ravangla Police Station to the effect that he received complaints from several students of Jawahar Navodaya Vidyalaya against the petitioner alleging commission of sexual harassment (molestation) on 14.02.2020 and immediately thereafter, he set up an internal committee to enquire into the complaints. It was also stated in the complaint that around 67 students complained in writing with the said committee that they were personally harassed by the petitioner. On such allegations the principal requested the Officer-in-Charge of the police station to take appropriate legal action against the petitioner.

On the basis of the aforesaid complaint Ravangla Police Station Case No. 02 of 2020 dated 15.02.2020 under Section 10 of the Protection of Children from Sexual Offences Act, 2012 was registered against the petitioner for investigation. The petitioner was arrested by the Investigating Officer on 15.02.2020, but subsequently he was released on bail by the concerned Court.

The petitioner was not informed about any disciplinary action taken against him, but from unofficial sources he came to know that he was placed under suspension. However, in reply to an Email dated

11.06.2020 seeking information regarding his status as he intended to join his duties, the respondent no. 4 by communicating an order being No. PER.DP/NVS(SHR)/PK Niroula/6170 dated 16.02.2020 informed him that he was placed under suspension with effect from 15.02.2020 in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The petitioner being aggrieved by the order of suspension made an appeal before the Chairman of Navodaya Vidyalaya Samiti under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on 10.07.2020, but he is yet to know about its fate.

6. Initially, the order of suspension inflicted upon the petitioner was from 15.02.2020 and it was extended for a period of 90 days. Even during the pendency of the appeal preferred by the petitioner before the Chairman of the said Samiti, the order of suspension was extended for another period of 90 days. Subsequently, such suspension order was further extended for another term of 90 days and ultimately it was extended up to 10.02.2021.

7. By an order dated 16.06.2020 the respondent school authorities informed the petitioner that the respondent no. 2 constituted a committee for summary trial for inquiring into the allegations levelled against him dispensing with the regular disciplinary proceedings in terms of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

8. It is contended by the petitioner that as the complaint against him is of the nature of sexual harassment at workplace, the respondent school authorities should have constituted internal complaints committee and such committee shall be deemed to be the inquiring authority appointed by the disciplinary authority. Under such factual scenario, the petitioner assails the impugned order on the grounds that the Learned Tribunal ought not to have directed the respondent authorities to proceed with the order of summary trial which has no legal force in view of the advent of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

9. Admittedly, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are applicable to the teachers of Jawahar Nabadaya Vidyalaya, Ravangla, South Sikkim which is wholly financially aided by the Central Government.

10. As it is evident from the documents on record, on a written complaint made by the respondent no. 4 with the local police station one Ravangla P.S Case no. 2 dated 15.02.2020 under Section 10 of POCSO Act was launched for investigation against the petitioner and he was arrested on 15.02.2020. On the following date i.e. on 16.02.2020 the school authority by an order dated 16.02.2020 placed the petitioner under suspension on the ground of his detention.

11. Learned Counsel appearing for the petitioner has argued that the order of suspension inflicted by the respondent school authorities smacks of illegality as the suspension order was passed while the petitioner was detained in custody for 24 hours. In such context, Learned Counsel submits that in terms of Rule 10 (2) (a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter be referred to as the CCS CCA Rules) a government servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period

exceeding forty-eight hours. It is not in dispute that the respondent authorities placed the petitioner under suspension within 24 hours of his detention. That being so, the order of suspension is illegal ab initio as it was made in gross violation of Rule 10(2) of the CCS CCA Rules.

12. What we find from the documents on record, the order of suspension made on 16.02.2020 was extended from time to time and finally it was extended till 10.02.2021. Amid such continuing suspension, the respondent school authorities by an order dated 16.06.2020 constituted the committee for summary trial to enquire into the allegations of sexual harassment against the petitioner.

13. In the decision in the case of Ajay Kumar Choudhary

-Vs- Union of India reported in (2015) 7 SCC 291, the Hon'ble Apex Court has held as under:

"Suspension, specially preceeding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and posts the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to codure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or inquiry.

Hence, it is directed that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of suspension."

14. After the petitioner was under suspension for more than 100 days, he without being served with any charge- sheet, was handed down the order dated 16.06.2020 informing that a committee was constituted for summary trial to enquire into the complaints against him.

15. In view of the law declared by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary supra, the order of suspension exceeding 90 days without any justifiable ground is vitiated with illegalities. It is not in dispute that the petitioner preferred an appeal against the order of suspension under Rule 23 of CCS CCA Rules on 09.07.2020, but, the authority turned deaf ear to the appeal. Such acts on the part of the concerned respondent authority reek of malafides. Under such factual matrix, the order of suspension which is illegal ab initio and its extension did not conform to the legal principles enunciated by the Hon'ble Apex Court in the decision of the Ajay Kumar Choudhary

supra is liable to be quashed.

16. Learned Counsel appearing for the respondent school authorities has submitted that the notification dated 20.12.1993 issued by the Navadaya Vidyalaya Samiti prescribing the constitution of committee for summary trial to enquire into allegations of sexual harassment against any teacher of the school carries legal force as the notification has been upheld by the Hon'ble Apex Court in the decision in the case of Avinash Nagra -Vs- Navadaya Vidyalaya Samiti reported in JT 1996 (10) SC 461.

17. Be that as it may, the legal scenario as to dealing with the complaints of sexual harassment at workplace has undergone a sea-change after the law declared by the Hon'ble Supreme Court in the case of Vishaka -Vs- State of Rajasthan reported in (1997) 6 SCC 241 and after enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In the decision in Vishaka the Hon'ble Apex Court directed that every organisation public or private shall have to constitute an internal complaints committee to enquire into any complaint of sexual harassment made by any aggrieved woman. In a later decision in the case of Medha Kotwal Lele and Others-Vs- Union of India and Ors reported in (2013) 1 SCC 297 the Hon'ble Supreme Court further passed the similar directive as to formation of internal complaints committee at every workplace.

18. However, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which came into force on 09.12.2013 now occupies the field and the Act contains a mechanism to deal with complaints of sexual harassment. In this regard it will be apposite to refer to Section 4 of the Act.

Section 4 of the Act reads as under:

"4. Constitution of Internal Complaints Committee.-(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee".

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1) :

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations

committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,-----

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section."

19. In order to implement section 4 of the Act in letter and spirit and to make the internal complaints committee viable and independent the Hon'ble Apex Court in a recent decision in the case of Punjab and Sind Bank and Others -Vs- Durgesh Kuwar reported in (2020) SCC Online SC 774 has observed at paragraph 22 that clause (c) of Section 4 (2) indicates that one member of the internal complaints committee has to be drawn from amongst a non-governmental organisation or association committed to the cause of women or a person familiar with issues relating to sexual harassment. The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the committee and thereby it obviates an institutional bias.

20. The committee in question for summary trial as constituted by the respondent school authorities comprises the following members:

1. Shri Vikram Joshi, D.C(Pers), NVS, Hqrs.,Noida- Convenor
2. Shri N. Haribabu, AC, NVS, RO, Shillong- Member
3. Smt. Sarita, AC, NVS, RO, Lucknow - Member

21. As discussed above, it is axiomatic that the committee so formed by the respondent school authorities cannot be termed as an internal complaints committee as envisaged under the provisions of Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Though the committee was constituted in terms of the notification dated 20.12.1993 issued by Navadaya Vidyalaya Samiti, but, the committee de hors of the fundamental legal requirements under Section 4 of the Act, has now lost its statutory force.

22. Learned Counsel for the respondent school authorities has further argued that since the allegations of sexual harassment have been made by the girl students of the school, the provisions of the aforesaid Act will not be applicable to the respondent school.

23. In this context, the definition of 'aggrieved woman' as defined under Section 2 (a) of the Act may be referred. As per Section 2 (a) an aggrieved woman means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent. That being so, the provisions of the Act squarely apply to the students of the school.

24. Now, we may advert to another relevant provision of the aforesaid Act. Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, inter alia, provides that the internal complaints committee, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent. After the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force the relevant service rules viz Central Civil Services (Conduct) Rules, 1964 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were suitably amended. Rule 3C of Central Civil Services (Conduct) Rules, 1964, amongst others, reads as under:

1. No Government servant shall indulge in any act of sexual harassment of any woman at any workplace.
2. Every government servant who is in-charge of a workplace shall take appropriate steps to prevent sexual harassment of any woman at the workplace.

25. For the purpose of this rule 'sexual harassment' includes anyone or more of the following acts or behaviour (whether directly or by implication) namely:

- i) Physical Contact and advances; or
- ii) A demand or request for sexual favours; or
- iii) Making sexually coloured remarks; or
- iv) Showing pornography; or
- v) Any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

26. On the other hand, the amended Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, inter alia, enjoins as follows:

Where there is a complaint of sexual harassment within the meaning of Rule 3C of the Central Civil Services (Conduct) Rules, 1964, the complaints committee established in each ministry or department or office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of this rule and the complaints committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the enquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

27. In view of the legal position as above, the committee constituted for summary trial without adhering to the mandatory requirements of the law and the rules as quoted above loses its legal force. Therefore, viewed from all aspects, the impugned order passed by the Learned Tribunal holding the legality of the committee for summary trial is not sustainable in law.

28. Therefore, in view of the observations as above, the question as raised for resolution is answered in the negative.

29. In the result, the writ petition succeeds.

30. The impugned order dated 05.10.2021 passed by the Learned Central Administrative Tribunal, Kolkata Bench in O.A.No. 352/9/SKM/2021 is hereby set aside. The Tribunal application being No. O.A.No. 352/9/SKM/2021 is allowed.

31. The order of suspension against the petitioner vide order dated 16.02.2020 made by the respondent no. 4 and extended from time to time and the order dated 16.06.2020 by which the committee for summary trial was constituted are hereby quashed.

32. The respondent school authorities are directed to allow the petitioner to join his duties within one month from date. They are also directed to pay all the back wages to the petitioner within two months from the date of joining of his duties.

33. In view of the above, the writ petition stands disposed of.

34. No order as to costs.

35. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.) I agree, (Harish Tandon,J.)