
(2019) 12 DEL CK 0443

In the Delhi High Court

Case No : Civil Writ Petition No. 9407 Of 2019

Arti Devi

APPELLANT

Vs

Jawaharlal Nehru University

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Constitution Of india, 1950 — Article 226

Citation : (2019) 12 DEL CK 0443

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Dibyanshu Pandey, Simran Bhagat, Veeraragavan N., Ginny J. Rautray, Anushka Ashok, Parth Shekher

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This writ petition has been filed by the Petitioner, who is a Research Scholar, under Article 226 of the Constitution of India, praying for an impartial enquiry into her complaint of sexual harassment. The prayer in the petition reads as under:

"It is most respectfully prayed that this Hon'ble Court may be pleased:

i. To issue a writ in the nature of mandamus directing the Respondent to form an Appeals Committee to consider the Appeal of the Petitioner in sexual harassment complaint no. FILE/ICC/11B/01-2018

ii. To issue a writ in the nature of mandamus directing the Respondent to decide the appeal within stipulated time of thirty days (30 days) as mandated by JNU ICC rules.

iii. To issue any order(s) or direction(s) as this Hon'ble Court deem just and proper under the facts and circumstances of the matter."

2. The background is that on 9th January, 2018, the Petitioner had filed a complaint alleging sexual harassment, before the Internal Complaints Committee (hereinafter, "ICC") of JNU. After an enquiry that lasted nearly eight months, on 2nd August, 2018, the ICC submitted its Report and Recommendations, which, inter alia, recommended that the Petitioner's request for registration be considered. The said recommendation reads as under: -

"1. Defendant no. 1 should be censured in terms of the CCS (CCA) Rules 1965 for creating uncertainty by not giving NOC to complainant as well as directing complainant to de-register against her will.

2. The defendant no. 2 did not place the application of the complainant for change of supervisor before the faculty meeting which again was a lapse on his part for which it is recommended that the defendant no. 2 should be censured in terms of the CCS (CCA) Rules.

3. The ICC found that the defendant no. 2 has not handed over several files related to the centre to the incoming chairperson and it was held by the defendant no. 2. The competent authority should take into consideration this procedural lapse on part of the defendant no. 2 and the competent authority should setup an inquiry committee in this regard against defendant no. 2. The competent authority should issue a general guidelines regarding handing over and taking over procedure between any outgoing and incoming Chairperson/ Deans.

4. A fine (in terms of 10(3) of the Rules and procedures of the Internal Complaints Committee (ICC), JNU adopted from Under the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of women Employees and students in higher Educational Institutions) regulations, 2015 and Gazette notification of MHRD dated 2nd May, 2016 under The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013]) of Rs. 5000/- each should be imposed on the defendants no. 1 and 2 as their administrative lapses, which created confusion for the complainant and wasted her time. This amount shall be paid to the complainant.

5. In case the complainant applies for registration to the Ph.D. Programme again it is recommended that the competent authority shall reconsider her application and under no circumstances her application should be rejected on the grounds of delay.

6. In the present circumstances it would appropriate that the complainant shall be provided a new supervisor.

7. It is recommended to the competent Authority that there should be uniform deregistration procedure for all M.Phil/Ph.D students in all schools/centres/ special centres, which should be properly defined and guidelines should be circulated to all Schools/Centres/Special centres for ready reference of students and faculties.

8. There should be proper procedure which should be laid down by the Admission Branch that faculty, who are on the long leave or deputed to any other assignment should not be made supervisor for M.Phil/Ph.D students. The University may decide to make proper guidelines about the same. It has been also observed that defendant no.1 was on long leave but still the Centre for South Asian Studies, SIS was allotting him M.Phil/Ph.D students. The presence of supervisors is necessary for the guidance of M.Phil/Ph.D research student.

9. It was observed during the proceedings that the complainant herself was advertising about her complaint on her facebook and through other electronic media and informed the public at large. Hence, the complainant should be issued a warning to not to indulge in such act in future because this kind of act by any of the complainant, defendants and witnesses damages, the inquiry procedure and the effected parties. The kind of a public propaganda also damages the image of the institution."

3. An appeal was filed by the Petitioner against the recommendations of the ICC. Further representations were also made by her. Since there was no response, the writ petition was filed. Notice was issued on 12th September 2019 and initially there was some confusion as to whether the appeal of the Petitioner was decided or not. JNU's counsel was to ascertain the exact status of the appeal as also the representation of the Petitioner for re-registration to the PhD programme, as per the recommendation of the ICC.

4. On 12th September, 2019, an affidavit was called for from the Registrar, JNU on the following aspects:

"11. Under these circumstances, the following directions are issued at this stage:
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1. A complete copy of the original record of the appeals shall be produced before the Court on the next date of hearing.

2. A specific affidavit shall be filed by the Registrar, JNU as to the status of the decision, if any, taken on the representation made by the Petitioner dated 6th August, 2018 seeking re-registration of candidature in the Ph.D course in terms of paragraph 5 of the ICC's recommendation.

3. The above-mentioned affidavit should also contain the clear stand of JNU as to whether the appeal was in fact filed before the Appellate Authority, if any of the parties were heard and if any orders have been passed in the same.

...

13. The affidavit shall be filed within a period of two weeks with an advance copy to the Petitioner.

Rejoinder be filed before the next date of hearing."

5. Thereafter on 11th December 2019, the Registrar JNU submitted that he is

unable to access the records as the administrative offices were inaccessible due to student protests. Directions were accordingly issued for ensuring that the administrative block of the JNU remains functional and further time was granted to file the affidavit.

6. Today, Id. counsel for the Jawaharlal Nehru University (hereinafter "JNU") has placed on record an affidavit signed by Dr. Pramod Kumar - the Registrar, JNU, dated 17th December, 2019.

7. The two main issues that were to be considered in the affidavit were -

(i) the re-registration of the Petitioner for the Ph.D program;

(ii) the status of the appeal against the recommendations of the Internal Complaints Committee (hereinafter "ICC").

8. In respect of the first, the note sheet which has been placed on record shows that the Chairperson of the ICC Ms. Vibha Tandon, on 10th September 2018, observed as under:

"The recommendation is attached as mentioned "X". We have not yet issued the final orders. The complainant and defendants both have appealed against the recommendations of ICC, we can look into the appeals, issue final orders, then only if it is allowed as per JNU rules Ms. Arti's request can be considered. I shall advise that we should look into the appeals, before going ahead in this matter."

Recommendation "X" referred to above is as under:

In case the complainant applies for registration to the Ph.D. Programme again it is recommended that the competent authority shall reconsider her application and under no circumstances her application should be rejected on the grounds of delay."

9. Thus, there was no clarity on the re-registration. The same was made dependent on the appeal. This noting of the Chairman of ICC was not even communicated to the Petitioner. Post the said noting, the appeal is stated to have been heard and disposed of vide decision dated 18th September, 2018. Id. counsel for the JNU fairly concedes that the order of the Appellate Authority was not conveyed to the Petitioner at all, despite repeated representations being made.

10. Further, even the question of re-registration appears not to have been considered by the JNU. Re-registration was sought by the Petitioner on 6th August 2018 and followed up by further letters. The same was moved through a Note on 5th September 2018 by the Evaluation Branch - I. On the said note, the Chairperson of ICC merely wrote a note asking that re-registration ought to await the decision in the appeal. The appeal itself was disposed of on 18th September 2018 and the Id. Counsel for JNU concedes that the same has not been dealt with in a satisfactory manner. Thus, both the re-registration issue and the appeal deserve fresh consideration.

11. In light of the fact that the JNU has not considered the matter afresh on merits, that considerable time is elapsing in the administrative processing, and the manner in which the re-registration is being examined being unsatisfactory, the recommendation of the ICC being in favour of the Petitioner, it is directed that the Petitioner be given re-registration into the Ph.D. program, and hostel facilities be provided to her in the winter session commencing from January, 2020. Her continuation in the Ph.D. program shall be as per the Rules governing the said program.

12. Insofar as the appeal against the ICC's recommendations is concerned, the JNU has only placed on record the decision of 18th September 2018, which was not even communicated to the Petitioner. The Petitioner was also not given any hearing by the Appeals Committee. Accordingly, the appeal shall be heard afresh by the Appeals Committee, and if the Petitioner requests for either legal assistance or the services of a defence assistant, the same shall be considered and granted by the Appeals Committee in accordance with the JNU/UGC Rules. The appeal shall be decided within a period of 30 days, after hearing the Petitioner. The order which may be passed shall also be communicated to the Petitioner, in order to enable her to avail her legal remedies in accordance with law, if required.

13. The Appeals Committee shall be constituted in accordance with the applicable rules.

14. The writ petition is, accordingly, disposed of. However, the remedies of the Petitioner, if any, against any decision that may be taken by the Appeals Committee are left open. All pending applications are also disposed of.