

(2023) 09 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17111 Of 2021

Balbir Singh Beniwal

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-09-2023

Acts Referred:

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 12, 16

Citation : (2023) 09 PAT CK 0019

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : P.N. Shahi, Samir Kumar, Anjani Kumar, Alok Kumar Rahi

Final Decision : Allowed

Judgement

1. Heard Mr. P.N. Shahi, learned Senior Counsel assisted by Mr. Samir Kumar, learned counsel for the petitioner and Mr. Anjani Kumar, learned senior counsel assisted by Mr. Alok Kumar Rahi, learned counsel for the Bihar Animal Sciences University.

2. The petitioner in the present case is seeking the following reliefs:-

(i) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of certiorari to quash the order dated 31.03.2021 (Annexure-P/4) by the Registrar, Bihar Animal Sciences University (BASU), Bihar Veterinary College Campus, Patna, whereby and whereunder petitioner was permanently discharged from the post of the Dean, Sanjay Gandhi Institute of Dairy Technology, Patna.

(ii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of certiorari to quash the order dated 22.03.2021 issued by Vice Chancellor, Bihar Animal Sciences University, Bihar Veterinary College Campus, Patna by which he has been pleased to direct the petitioner to hand over Administrative Charges of post of Dean, Sanjay Gandhi Institute of Dairy Technology, Patna.

(iii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of mandamus directing respondents to reinstate the petitioner for balance of period of his tenure as the charges against him remained unproved and the Enquiry was closed;

(iv) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of mandamus directing the respondents to issue the character and experience certificate with apology letter to the petitioner for unwarranted and unjustified termination and also pay compensation as well as damages to compensate the financial loss, social and mental setbacks caused to him due to termination resulting into deprivation of means of livelihood for six months;

(v) Any other relief which the petitioner may deemed to be found entitled in the facts and circumstances of the case.”

Facts of the Present Case

3. The petitioner in the present case claims that he is widely acclaimed Academician and a Dairy Scientist. After serving the Haryana Agricultural University for about 30 years, the petitioner retired from service on attaining the age of superannuation. He came across the Employment Notice No. 12 of 2018 as contained in Annexure 'P/1' to the writ application.

4. The Employment Notice was issued by the Bihar Animal Sciences University (hereinafter referred to as the 'University') from eligible candidates for the post of Dean in the three constituent colleges of the University. The petitioner applied for the said post and was selected for the post of Dean, Sanjay Gandhi Institute of Dairy Technology, Patna. The offer of appointment of the petitioner is a part of Annexure 'P/1' to the writ application. According to the offer of appointment, the tenure of the post will be for five years or 65 years of age, whichever is earlier. His appointment is to be governed by the agreement to be executed between him and the University at the time of joining and the provisions of the Bihar Animal Sciences University revised from time to time will be applicable. Clause '3' of the offer of appointment which is relevant for purpose of the present case is being reproduced hereunder for a ready reference:-

“3. His service can be discontinued owing to administrative reasons at any time by issue of one month's notice or one month's emoluments in lieu thereof. He may also leave the assignment, on his own volition, by giving one month's notice.”

5. The petitioner states that the petitioner was a disciplined hard task master, therefore, he was not being liked by a group of unruly people who started hobnobbing with some persons of the Opposition parties of the State and their leaders. It is the case of the petitioner that on 18th of March, a member of the Opposition alleged in the Bihar Legislative Council that the Dean of the Sanjay Gandhi Institute of Dairy Technology was appointed because of his relation with the Vice Chancellor and also made some other allegations regarding his

behaviour with lady Professors. The allegations were also made against the then Vice Chancellor of the University alleging that he is involved in embezzlement of large sums of money. It is stated that there was no complaint against the petitioner and on 20th of March, the Registrar of the University asked a few points to him and on 22nd of March, an office order was passed by the Registrar of the University through which the administrative charge of the Dean stood withdrawn from the petitioner and it was handed over to Dr. Thakur till further orders.

6. The petitioner alleges that he had no information about this development and all of a sudden, when Mr. came to take the charge, some teachers and non-teachers also came to the office of the Dean and assaulted the petitioner brutally. A complaint in this regard has been submitted to the administration for taking necessary action.

7. It is stated that in a haste, the University passed the impugned order dated 31.03.2021 (Annexure 'P/4) by which the service of the petitioner has been terminated casting aspersion and stigma upon him.

8. It is stated that an Internal Complaint Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act of 2013') called upon the petitioner and the petitioner submitted his apology in writing to the said Committee. The said case was resolved through reconciliation on 19.06.2021. The petitioner wrote to the University for his reinstatement with back wages and full dignity and also submitted a reminder but the University did not bother to reply to those communications.

Submissions on behalf of the Petitioner

9. Mr. P.N. Shahi, learned Senior Counsel arguing for the petitioner has taken this Court through the impugned office order dated 31.03.2021 and submits that on bare perusal of the same, this Court may easily conclude that this termination is not a termination simpliciter by giving one month's notice or one month's salary in lieu thereof. In fact, what the University did is that after holding that the petitioner is entitled for one month's notice or one month's emolument in lieu thereof, the same was withheld by the University in view of the ongoing inquiry by the Internal Complaint Committee of the University. It is submitted that in the impugned office order, reference has been made to the ongoing inquiry by the Internal Complaint Committee and for that reason, one month's emolument was withheld which is nothing but an aspersion and stigma upon the petitioner. It is submitted that at no point of time, the Internal Complaint Committee communicated any finding against the petitioner. There was no recommendation by the Internal Complaint Committee to take any action under Section '12' of the Act of 2013. It is submitted that in the garb of passing of an order of termination simpliciter, in fact the respondent University has passed a stigmatic order even before completion of the inquiry.

10. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Dr. Vijayakumaran C.P.V. versus Central University of Kerala and Others reported in (2020) 12 SCC 426 wherein the Hon'ble Apex Court has held to the extent that the material which amounts to a stigma need not be contained in the order of termination of the probationer, but might be contained in any document referred to in the termination order.

11. It is submitted that the manner in which the impugned office order has been issued casting aspersion upon the petitioner, it would inevitably affect the future prospects of the petitioner. The Hon'ble Supreme Court has in its judgment referred the earlier three-Judge Bench decision of the Hon'ble Apex Court in the case of Indra Pal Gupta versus the Managing Committee, Model Inter College, Thora and Others reported in (1984) 3 SCC 384 in which a somewhat similar situation has been dealt with by the Hon'ble Supreme Court.

Stand of the University

12. This writ application has been opposed by Mr. Anjani Kumar, learned senior counsel for and on behalf of the University. Learned senior counsel has taken this Court through the counter affidavit of respondent nos. 3 to 5. The stand of the University is contained in paragraphs '6' to '10' of the counter affidavit. Perusal of these paragraphs would show that the Registrar had conducted a preliminary inquiry and submitted a report vide Letter No. 1310/Reg./BASU dated 20.03.2022 saying as follows:-

"a. Prima facie, rude and high-headed attitude and unbecoming behaviour of Dr. Beniwal cannot be ruled out;

b. There are two lady-teachers in SGIDT. One of them has stated on record that she had not received any phone calls or WhatsApp messages from Dr. Beniwal. The second lady-teacher submitted on record that she used to receive official as well as personal messages through WhatsApp chat from Dr. Beniwal and responded to his messages. However, she stated on record that she has deleted all those messages and had not shared those messages with anybody. Thus in the absence of duly certified/verified print outs of the WhatsApp chats, it is not fair and also not possible to substantiate or deny the allegations leveled against Dr. Beniwal.

c. Since Dr. Beniwal on record charged that "it is an attempt to malign the image of the University or there are forces that would not like work atmosphere in BASU", and "lady teacher has stated on record that she did not make any written complaint out of fear of family and she deleted the messages due to family and society fear", it is imperative that further detailed enquiry be conducted into this case by the "Internal Complaint Committee" of the University, headed by one of the lady-teachers, and constituted under the provisions of "Prevention of Sexual Harassment to Women at Workplace, Act 2013". Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prohibits publication or making known contents of complaint and inquiry

proceedings. That's why the same is not being produced but the Respondents undertake to produce the Report if the Hon'ble court so desire."

13. Although it is also stated that the petitioner had tendered his resignation to the Vice Chancellor vide his letter dated 20.03.2021 but it is not the case of the University that the resignation of the petitioner was ever accepted. The counter affidavit has in various paragraphs justified action of the University in view of the allegations against the petitioner and the preliminary report of the Registrar, however, in the later part of the counter affidavit, it is stated that the appointment of the petitioner may be terminated under Clause '3' of the offer letter and in exercise of power conferred under Clause '3' of the offer of appointment, the Competent Authority of the University permanently discharged the petitioner from the post of the Dean with immediate effect.

14. In the counter affidavit, it is stated that the emoluments were withheld with a view to ensure the cooperation of the petitioner with the ongoing inquiry against him by the Internal Complaint Committee. This is, however, admitted in the counter affidavit that the Internal Complaint Committee submitted in its final report that the issue was settled between the parties in view of the apology in writing on behalf of the petitioner and the Committee recommends not to pursue this inquiry.

15. It is further stated that withheld salary of the petitioner has been released vide Office Order No. 140 dated 18.08.2021.

16. On record, there is also an Interlocutory Application No. 01 of 2022 filed on behalf of one Satish Kumar Sharma, who claims to be a Social Activist, however, in course of hearing, no one has appeared on behalf of the intervenor to press this application. There is an affidavit of the University that they had advertised the post vide rolling advertisement Employment Notice No. 04 of 2022 which was active till 10.08.2022. An undertaking has been recorded in the said affidavit that if any action pursuant to the Employment Notice No. 04 of 2022 dated 04.07.2022 is taken, the same will be subject to the decision of this case.

Consideration

17. Having heard learned counsel for the parties and on persual of the records, this Court briefly reproduces the impugned order hereinbelow:-

"Office Order

As per approval of Hon'ble Vice-Chancellor, Bihar Animal Sciences University, Patna on note sheet page no. 04 of the file no. Admin 11/Enq./08/2021/Reg./BASU, Patna, Dr. Balbir Singh Beniwal, Dean, Sanjay Gandhi Institute of Dairy Technology, Patna is hereby permanently discharged from the post of Dean, SGIDT, Patna of Bihar Animal Sciences University, Patna with immediate effect on ground of administrative reason in the interest of University in the light of terms and conditions of his appointment vide O.O. No. 211/Rect./BASU, Patna dated 27.01.2019. Whereas, Dr. Beniwal is entitled for one month notice or one

month's emoluments in lieu thereof, however, one month's emoluments in lieu of one month notice is hereby withheld in view of the ongoing Inquiry by the Internal Complaint Committee of the University.

Sd/-

Registrar

Bihar Animal Sciences University,

Patna. "

18. It is not in dispute that at the stage of issuance of impugned office order, the Internal Complaint Committee had not recorded any finding against the petitioner and there was no recommendation by the Internal Complaint Committee to take any step as envisaged under Section '12' of the Act of 2013.

19. To this Court, it appears that the office order is definitely not an order of termination simpliciter in terms of Clause '3' of the offer of appointment which is admittedly governing the terms and conditions of service of the petitioner

20. In case of termination simpliciter, there was no need to refer to the ongoing inquiry by the Internal Complaint Committee and withholdment of one month's salary in lieu of notice to the petitioner. By referring the fact that the one month's salary in lieu of notice is being withheld during pendency of the ongoing inquiry by the Internal Complaint Committee, the University has referred to the pending allegations against the petitioner which were subject matter of enquiry. This makes the impugned office order stigmatic.

21. In case of Indra Pal Gupta (supra), the order of termination of a probationer was under challenge. Although the order of termination did not contain specifically as to what prevailed upon the Managing Committee of the school where the probationer was posted as Principal, the resolution of the Managing Committee appended to the order of termination talked about the report of the Manager which was read at the meeting and that the facts contain in the report of the Manager were found serious and not in the interest of the institution, therefore, the Committee had unanimously resolved to terminate his probation. Although the report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter affidavit filed in the case. The Hon'ble Supreme Court held that the letter of termination referred to the resolution of the Managing Committee and that the said resolution was made part of the order as an enclosure and that the resolution in its term referred to the report of the Manager. It was noticed that the Manager's report was the foundation which was stigmatic.

22. In this case, as mentioned above, the whole counter affidavit referred to the allegations against the petitioner and in several paragraphs, the action taken by the University has been sought to be justified referring to what have transpired in the preliminary inquiry by the Registrar. This Court finds that the discussions

made by the Hon'ble Supreme Court in the case of Dr. Vijayakumaran C.P.V. (supra) from paragraphs '8' to '11' are required to be reproduced hereunder for a ready reference:-

"8. It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in "any document referred to in the termination order". Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex facie stigmatic order of termination. A three-Judge Bench of this Court in *Indra Pal Gupta v. Model Inter College* (1984) 3 SCC 384 : 1984 SCC (L&S) 555 had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made the basis for the decision by the Committee to terminate probation of the employee concerned.

9. Relying on the aforementioned decision, the Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences* (1999) 3 SCC 60 : 1999 SCC (L&S) 596, observed as follows:(*Dipti Prakash Banerjee case* (1999) 3 SCC 60 : 1999 SCC (L&S) 596, SCC pp. 75-76, paras 32-35)

"32. The next question is whether the reference in the impugned order to the three earlier letters amounts to a stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.

33. Learned counsel for the appellant relies upon *Indra Pal Gupta v. Model Inter College* (1984) 3 SCC 384 : 1984 SCC (L&S) 555 decided by a three-Judge Bench of this Court. In that case, the order of termination of probation, which is extracted in the judgment, reads as follows: (SCC p. 386, para 1)

"1.With reference to the above (viz. termination of service as Principal), I have to mention that in view of Resolution No. 2 of the Managing Committee dated 27-4-1969 (copy enclosed) and subsequent approval by the DIOS, Bulandshahr, you are hereby informed that your service as Principal of this Institution is terminated...."

Now the copy of the resolution of the Managing Committee appended to the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the Manager being serious and not in the interests of the institution, that therefore the Committee unanimously resolved to terminate his probation. The report of the Manager was not extracted in the enclosure to the termination order but was extracted in the counter filed in the case and read as follows: (SCC p. 388, para "3)

'3. ..."It will be evident from the above that the Principal's stay will not be in the

interest of the Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e., for termination of his period of probation, too, the approval of the DIOS will be necessary. Accordingly, any delay in this matter may also be harmful to our interests.

Accordingly I suggest that instead of taking any serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end.” ’

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the resolution in its turn referred to the report of the Manager. A copy of the Manager’s report had been filed along with the counter and the said report was the “foundation”.

Venkataramiah, J. (as he then was) held that the Manager’s report contained words amounting to a stigma. The learned Judge said: “This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct ...”, that these findings in the Manager’s report amounted to a “mark of disgrace or infamy” and that the appellant there was visited with evil consequences. The officer was reinstated with all the benefits of back wages and continuity of service.

34. It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager’s report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager’s report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.

35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.”

(emphasis supplied)

10. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* (2002) 1 SCC 520 : 2002 SCC (L&S) 170, the Court observed thus: (SCC p. 528, para 21)

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is *ex facie* stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him. "

23. Finding that the impugned office order dated 31.03.2021 (Annexure 'P/4' to the writ application) suffers from non-observance of the principles of natural justice and has been passed in haste without conducting any formal regular inquiry against the petitioner, the same is hereby set aside.

24. As a consequence of setting aside of the impugned office order, the petitioner would stand reinstated for the remainder of the period, if any left but having noticed that the petitioner has come out from the pending inquiry before the Internal Complaint Committee in view of the reconciliation and in the process he submitted his apology and promised not to repeat the same occurrence in future, this Court is of the considered opinion that at this stage, revival of the said proceedings before the Internal Complaint Committee is not desirable. At the same time, the petitioner would not be entitled for any salary or emoluments for the period he has remained outside his service.

25. In result, the petitioner would stand reinstated to his service for the leftover period, if any, but it will be open to the University to take an appropriate step, if advised in accordance with the terms of the appointment of the petitioner.

26. This writ application stands allowed to the extent indicated hereinabove.